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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am

WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Monday, July 18, 1994

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG09

Prevailing Rate Systems; Aroostook, ME, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to abolish the Aroostook, Maine, nonappropriated fund (NAF) Federal Wage System wage area and to redefine Aroostook and Washington Counties, Maine, as areas of application to the Cumberland, Maine, NAF wage area for pay-setting purposes. With the scheduled closing of Loring Air Force Base (AFB) on September 30, 1994, and the current downsizing of the Army and Air Force Exchange Service and Loring AFB Morale, Welfare and Recreation Department, there will not be a sufficient number of employees to conduct the wage change survey scheduled for July 1994 or to meet the regulatory requirements for a survey area.

DATES: This interim rule becomes effective on July 18, 1994. Comments must be received by August 17, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Aroostook NAF wage area is composed of two counties. Aroostook County is the survey area, and Washington County is the area of application. The host activity, Loring AFB, is scheduled to close on September 30, 1994. With the scheduled closing of Loring AFB and the current downsizing of the Army and Air Force Exchange Service and Loring AFB Morale, Welfare and Recreation Department, there will not be a sufficient number of employees to conduct the wage change survey scheduled for July 1994. The Department of Defense projects that no more than 25 Federal Wage System (FWS) employees will work in Aroostook County by September 30, 1994. Cutler Radio Station, in Washington, Maine, the only other installation with NAF employees in the wage area, has eight FWS employees and does not have sufficient capability to serve as host installation. Because neither county meets the minimum of 26 NAF employees required to establish a wage area, Aroostook and Washington Counties must be redefined as areas of application to an existing wage area.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage are:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments. These criteria are discussed below.

Loring AFB in Aroostook County and Cutler Radio Station in Washington County are closest to the Cumberland, Maine, NAF wage area. Loring AFB is approximately 461 kilometers (286 miles) and Cutler Radio Station is approximately 298 kilometers (185 miles) from Brunswick Naval Air Station, host installation and largest activity in the Cumberland, Maine, NAF wage area. York, Maine (which was defined as a wage area effective March 23, 1994, by an interim rule 59 FR 13641), is the next closest NAF wage area. Portsmouth Naval Shipyard is the largest activity and host installation in York, Maine, and is located approximately 585 kilometers (363 miles) from Loring AFB and 415 kilometers (258 miles) from Cutler Radio Station.

Transportation facilities consist of interstate highways and principal highways. The most direct route from Loring AFB and Cutler Radio Station to Cumberland, Maine, and Brunswick Naval Air Station is Interstate 95. Interstate 95 then continues to York, Maine, and Portsmouth Naval Shipyard.

An analysis of the 1990 commuting patterns indicates that 37,392 workers live and work within Aroostook County. Aroostook County out-commuters include 113 who commute to work in Washington County, 42 who commute to Cumberland County, and none who commute to York County. The 1990 commuting patterns for Washington County indicate that 12,178 workers live and work within Washington County. Washington County out-commuters include 54 who commute to work in Aroostook County, 11 who commute to Cumberland County, and none who commute to York County.

In overall population, Aroostook (population 86,936) and Washington (population 35,308) Counties are smaller than both York County (population 164,587) and Cumberland County (243,135). In terms of private industry employment in the major industry categories, Aroostook (employment 2,402) and Washington (employment 599) Counties are again smaller than both York County (employment 4,428) and Cumberland County (employment 14,901). As with the employment criteria, the kinds and sizes of private industry establishments in Aroostook and Washington Counties more closely resemble those in York County but are smaller than both Cumberland and York Counties. In summary, both proximity and transportation facilities favor assigning Aroostook and Washington Counties to the Cumberland, Maine, NAF wage area. Aroostook and Washington Counties are more similar to, but substantially smaller than, York County in terms of overall population, private employment in major industry categories, and kinds and sizes of private industrial establishments.

The Federal Prevailing Rate Advisory Committee reviewed this request and recommended approval by consensus.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code,

I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days to avoid the expenditure of resources needed to prepare for the July 1994 wage change survey of the Aroostook, Maine, NAF wage area.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532 [Amended]

2. In Appendix B to subpart B of Part 532, the listing for the State of Maine is amended by removing the entry for Aroostook.

3. Appendix D to subpart B of Part 532 is amended by removing the wage area list for Aroostook, Maine, and by revising the list for Cumberland, Maine, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Maine

Cumberland

Survey area

Maine:
Cumberland

Area of application: Survey area plus:

Maine:
Aroostook
Hancock
Kennebec
Knox
Penobscot
Sagadahoc
Washington

* * * * *

[FR Doc. 94–17307 Filed 7–15–94; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 772

RIN 3206–AF76

Interim Relief

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is publishing final regulations which reflect administrative case law on taking personnel actions to provide interim relief under the Whistleblower Protection Act of 1989. These regulations also reflect OPM's initiative to sunset the Federal Personnel Manual.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606–2920.

SUPPLEMENTARY INFORMATION: OPM published for comment proposed changes to the regulations on this subject in the **Federal Register** on February 17, 1994 (59 FR 7909). Comments and suggestions were received from three agencies and eighteen individuals. These comments and suggestions, along with the rationale for and explanations of changes to the regulations, are discussed below.

The Whistleblower Protection Act of 1989 (WPA), Pub. L. 101–12 codified at 5 U.S.C. 7701(b)(2)(A), provided that prevailing parties in an appeal to the Merit Systems Protection Board (MSPB) "* * * shall be granted the relief provided in the decision, and remaining in effect pending the outcome of any petition for review * * *." OPM published final regulations on this subject in the **Federal Register** on January 31, 1992 (57 FR 3707–3715). The final regulations authorized agencies to take interim personnel actions to provide a prevailing applicant or employee the interim relief ordered in an MSPB initial decision. Interim personnel actions include, but are not limited to, interim appointments, interim repromotions after demotions, and interim within-grade increases.

After these regulations were published, the Merit Systems Protection Board (MSPB) issued an administrative decision in *Leonard Ginocchi* v. *Department of Treasury*, 53 M.S.P.R. 62 (1992), which explained MSPB's interpretation of the WPA with regard to interim relief. In *Ginocchi*, the Board ruled that it would not look behind the agency's determination under 5 U.S.C. 7701(b)(2)(A) that returning an employee to the workplace would be unduly disruptive. It also held that an agency making a determination of undue disruption did not have to keep the employee on excused absence (administrative leave), but could place the employee in other duties. OPM believes this facet of *Ginocchi* is a reasonable and persuasive interpretation of the WPA. Since this interpretation is inconsistent with a portion of OPM's regulations (which was based on a more restrictive interpretation), OPM proposed to delete that portion of the regulations—section 772.102(d). This change helps reduce any confusion by practitioners before the Board about their respective rights and responsibilities regarding interim relief.

With regard to the proposed change to the regulations, one commenter expressed concern that deletion of the paragraph describing the actions an agency may take to provide interim relief might be misconstrued or misunderstood to mean that an agency no longer would have the flexibility to place an employee in a non-duty, paid status during interim relief. (Several commenters did misconstrue the proposed change in this manner.) OPM emphasizes that this is not the intent of the change. OPM believes that the statute itself and MSPB's administrative case law noted above clearly show that an agency may place an employee or applicant in a non-duty, pay status when an "unduly disruptive" determination is made provided the employee or applicant receives "pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review * * *." [5 U.S.C. 7701(b)(2)(B)]

Another commenter noted that the current regulations refer to an agency's authority to place an employee "in the same or similar position previously occupied" and wondered whether that authority would remain intact under the proposed change. An agency may continue to place an employee in a "similar" position under the change but under MSPB administrative case law the agency would be required to make a determination of "undue disruption" whenever the employee is not placed in the exact position he or she previously held.

Several commenters stated that they believed that the "unduly disruptive part of the law" has been used against union personnel as a "union busting tactic" and that OPM proposes to

"advance the anti labor tactics" of the MSPB. The basis for this belief is unclear. OPM does note that Federal unions with consultation rights under 5 U.S.C. 7117(d)(2) were afforded an opportunity to provide their views and recommendations on the proposed regulations. Similar concerns or beliefs were not raised by these organizations.

Finally, several commenters stated that they believed that MSPB will not enforce its own regulations on interim relief. Another commenter stated that his had occurred in his individual appeal. OPM's changes do not address these concerns about MSPB's enforcement of its regulations.

Since Federal Personnel Manual Supplement 296–33 was discontinued under OPM's initiative to sunset the FPM, OPM has deleted the reference to it in part 772 which provided that interim relief actions needed to be prepared in accordance with the FPM. Now, agencies may rely on The Guide to Processing Personnel Actions, an OPM handbook effective on January 1, 1994 for guidance on how to prepare interim relief actions. No concerns were raised by commenters about this portion of the proposed change.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 772

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

James B. King.

Director.

Accordingly, OPM amends part 772 of title 5 of the Code of Federal Regulations as follows:

PART 772—INTERIM RELIEF

1. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, and 7301; Pub. L. 101–12.

§ 772.102 [Amended]

2. Section 772.102 is amended by removing paragraphs (d) and (g); redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively; and by removing the semicolon and the word "and" at the end of paragraph (e) and inserting a period in its place.

[FR Doc. 94–17306 Filed 7–15–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV94–998–2IFR]

Clarification of Requirements Established Under Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts for 1994 and Subsequent Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule clarifies that peanut handlers signatory to Peanut Marketing Agreement No. 146 (agreement) may store and shell certain Segregation 2 seed peanut lots with Segregation 1 seed peanut lots when such lots are produced under the auspices of a State agency, which regulates or controls their production. The Peanut Administrative Committee (Committee) believes that the current requirements authorize such commingling of lots but recommended the clarification to remove any chance of confusion. This rule also provides that the unchanged portions of the incoming, outgoing, and indemnification regulations currently in effect under the agreement for 1993 crop peanuts be established for 1994 and subsequent crop peanuts. The clarification of requirements was unanimously recommended by the Committee.

DATES: Effective July 18, 1994. Comments received by August 17, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administrative Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; FAX: (202) 720–5698. Comments should reference this docket number, the date, and page number of this issue of the **Federal Register**. Comments received will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770, or FAX: (813) 299–5169; or Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2170, or FAX: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 146 [7 CFR part 998] regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 75 handlers of peanuts subject to regulation under the agreement, and about 47,000 peanut producers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the producers may be classified as small entities.

In 1993, the reported U.S. production, mostly covered under the agreement,

was approximately 3.33 billion pounds of peanuts, a 22 percent decrease from 1992 and the lowest level since 1983. The preliminary 1993 peanut crop value is $991.65 million, 77 percent of the 1992 crop value.

The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 70 percent of U.S. shellers (handlers), handling approximately 95 percent of the crop, have voluntarily signed the agreement. Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. Signatory handlers who comply with these requirements may be eligible for indemnification of losses for individual lots of their peanuts which test positive to aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The Committee, which is composed of growers and handlers of peanuts, meets to review the rules and regulations effective on a continuous basis for peanuts regulated under the agreement. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

The Committee met on March 15 and 16, 1994, and unanimously recommended clarifying changes to § 998.100 Incoming quality regulation.

Section 998.34 of the agreement provides authority for the modification of the incoming quality regulation by the Secretary of Agriculture, if the Secretary finds that such modification would tend to effectuate the objectives of the agreement.

After considerable discussion, the Committee unanimously recommended amending paragraph (e) *Seed peanuts* of § 998.100 to clarify that Segregation 2 seed peanuts meeting certain quality requirements may be stored and shelled with Segregation 1 seed peanut lots. Currently, paragraph (e) specifies that Segregation 3 seed peanut lots with visible *Aspergillus flavus* mold must be stored and shelled separate and apart from other peanuts. The regulation does not specifically state that Segregation 2 seed peanuts containing up to three percent damaged kernels and no visible *Aspergillus flavus* mold can be stored and shelled with Segregation 1 seed lots if the seed peanuts were produced under the auspices of a State agency. The Committee believes that the current provisions authorize such commingling but believe that the authority should be expressly stated to avoid confusion.

The Committee noted that requiring Segregation 2 seed peanuts to be stored separately from Segregration 1 seed peanuts would increase the number of storage bins handlers needed to maintain separation. This would increase handler costs. It also noted that requiring the Segregation 2 seed peanuts to be shelled separate and apart from Segregation 1 seed peanuts would increase handler shelling costs with no apparent benefits.

Therefore, the Committee recommended adding a sentence to paragraph (e) clarifying that seed peanut lots may be stored and shelled with Segregation 1 lots if: (1) The seed peanuts do not exceed 3 percent total damage and have no visible *Aspergillus flavus* mold; and (2) both the Segregation 2 seed peanut lot and the Segregation 1 seed peanut lot are produced under the auspices of a State agency which regulates or controls the production of seed peanuts.

This rule also provides that the unchanged portions of the incoming, outgoing, and indemnification regulations currently in effect under the agreement for 1993 crop peanuts be established for 1994 and subsequent crop peanuts.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Written comments, timely received, in response to this action, will be considered before finalization of this rule.

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other information, it is found that the revision set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action clarifies requirements currently in effect for peanut handlers who are signatory to the agreement; (2) this action should be in effect as soon as possible, because the 1994 crop year begins July 1, 1994, and handlers need to know regulations applicable to handling 1994 crop peanuts; and (3) this action provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 998.100 is amended by revising the section heading and adding a new sentence at the end of paragraph (e)(2) to read as follows:

§ 998.100 Incoming quality regulation—1994 and subsequent crop peanuts.

* * * * *

(e) * * *

(2) * * * Seed peanuts, produced under the auspices of the State agency, which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus*, may be stored and shelled with Segregation I seed peanuts which are also produced under the auspices of the State agency.

* * * * *

3. Section 998.200 is amended by revising the section heading to read as follows:

§ 998.200 Outgoing quality regulation—1994 and subsequent crop peanuts.

4. Section 998.300 is amended by revising the section heading to read as follows:

§ 998.300 Terms and conditions of indemnification—1994 and subsequent crop peanuts.

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–17241 Filed 7–15–94; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Amending the NASA Research Grant Handbook To Address Education Grants, Training Grants, and Reduce the Threshold for Incremental Funding of Grants

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: NASA has revised its Research Grant Handbook to define education and training grants, permit the award of education grants, and decrease the threshold for incremental funding of grants. This regulation is issued as an interim rule to ensure immediate correction of deficiencies in the NASA Research Grant Handbook in these areas.

DATES: This Interim Rule is effective July 18, 1994. Comments are due on or before September 16, 1994.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

The Research Grant Handbook, 14 CFR Part 1260, NHB 5800.1C, does not currently apply to training grants, does not specifically address education grants, and does not adequately distinguish these types of grants from the research grants generally covered in the Handbook. Education grants are now covered by the Research Grant Handbook. They may be negotiated and awarded by all Agency grant offices. Training Grants remain outside the scope of the Research Grant Handbook. The award of training grants will continue to be accomplished by NASA Headquarters.

The Research Grant Handbook currently provides for incremental funding of grants exceeding $1 million in annual funding. This notice reduces that amount to $50,000.

Availability of NASA Grant Handbook

The NASA Research Grant Handbook, of which this regulation will become a part, is codified in 14 CFR Part 1260 and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238. Cite GPO Subscription Stock Number 933–001–00000–8. It is not distributed to the public, whether in whole or in part, directly by NASA.

Impact

NASA certifies that this interim rule will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 14 CFR Part 1260

Grants.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR Part 1260 is amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: Public Law 97–258, 31 U.S.C. 6301 et seq.

Subpart 1—General

2. Section 1260.102 is revised to read as follows:

§ 1260.102 Applicability.

This part 1260 establishes policies and procedures for all research and education grants and cooperative agreements awarded by the National Aeronautics and Space Administration (NASA) to educational institutions and nonprofit organizations. It does not cover training grants, facilities grants, grants for the Centers for the Commercial Development of Space, or contracts.

Subpart 2--Definitions

3. Section 1260.201 is amended by adding the following definitions in alphabetical order:

§ 1260.201 Definitions.

* * * * *

Education Grant. An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute within one or more of the following areas: (1) Capturing student interest in science, mathematics, technology, or related fields; (2) improving student performance in science, mathematics, or technology; (3) enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics or technology; (4) supporting national educational reform movements; (5) conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and (6) developing instructional materials, (e.g., teacher guides, printed publications, computer software, and videotapes) or networked information services for education. No substantial involvement is expected between NASA and the grantee.

* * * * *

Training Grant. An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute solely by providing scholarships, fellowships, or stipends to students or faculty. No substantial involvement is expected between NASA and the grantee.

* * * * *

Subpart 3—The Process

4. In section 1260.302, paragraph (d) is amended by revising the introductory text to read as follows:

§ 1260.302 Evaluation and selection.

* * * * *

(d) *Incremental funding.* Grants with anticipated annual funding exceeding $50,000 may be funded for less than the amount and period of performance stated in the proposal provided:

* * * * *

5. Section 1260.303 is amended by adding paragraphs (i) to read as follows:

§ 1260.303 Award procedures.

* * * * *

(i) *Education grants.* The grant officer shall include in education grants the special condition in § 1260.422(i).

Subpart 4—Provisions and Special Conditions

6. Section 1260.422 is amended by adding paragraph (i) to read as follows:

§ 1260.422 Special conditions.

* * * * *

(i) See § 1260.303(i).

Education Grant (July 1994)

This is an Education Grant. References in other provisions of this grant to "research," "research work," and "technical," shall be deemed to

refer to the efforts or results obtained under this grant.

[FR Doc. 94–17336 Filed 7–15–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8554]

RIN 1545–AS96

Clear Reflection of Income in the Case of Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to accounting for business hedging transactions. Elsewhere in the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing final regulations to clarify the character of gain or loss recognized from the sale or exchange of property that is part of a business hedge. The final regulations in this document are needed to provide guidance to taxpayers regarding when gain or loss from common business hedging transactions is taken into account for tax purposes.

DATES: These regulations are effective July 18, 1994.

For dates of applicability of these regulations, see § 1.446–4(g).

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (attn: CC:DOM:FI&P). Telephone (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1412. The estimated annual burden per respondent or recordkeeper varies from .1 to 10 hours, depending on individual circumstances, with an estimated average of .5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On October 20, 1993, the Service published in the **Federal Register** (58 FR 54077) a notice of proposed rulemaking (FI–54–93) relating to accounting for business hedging transactions. The notice also contained proposed amendments to regulations under sections 446 (relating to accounting for notional principal contracts) and 461 (relating to general rules on the taxable year of deduction).

On January 19, 1994, the Service held a public hearing on the proposed regulations. In addition, the Service received a number of written comments on the proposed regulations. The proposed regulations, with certain modifications and changes, are adopted as final regulations. The changes, and several of the suggestions that were not adopted, are discussed below.

Explanation of Provisions

Under the final regulations, a hedging transaction defined in § 1.1221–2(b) must be accounted for under the rules of § 1.446–4. This requirement applies regardless of whether the character of the gain or loss on the hedging transaction is determined under § 1.1221–2. Thus, for example, certain section 988 transactions that are described in § 1.1221–2(b) are accounted for under the rules of this section.

The regulations require taxpayers to clearly reflect income by reasonably matching the timing of the income, deduction, gain, or loss from a hedging transaction with the timing of income, deduction, gain, or loss from the hedged item or items. The regulations generally provide significant flexibility to taxpayers in determining the appropriate method of accounting for their different hedging transactions.

Some commentators suggested that any hedge accounting method employed by a taxpayer for financial statement purposes should be treated as satisfying the matching requirement. Because the financial accounting standards for hedges are in a state of development, however, the final regulations do not expressly sanction the use of financial accounting methods. Nevertheless, the Service and Treasury expect that the hedge accounting methods employed by most taxpayers for financial accounting purposes will satisfy the clear reflection standard in the final regulations.

The final regulations require taxpayers to maintain books and records containing a description of the accounting method used for each type of hedging transaction in sufficient detail to demonstrate how the clear reflection standard is met. For each hedging transaction, in addition to the identification required by the regulations under section 1221, the final regulations require whatever more specific identification is necessary to verify the application of the method of accounting used by the taxpayer for that transaction.

Various commentators requested that the regulations provide specific examples or other guidance on the type of additional information the Service expects taxpayers to provide. Because the identification that is needed depends upon the method of accounting being used and the types of items or risk being hedged, however, specific rules cannot be provided. For example, taxpayers using a mark-and-spread method of accounting for aggregate hedges will identify the spread period in their books and records, but taxpayers using other methods will not.

The proposed regulations provided no specific guidance on the appropriate method of accounting for global hedges and other hedges of aggregate risk. The preamble, however, solicited comments on this issue. Many commentators suggested that the regulations should provide for an aggregate hedge account, in which both the hedging transactions and the hedged items would be accounted for under a particular method. Methods suggested included a periodic mark-to-market method modeled on the mixed straddle accounts of section 1092(b) and realization-based methods with loss-deferral or loss-limitation provisions.

Because these regulations concern only accounting for hedging transactions, the Service and Treasury are concerned about expanding the regulations to allow mark-to-market accounting for hedged items in an aggregate hedge account. Many taxpayers are not currently using mark-to-market accounting, and general changes to their methods of accounting for hedged items would create issues that are beyond the scope of the regulations. Realization-based methods of accounting for aggregate hedge accounts would only be appropriate if coupled with loss-deferral or loss-limitation provisions, and the Service and Treasury are concerned about their authority to impose these restrictions. Accordingly, the regulations do not

adopt the suggestion that an aggregate hedge account should be permitted.

The final regulations restate the general matching rule for hedges of aggregate risk and require taxpayers to match the timing of income, deduction, gain, or loss from the hedging transaction to the timing of the aggregate income, deduction, gain, or loss from the items being hedged. The regulations further provide that the "mark-and-spread" method currently employed by many taxpayers to account for hedges of aggregate risk for financial accounting purposes may provide an appropriate and reasonable match. Under the mark-and-spread method described in the regulations, the taxpayer periodically marks the hedging transactions to market and takes the gain or loss into account over the period for which the hedge is intended to reduce exposure to risk. Similar spreading applies to realized income, deduction, gain, and loss. Under this method, the period over which the hedging transaction is intended to reduce risk (and thus the period over which the gains and losses are taken into account) may change over time, depending upon a taxpayer's particular hedging strategies. The period used, however, must be reasonable and consistent with those strategies. It is anticipated that the identification and recordkeeping required by §§ 1.446–4(d) and 1.1221–2(e) will support the reasonableness of a taxpayer's spread period.

The mark-and-spread method is not the only method that clearly reflects income for hedges of aggregate risk. The final regulations also state that, if a taxpayer hedges its aggregate risk with a notional principal contract, taking into account gains and losses in accordance with § 1.446–3 of the regulations may clearly reflect income. Other methods of accounting also may be appropriate. Like the proposed regulations, the final regulations allow flexibility in attaining the reasonable matching required by the general rule.

The proposed regulations contained several provisions applicable to inventory hedging transactions. The general rule in the proposed regulations was that gains and losses on hedges of inventory purchases may be taken into account at the same time they would be taken into account if they were elements of inventory cost. Similarly, gains and losses on hedges of sales of inventory may be taken into account at the same time they would be if they were elements of gross sales proceeds.

In response to comments, the final regulations clarify the general rule for inventory hedges and extend it to hedges of aggregate inventory risk. A hedge of an aggregate risk cannot be associated with particular purchase or sales transactions. Accordingly, the final regulations provide that taxpayers may account for hedges of purchases under the mark-and-spread method, with the modification that the gain or loss spread to particular periods is taken into account in the same period it would have been if it had been an increase or decrease to inventory cost incurred in the particular period. Similarly, a taxpayer may account for hedges of sales of inventory under a mark-and-spread approach, with the gain or loss that is spread to a particular period taken into account in the same period it would have been if it had been an increase or decrease to gross sales proceeds.

The final regulations clarify certain simplified methods of accounting for inventory hedges that were provided in the proposed regulations. First, the proposed regulations provided a special rule allowing taxpayers to take hedging gains and losses into account when realized, if the hedging transactions are closed when the hedged inventory items are sold and units are included in inventory at cost. Because the general rule has been clarified to encompass this approach, this provision is not separately stated in the final regulations.

Second, the final regulations continue the simplified method of taking into account gains and losses on hedges of both purchases and sales as though those gains and losses were elements of inventory cost. The regulations make it clear that it is realized gains and losses that are so taken into account. The regulations also continue to prohibit the use of this method by LIFO taxpayers. The Service and Treasury believe that significant distortions of income might result if gains and losses on *sales* hedges became buried in inventory cost layers.

Finally, the simplified method of marking to market inventory hedging transactions is clarified to allow the mark-to-market gain or loss to be taken into account immediately, instead of being treated as an element of cost or gross proceeds. The final regulations continue the proposed prohibition on the use of this method by LIFO taxpayers and by taxpayers employing a lower-of-cost-or-market method of accounting for inventory. Moreover, this method may be used only if items are held in inventory for short periods of time.

The final regulations clarify when the built-in gain or loss on the hedging transaction is taken into account where a taxpayer disposes of the hedged item but does not dispose of the hedging transaction. In this situation, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. This matching may be met by marking to market the hedge on the date of disposition of the hedged item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period, the taxpayer may match the realized gain or loss on the hedging transaction with the gain or loss on the disposed item. However, if the taxpayer intends to dispose of the hedging transaction within a reasonable period and the hedging transaction is still in place after that period, the taxpayer must match the gain or loss on the hedge at the end of the reasonable period with the gain or loss on the disposed item. For these purposes, a reasonable period is generally seven days.

The final regulations provide rules of accounting for recycled hedges (positions that previously hedged one item but that the taxpayer has re-identified as hedging another). The new rules are similar to those of the proposed regulations for treatment of hedges after disposition of the hedged asset or liability. A taxpayer recycling a hedge of a particular hedged item to serve as a hedge of another item must match the built-in gain or loss on the hedge at the time of the recycling to the income, deduction, gain, or loss on the original hedged item. Income, deduction, gain, or loss on the hedge after the recycling must be matched to the income, deduction, gain, or loss on the new hedged item, items, or aggregate risk. This matching may be accomplished by marking the hedge to market at the time of the recycling.

The preamble to the proposed regulations invited comments on the appropriate accounting for anticipatory hedges where the anticipated transaction is not consummated. Most commentators suggested that gains or losses be taken into account when realized. Others suggested that any gain or loss realized on the hedging transaction be taken into account at the same time it would have been taken into account if the anticipated transaction had been consummated and the timing of the gain or loss on the hedge had been matched with the timing of the gain or loss on the hedged item. Still others suggested an arbitrary spread period.

The first suggestion was adopted. The regulations provide that, if an anticipated transaction is not consummated, any income, deduction, gain, or loss on the hedging transaction is taken into account when realized. The regulations provide that a transaction is

consummated upon the occurrence, within a reasonable time period, of either the anticipated transaction or a different but similar transaction for which the hedge serves to reasonably reduce risk. The Service will view the "similar transaction" parameters broadly to prevent taxpayers from realizing hedging gains and losses selectively by abandoning a planned transaction and substituting a similar transaction.

Finally, the regulations grant consent for taxpayers to change their methods of accounting for hedging transactions. The change must be made for transactions entered into on or after October 1, 1994, and must be made for the taxable year containing that date. The change is made on a cut-off basis. Therefore, no items of income or deduction are omitted or duplicated, and no adjustment under section 481 is allowed or permitted. Because the consent does not extend to changes for a subsequent tax year, consent for such a change must be requested according to the procedures established under § 1.446–1(e).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.446–3 is amended as follows:

1. The first sentence of paragraph (h)(2) is revised.

2. The second sentence of the introductory language of paragraph (h)(5) is revised.

3. The revisions read as follows:

§ 1.446–3 Notional principal contracts.

* * * * *

(h) * * *

(2) *Taxable year of inclusion and deduction by original parties.* Except as otherwise provided (for example, in section 453, section 1092, or § 1.446–4), a party to a notional principal contract recognizes a termination payment in the year the contract is extinguished, assigned, or exchanged. * * *

* * * * *

(5) * * * The contracts in the examples are not hedging transactions as defined in § 1.1221–2(b), and all of the examples assume that no loss-deferral rules apply.

* * * * *

Par. 3. Section 1.446–4 is added to read as follows:

§ 1.446–4 Hedging transactions.

(a) *In general.* Except as provided in this paragraph (a), a hedging transaction as defined in § 1.1221–2(b) (whether or not the character of gain or loss from the transaction is determined under § 1.1221–2) must be accounted for under the rules of this section. To the extent that provisions of any other regulations governing the timing of income, deductions, gain, or loss are inconsistent with the rules of this section, the rules of this section control.

(1) *Trades or businesses excepted.* A taxpayer is not required to account for hedging transactions under the rules of this section for any trade or business in which the cash receipts and disbursements method of accounting is used or in which § 1.471–6 is used for inventory valuations if, for all prior taxable years ending on or after September 30, 1993, the taxpayer met the $5,000,000 gross receipts test of section 448(c) (or would have met that test if the taxpayer were a corporation or partnership). A taxpayer not required to use the rules of this section may nonetheless use a method of accounting that is consistent with these rules.

(2) *Coordination with other sections.* This section does not apply to—

(i) Any position to which section 475(a) applies;

(ii) Any section 988 hedging transaction if the transaction is integrated under § 1.988–5 or if other regulations issued under section 988(d) (or an advance ruling described in 1.988–5(e)) govern when gain or loss from the transaction is taken into account; or

(iii) The determination of the issuer's yield on an issue of tax-exempt bonds for purposes of the arbitrage restrictions to which § 1.148–4(h) applies.

(b) *Clear reflection of income.* The method of accounting used by a taxpayer for a hedging transaction must clearly reflect income. To clearly reflect income, the method used must reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of income, deduction, gain, or loss from the item or items being hedged. Taking gains and losses into account in the period in which they are realized may clearly reflect income in the case of certain hedging transactions. For example, where a hedge and the item being hedged are disposed of in the same taxable year, taking realized gain or loss into account on both items in that taxable year may clearly reflect income. In the case of many hedging transactions, however, taking gains and losses into account as they are realized does not result in the matching required by this section.

(c) *Choice of method and consistency.* For any given type of hedging transaction, there may be more than one method of accounting that satisfies the clear reflection requirement of paragraph (b) of this section. A taxpayer is generally permitted to adopt a method of accounting for a particular type of hedging transaction that clearly reflects the taxpayer's income from that type of transaction. See paragraph (e) of this section for requirements and limitations on the taxpayer's choice of method. Different methods of accounting may be used for different types of hedging transactions and for transactions that hedge different types of items. Once a taxpayer adopts a method of accounting, however, that method must be applied consistently and can only be changed with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(d) *Recordkeeping requirements*—(1) *In general.* The books and records maintained by a taxpayer must contain

a description of the accounting method used for each type of hedging transaction. The description of the method or methods used must be sufficient to show how the clear-reflection requirement of paragraph (b) of this section is satisfied.

(2) *Additional identification.* In addition to the identification required by § 1.1221–2(e), the books and records maintained by a taxpayer must contain whatever more specific identification with respect to a transaction is necessary to verify the application of the method of accounting used by the taxpayer for the transaction. This additional identification may relate to the hedging transaction or to the item, items, or aggregate risk being hedged. The additional identification must be made at the time specified in § 1.1221–2(e)(2) and must be made on, and retained as part of, the taxpayer's books and records.

(3) *Transactions in which character of gain or loss is not determined under § 1.1221–2.* A section 988 transaction, as defined in section 988(c)(1), or a qualified fund, as defined in section 988(c)(1)(E)(iii), is subject to the identification and recordkeeping requirements of § 1.1221–2(e). See § 1.1221–2(a)(4)(i).

(e) *Requirements and limitations with respect to hedges of certain assets and liabilities.* In the case of certain hedging transactions, this paragraph (e) provides guidance in determining whether a taxpayer's method of accounting satisfies the clear reflection requirement of paragraph (b) of this section. Even if these rules are satisfied, however, the taxpayer's method, as actually applied to the taxpayer's hedging transactions, must clearly reflect income by meeting the matching requirement of paragraph (b) of this section.

(1) *Hedges of aggregate risk*—(i) *In general.* The method of accounting used for hedges of aggregate risk must comply with the matching requirements of paragraph (b) of this section. Even though a taxpayer may not be able to associate the hedging transaction with any particular item being hedged, the timing of income, deduction, gain, or loss from the hedging transaction must be matched with the timing of the aggregate income, deduction, gain, or loss from the items being hedged. For example, if a notional principal contract hedges a taxpayer's aggregate risk, taking into account income, deduction, gain, or loss under the provisions of § 1.446–3 may clearly reflect income. See paragraph (e)(5) of this section.

(ii) *Mark-and-spread method.* The following method may be appropriate for taking into account income, deduction, gain, or loss from hedges of aggregate risk:

(A) The hedging transactions are marked to market at regular intervals for which the taxpayer has the necessary data, but no less frequently than quarterly; and

(B) The income, deduction, gain, or loss attributable to the realization or periodic marking to market of hedging transactions is taken into account over the period for which the hedging transactions are intended to reduce risk. Although the period over which the hedging transactions are intended to reduce risk may change, the period must be reasonable and consistent with the taxpayer's hedging policies and strategies.

(2) *Hedges of items marked to market.* In the case of a transaction that hedges an item that is marked to market under the taxpayer's method of accounting, marking the hedge to market clearly reflects income.

(3) *Hedges of inventory*—(i) *In general.* If a hedging transaction hedges purchases of inventory, gain or loss on the hedging transaction may be taken into account in the same period that it would be taken into account if the gain or loss were treated as an element of the cost of inventory. Similarly, if a hedging transaction hedges sales of inventory, gain or loss on the hedging transaction may be taken into account in the same period that it would be taken into account if the gain or loss were treated as an element of sales proceeds. If a hedge is associated with a particular purchase or sales transaction, the gain or loss on the hedge may be taken into account when it would be taken into account if it were an element of cost incurred in, or sales proceeds from, that transaction. As with hedges of aggregate risk, however, a taxpayer may not be able to associate hedges of inventory purchases or sales with particular purchase or sales transactions. In order to match the timing of income, deduction, gain, or loss from the hedge with the timing of aggregate income, deduction, gain, or loss from the hedged purchases or sales, it may be appropriate for a taxpayer to account for its hedging transactions in the manner described in paragraph (e)(1)(ii) of this section, except that the gain or loss that is spread to each period is taken into account when it would be if it were an element of cost incurred (purchase hedges), or an element of proceeds from sales made (sales hedges), during that period.

(ii) *Alternative methods for certain inventory hedges.* In lieu of the method described in paragraph (e)(3)(i) of this section, other simpler, less precise methods may be used in appropriate cases where the clear reflection requirement of paragraph (b) of this section is satisfied. For example:

(A) Taking into account realized gains and losses on both hedges of inventory purchases and hedges of inventory sales when they would be taken into account if the gains and losses were elements of inventory cost in the period realized may clearly reflect income in some situations, but does not clearly reflect income for a taxpayer that uses the last-in, first-out method of accounting for the inventory; and

(B) Marking hedging transactions to market with resulting gain or loss taken into account immediately may clearly reflect income even though the inventory that is being hedged is not marked to market, but only if the inventory is not accounted for under either the last-in, first-out method or the lower-of-cost-or-market method and only if items are held in inventory for short periods of time.

(4) *Hedges of debt instruments.* Gain or loss from a transaction that hedges a debt instrument issued or to be issued by a taxpayer, or a debt instrument held or to be held by a taxpayer, must be accounted for by reference to the terms of the debt instrument and the period or periods to which the hedge relates. A hedge of an instrument that provides for interest to be paid at a fixed rate or a qualified floating rate, for example, generally is accounted for using constant yield principles. Thus, assuming that a fixed rate or qualified floating rate instrument remains outstanding, hedging gain or loss is taken into account in the same periods in which it would be taken into account if it adjusted the yield of the instrument over the term to which the hedge relates. For example, gain or loss realized on a transaction that hedged an anticipated fixed rate borrowing for its entire term is accounted for, solely for purposes of this section, as if it decreased or increased the issue price of the debt instrument.

(5) *Notional principal contracts.* The rules of § 1.446–3 govern the timing of income and deductions with respect to a notional principal contract unless, because the notional principal contract is part of a hedging transaction, the application of those rules would not result in the matching that is needed to satisfy the clear reflection requirement of paragraph (b) and, as applicable, (e)(4) of this section. For example, if a notional principal contract hedges a debt instrument, the method of accounting for periodic payments described in § 1.446–3(e) and the methods of accounting for nonperiodic

payments described in § 1.446–3(f)(2)(iii) and (v) generally clearly reflect the taxpayer's income. The methods described in § 1.446–3(f)(2)(ii) and (iv), however, generally do not clearly reflect the taxpayer's income in that situation.

(6) *Disposition of hedged asset or liability.* If a taxpayer hedges an item and disposes of, or terminates its interest in, the item but does not dispose of or terminate the hedging transaction, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. To meet this requirement, the taxpayer may mark the hedge to market on the date it disposes of the hedged item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period, however, it may be appropriate to match the realized gain or loss on the hedging transaction with the gain or loss on the disposed item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period and the hedging transaction is not actually disposed of within that period, the taxpayer must match the gain or loss on the hedge at the end of the reasonable period with the gain or loss on the disposed item. For purposes of this paragraph (e)(6), a reasonable period is generally 7 days.

(7) *Recycled hedges.* If a taxpayer enters into a hedging transaction by recycling a hedge of a particular hedged item to serve as a hedge of a different item, as described in § 1.1221–2(c)(2), the taxpayer must match the built-in gain or loss at the time of the recycling to the gain or loss on the original hedged item, items, or aggregate risk. Income, deduction, gain, or loss attributable to the period after the recycling must be matched to the new hedged item, items, or aggregate risk under the principles of paragraph (b) of this section.

(8) *Unfulfilled anticipatory transactions*—(i) *In general.* If a taxpayer enters into a hedging transaction to reduce risk with respect to an anticipated asset acquisition, debt issuance, or obligation, and the anticipated transaction is not consummated, any income, deduction, gain, or loss from the hedging transaction is taken into account when realized.

(ii) *Consummation of anticipated transaction.* A taxpayer consummates a transaction for purposes of paragraph (e)(8)(i) of this section upon the occurrence (within a reasonable interval around the expected time of the anticipated transaction) of either the anticipated transaction or a different but similar transaction for which the hedge serves to reasonably reduce risk.

(9) *Hedging by members of a consolidated group.* [Reserved.]

(f) *Type or character of income and deduction.* The rules of this section govern the timing of income, deduction, gain, or loss on hedging transactions but do not affect the type or character of income, deduction, gain, or loss produced by the transaction. Thus, for example, the rules of paragraph (e)(3) of this section do not affect the computation of cost of goods sold or sales proceeds for a taxpayer that hedges inventory purchases or sales. Similarly, the rules of paragraph (e)(4) of this section do not increase or decrease the interest income or expense of a taxpayer that hedges a debt instrument or a liability.

(g) *Effective date.* This section applies to hedging transactions entered into on or after October 1, 1994.

(h) *Consent to change methods of accounting.* The Commissioner grants consent for a taxpayer to change its methods of accounting for transactions that are entered into on or after October 1, 1994, and that are described in paragraph (a) of this section. This consent is granted only for changes for the taxable year containing October 1, 1994. The taxpayer must describe its new methods of accounting in a statement that is included in its Federal income tax return for that taxable year.

Par. 4. In § 1.461–1, paragraph (a)(2)(iii)(B) is revised to read as follows:

§ 1.461–1 General rules for taxable year of deduction.

(a) * * *

(2) * * *

(iii) * * *

(B) If the liability of a taxpayer is subject to section 170 (charitable contributions), section 192 (black lung benefit trusts), section 194A (employer liability trusts), section 468 (mining and solid waste disposal reclamation and closing costs), or section 468A (certain nuclear decommissioning costs), the liability is taken into account as determined under that section and not under section 461 or the regulations thereunder. For special rules relating to certain loss deductions, see sections 165(e), 165(i), and 165(l), relating to theft losses, disaster losses, and losses from certain deposits in qualified financial institutions.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.446–4(d)	1545–1412
. . . . .	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:

Samuel Y. Sessions,
Acting Assistant Secretary of Treasury.

[FR Doc. 94–16868 Filed 7–13–94; 9:10 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8555]

RIN 1545–AR73

Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations clarifying the character of gain or loss from business hedges. In general, the regulations treat gain or loss on most hedging transactions as ordinary rather than capital. The regulations are needed to provide guidance to businesses entering into hedging transactions and to serve as a basis for resolving pending cases involving gains and losses from hedging.

DATES: These regulations are effective July 18, 1994, except that the amendments relating to the removal of § 1.1221–2T are effective October 1, 1994.

For dates of applicability of these regulations, see the discussion in the Dates of Applicability paragraph in the **SUPPLEMENTARY INFORMATION** portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC 20224 (Attn: CC:DOM:FI&P). Telephone 202–622–3920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1403. The estimated annual burden per recordkeeper varies from .1 to 10 hours, depending on individual circumstances, with an estimated average of .9 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 1221 of the Internal Revenue Code (Code) (relating to the definition of capital asset). The provisions affected relate to the determination of the character of gain or loss from hedging transactions.

On October 20, 1993, temporary regulations (TD 8493) providing that gain or loss on most common business hedges is ordinary rather than capital were published in the **Federal Register** (58 FR 54037). A notice of proposed rulemaking (FI–46–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 54075). The regulations were intended to resolve questions that had arisen with respect to the tax treatment of business hedging following the decision of the United States Supreme Court in *Arkansas Best Corp.* v. *Commissioner*, 485 U.S. 212 (1988).

Many comments were received on the proposed regulations, and a public hearing was held on January 19, 1994. Most commentators supported the general approach of the proposed regulations, but a number suggested specific revisions to the proposed rules or the addition of rules to resolve remaining issues.

Explanation of Provisions

Paragraph (a) of § 1.1221–2 provides basic rules for the treatment of hedging transactions. Only minor, clarifying changes have been made to the proposed regulations.

Paragraph (a)(1) provides that property that is part of a hedging transaction, as defined in the regulations, is not a capital asset. Paragraph (a)(2) provides a similar rule for short sales and options. Where a short sale or option is part of a hedging transaction, as defined, any gain or loss on the short sale or option is ordinary. Final regulations under sections 1233 and 1234 provide that § 1.1221–2 governs the character of gain or loss on short sales and options that are part of hedging transactions.

Under paragraph (a)(3), if a transaction falls outside the regulations, gain or loss from the transaction is not made ordinary by the fact that property is a surrogate for a non-capital asset, that the transaction serves as insurance against a business risk, that the transaction serves a hedging function, or that the transaction serves a similar function or purpose.

The provisions of this section generally apply to determine the character of gain or loss from transactions that also are subject to various international provisions of the Code. Paragraph (a)(4), however, provides that section 988 transactions are excluded from the character provisions of these regulations because gain or loss on those transactions is ordinary under section 988(a)(1). The regulations do apply to transactions that predate the effective date of section 988. Paragraph (a)(4) also provides that the definition of a hedging transaction under § 1.1221–2(b) does not apply for purposes of the hedging exceptions to the subpart F rules of section 954(c) and certain hedging rules in the interest allocation regulations under section 864(e). The IRS and Treasury are considering the possibility of using the definition of hedging transaction and other provisions of these regulations for purposes of various international tax provisions, except where a modification of the provisions is necessary to carry out the purposes of those international provisions. Comments on this subject are welcomed.

In defining the term hedging transaction, paragraph (b) of § 1.1221–2 retains the rule of the proposed regulations and adopts the concept of hedging in section 1256(e)(2)(A) of the Code. Under this rule, a hedging transaction generally is a transaction that a taxpayer enters into in the normal course of its business primarily to reduce the risk of interest rate or price changes or currency fluctuations.

A number of commentators suggested that the IRS abandon the rule of the proposed regulations and adopt a definition of hedging that looks to risk management rather than risk reduction. This comment was not adopted because the IRS and Treasury believe that the definition in section 1256 represents the best indication of congressional intent with respect to business hedges. Although the risk reduction standard has been retained, the final regulations provide rules of application designed to ensure that the definition of hedging transaction is applied reasonably to include most common types of hedging transactions.

Paragraph (c)(1) deals with the meaning of risk reduction. To enter into a hedging transaction, the taxpayer must have risk when all of its operations are considered—that is, there must be risk on a "macro" basis. Nonetheless, a hedge of a single asset or liability, or pool of assets or liabilities, will be respected if the hedge reduces the risk attributable to the item or items being hedged and if the hedge is reasonably calculated to reduce the overall risk of the taxpayer's operations. In addition, if a taxpayer hedges a particular asset or liability, or a pool of assets or liabilities, and the hedge is undertaken as part of a program to reduce the overall risk of the taxpayer's operations, the taxpayer need not show that the hedge reduces its overall risk.

Paragraph (c)(1) also recognizes that fixed to floating hedges and certain types of written options may be risk reducing and may be used in hedging transactions. For example, a covered call with respect to assets held or a written put option with respect to assets to be acquired may reduce risk.

In addition, paragraph (c)(1) provides that a hedging transaction includes a transaction that is entered into primarily to reverse or counteract a hedging transaction. This rule recognizes that some transactions are used to eliminate some or all of the risk reduction accomplished through a hedging transaction. Although the transactions are not risk reducing if viewed independently, they are considered to be part of the larger hedging transaction.

Paragraph (c)(1) further provides that a taxpayer may hedge any part or all of its risk for any part of the period during which it has risk. The regulations also provide that the frequent entering into and termination of hedging positions is not relevant to whether transactions are hedging transactions.

Finally, paragraph (c)(1) provides that a transaction that is not entered into primarily to reduce risk is not a hedging transaction. For example, the so-called "store-on-the-board" transaction, in which a taxpayer disposes of its production and enters into a long futures or forward contract, is not a

hedging transaction because the long position does not reduce risk. Moreover, gain or loss on the contract is not made ordinary on the grounds that it is a surrogate for inventory.

The IRS and Treasury understand that there are situations in which a taxpayer engages in a store-on-the-board transaction as a hedge of an expected payment under an agricultural price support program. In this situation, a long futures or forward contract may qualify as a hedging transaction with respect to the expected payment.

Paragraph (c)(2) provides that a hedging transaction may be entered into by using a position that was a hedge of one asset or liability to hedge another asset or liability.

Paragraph (c)(3) provides that the acquisition of certain assets, such as investments, may not be a hedging transaction. Even though these assets may reduce risk, they typically are not acquired primarily to reduce risk. For example, a taxpayer's interest rate risk from a floating rate borrowing may be reduced by the purchase of debt instruments that bear a comparable floating rate. The acquisition of the debt instruments, however, is not made primarily to reduce risk and, therefore, is not a hedging transaction. Similarly, borrowings generally are not made primarily to reduce risk.

Paragraph (c)(4) defines the normal course requirement of paragraph (b) to include any transaction entered into in furtherance of a taxpayer's trade or business. Thus, for example, a liability hedge meets this requirement regardless of whether the liability is undertaken to fund current operations, an acquisition, or an expansion of a taxpayer's business. This definition does not apply to other uses of the term "normal course" in the Code or regulations.

Paragraph (c)(5) retains the rule in the proposed regulations that a hedge of property or of an obligation is a hedging transaction only if a sale or exchange of the property, or performance or termination of the obligation, could not produce capital gain or loss. In response to the many comments received, however, a special rule has been added for noninventory supplies. Under this rule, if a taxpayer sells only a negligible amount of a noninventory supply, then, only for purposes of determining whether a hedge of the purchase of that noninventory supply is a hedging transaction, the noninventory supply is treated as ordinary property. In this case, the Service and Treasury believe that the theoretical possibility of ordinary loss on a hedge and capital gain on the sale of supplies should not prevent the transactions from qualifying as hedging transactions. The Service intends to issue guidance on the negligible amount standard. The comments received indicate that most taxpayers sell none of their supplies or a very small amount. Further comments are requested.

For prior years, a transition rule provides a substantially more generous standard for noninventory supplies. If, in each prior year that is open for assessment on September 1, 1994, a taxpayer sold no more than 15 percent of the greater of the total amount of a supply held at the beginning of the year or the total amount of the supply acquired in that year and meets certain other requirements, hedges of purchases of that supply are hedging transactions.

The final regulations do not provide a negligible sales rule for hedges of section 1231 assets. Sales of these assets are less predictable than sales of supplies and may occur many years after the transaction that hedges their purchase. The IRS and Treasury believe that it is inappropriate to provide ordinary treatment for the hedges when it is not known whether the assets will produce capital gains. Nonetheless, the regulations provide a special transition rule applicable to certain hedges of section 1231 assets entered into in prior years.

Paragraph (c)(6) provides that the status of liability hedges as hedging transactions is determined without regard to the use that is made of the proceeds of a borrowing. The IRS and Treasury believe that a liability hedge should not fail to qualify as a hedging transaction because the proceeds of the borrowing being hedged are used to purchase a capital asset.

Paragraph (c)(7) retains the rule in the proposed regulations that, in the case of hedges of aggregate risk, all but a de minimis amount of the risk being hedged must be attributable to ordinary property, ordinary obligations, and borrowings.

Although the purpose of the rules in paragraph (c) is to ensure that the definition of hedging transaction will be interpreted reasonably to cover most common business hedges, not all hedges are intended to be covered. For example, the regulations do not apply where a taxpayer hedges a dividend stream, the overall profitability of a business unit, or other business risks that do not relate directly to interest rate or price changes or currency fluctuations. Moreover, the regulations do not provide ordinary treatment for gain or loss from the disposition of stock where, for example, the stock is acquired to protect the goodwill or business reputation of the acquirer or to ensure the availability of goods.

The status of so-called "gap" hedges is not separately addressed in paragraph (c). Insurance companies, for example, sometimes hedge the "gap" between their liabilities and the assets that fund them. Under the proposed regulations, a hedge of those assets does not qualify as a hedging transaction if the assets are capital. Commentators, therefore, suggested that the final regulations provide a rule that deems all gap hedges to be hedges of the liabilities rather than of the assets. The IRS and Treasury, however, are concerned that, where this type of hedge is more closely associated with the assets than the liabilities, there is a significant possibility of mismatch if the hedges are given ordinary treatment and the assets can be sold for capital gains. Thus, the final regulations do not include the suggested rule.

Whether a gap hedge qualifies as a liability hedge is a question of fact and depends on whether it is more closely associated with the liabilities than with the assets. For example, a contract to purchase assets is generally not a liability hedge even if the assets are being purchased to fund the liability. Other gap hedges may be appropriately treated as liability hedges and, therefore, may qualify as hedging transactions.

The IRS and Treasury understand that the most significant consequence of the failure of gap hedges to qualify as hedging transactions may be that they are then subject to the straddle rules of section 1092. Comments are requested on whether it would be appropriate to exempt these transactions from section 1092 and apply the hedge accounting rules of § 1.446–4 even though the transactions are not hedging transactions and their character is not determined under § 1.1221–2. The IRS and Treasury also note that there may be different considerations for determining whether income or loss from a gap hedge should be treated as an interest equivalent for purposes of international tax provisions, such as section 864(e). Comments are also requested on this point.

Paragraph (d) is reserved in the final regulations to allow development of rules applicable to hedging by members of a consolidated group. Proposed regulations on this subject are published in the Proposed Rules section of this issue of the **Federal Register**.

Paragraph (e)(1) retains the requirement of the proposed regulations that hedging transactions must be identified before the close of the day on which they are entered into. Paragraph (e)(2), however, relaxes the rule of the proposed regulations and requires that

the item, items, or aggregate risk being hedged be identified substantially contemporaneously with entering into the hedging transaction. The identification must be made no more than 35 days after entering into the hedging transaction. This time period should make it possible for taxpayers to identify the hedged item, items, or aggregate risk at the time they prepare monthly reports for nontax purposes.

Some commentators suggested eliminating entirely the requirement of identifying the item being hedged. The Service and Treasury believe, however, that this identification is needed to establish that the definition of hedging transaction is satisfied. Moreover, because special identification rules have been provided for hedges of aggregate risk and certain inventory hedges, the requirement of identifying the items being hedged should not be overly burdensome.

A transition rule is provided to extend the time period for identifying a transaction that is a hedging transaction under the final regulations and that the taxpayer reasonably treated as other than a hedging transaction under the proposed regulations. If such a transaction was entered into before October 1, 1994, and remains in existence on that date, the identification and recordkeeping requirements of paragraph (e) apply, except that the identification of both the hedging transaction and the hedged item are timely if made before the close of business on October 1, 1994. However, if the transaction was entered into before October 1, 1994, and does not remain in existence on that date, the identification and recordkeeping requirements of paragraph (e) do not apply.

Paragraph (e)(3) contains a series of special rules for identifying certain types of hedging transactions. In the case of inventory, the identification must specify the type or class of inventory to which the hedge relates. If particular inventory purchases or sales transactions are being hedged, the taxpayer must also identify the expected dates and the amounts to be acquired or sold. In the case of hedges of aggregate risk, the identification requirement is satisfied if a taxpayer's records contain a description of the hedging program and if the taxpayer establishes a system under which transactions are identified as being entered into as part of that program. The intent underlying this rule is to provide verifiable information with respect to the item being hedged without requiring the taxpayer to identify individually the many items that give rise to the aggregate risk being hedged.

Paragraph (e)(4) generally retains and expands the rules of the proposed regulations with respect to how an identification is made. It must be clear that the identification is being made for tax purposes. In lieu of separately identifying each transaction, however, a taxpayer may establish a system in which identification is indicated by the type of transaction or the manner in which the transaction is consummated or recorded.

Paragraph (e)(5) is reserved to deal with the required identification where the taxpayer is a member of a consolidated group, and paragraph (e)(6) provides that an identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of § 1.1221–2(e)(1).

Paragraph (f) deals with the effect of identification and non-identification and provides rules that generally are unchanged from the proposed regulations. The only significant change is the addition of a rule that allows correction of an inadvertent identification in some circumstances. If the correction is allowed, the transaction is not subject to the ordinary-gain, capital-loss rule that generally applies to transactions that are incorrectly identified as hedging transactions.

Final regulations under section 1256 retain the rules of the proposed regulations that coordinate the identification of hedges for purposes of section 1256(e). In addition, the regulations provide that, if a taxpayer inadvertently identifies a transaction as a hedging transaction and corrects it in accordance with paragraph (f)(1)(ii) of § 1.1221–2, the transaction is treated as if it were not identified as a hedging transaction for purposes of section 1256(e)(2)(C). Thus, section 1256(f)(1) does not impose ordinary-gain, capital-loss treatment on the transaction.

Dates of Applicability

Except for the identification rules of paragraph (e), which apply to transactions that were entered into on or after January 1, 1994, or were entered into before that date and remained in existence on March 31, 1994, these final regulations generally apply to all open taxable years. Taxpayers may, however, rely on any paragraph in § 1.1221–2T (26 CFR part 1 revised as of April 1, 1994), for transactions entered into prior to October 1, 1994, provided that the taxpayer applies the paragraph reasonably and consistently.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. Effective July 18, 1884 the authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1221–2 also issued under 26 U.S.C. 6001. * * *

Par. 2. Effective October 1, 1994, the authority citation for part 1 is further amended by removing the entry for § 1.1221–2T.

Par. 3. Effective July 18, 1994, § 1.1221–2 is added to read as follows:

§ 1.1221–2 Hedging transactions.

(a) *Treatment of hedging transactions*—(1) *In general.* This section governs the treatment of hedging transactions under section 1221. Except as provided in paragraph (f)(2) of this section (and notwithstanding the provisions of § 1.1221–1(a)), the term capital asset does not include property

that is part of a hedging transaction (as defined in paragraph (b) of this section).

(2) *Short sales and options.* This section also governs the character of gain or loss from a short sale or option that is part of a hedging transaction. See §§ 1.1233–2 and 1.1234–4. Except as provided in paragraph (f)(2) of this section, gain or loss on a short sale or option that is part of a hedging transaction (as defined in paragraph (b) of this section) is ordinary income or loss.

(3) *Exclusivity.* If a transaction is not a hedging transaction as defined in paragraph (b) of this section, gain or loss from the transaction is not made ordinary on the grounds that property involved in the transaction is a surrogate for a noncapital asset, that the transaction serves as insurance against a business risk, that the transaction serves a hedging function, or that the transaction serves a similar function or purpose.

(4) *Coordination with other sections*—(i) *Section 988.* This section does not apply to determine the character of gain or loss realized on a section 988 transaction as defined in section 988(c)(1) or realized with respect to a qualified fund as defined in section 988(c)(1)(E)(iii). This section does apply, however, to transactions or payments that would be subject to section 988 but for the date that the transactions were entered into or the date that the payments were made.

(ii) *Sections 864(e) and 954(c).* Except as otherwise provided in regulations issued pursuant to sections 864(e) and 954(c), the definition of hedging transaction in paragraph (b) of this section does not apply for purposes of section 864(e) and 954(c).

(b) *Hedging transaction defined.* A hedging transaction is a transaction that a taxpayer enters into in the normal course of the taxpayer's trade or business primarily—

(1) To reduce risk of price changes or currency fluctuations with respect to ordinary property (as defined in paragraph (c)(5) of this section) that is held or to be held by the taxpayer; or

(2) To reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer.

(c) *Rules of application.* The rules of this paragraph (c) apply for purposes of the definition of the term hedging transaction in paragraph (b) of this section. These rules must be interpreted reasonably and consistently with the purposes of this section. Where no specific rules of application control, the definition of hedging transaction must be interpreted reasonably and consistently with the purposes of this section.

(1) *Reducing risk*—(i) *Transactions that reduce risk.* Whether a transaction reduces a taxpayer's risk is determined based on all of the facts and circumstances surrounding the taxpayer's business and the transaction. In general, a taxpayer's hedging strategies and policies as reflected in the taxpayer's minutes or other records are evidence of whether particular transactions reduce the taxpayer's risk.

(ii) *Micro and macro hedges*—(A) *In general.* A taxpayer has risk of a particular type only if it is at risk when all of its operations are considered. Nonetheless, a hedge of a particular asset or liability generally will be respected as reducing risk if it reduces the risk attributable to the asset or liability and if it is reasonably expected to reduce the overall risk of the taxpayer's operations. If a taxpayer hedges particular assets or liabilities, or groups of assets or liabilities, and the hedges are undertaken as part of a program that, as a whole, is reasonably expected to reduce the overall risk of the taxpayer's operations, the taxpayer generally does not have to demonstrate that each hedge that was entered into pursuant to the program reduces its overall risk.

(B) *Fixed-to-floating hedges.* Under the principles of paragraph (c)(1)(ii)(A) of this section, a transaction that economically converts an interest rate or price from a fixed price or rate to a floating price or rate may reduce risk. For example, if a taxpayer's income varies with interest rates, the taxpayer may be at risk if it has a fixed rate liability. Similarly, a taxpayer with a fixed cost for its inventory may be at risk if the price at which the inventory can be sold varies with a particular factor. Thus, a transaction that converts an interest rate or price from fixed to floating may be a hedging transaction.

(iii) *Written options.* A written option may reduce risk. For example, in appropriate circumstances, a written call option with respect to assets held by a taxpayer or a written put option with respect to assets to be acquired by a taxpayer may be a hedging transaction. See also paragraph (c)(1)(v) of this section.

(iv) *Extent of risk reduction.* A taxpayer may hedge all or any portion of its risk for all or any part of the period during which it is exposed to the risk.

(v) *Transactions that counteract hedging transactions.* If a transaction is entered into primarily to counteract all or any part of the risk reduction effected by one or more hedging transactions, the transaction is a hedging transaction. For example, if a written option is used to reduce or eliminate the risk reduction obtained from another position such as a purchased option, then it may be part of a hedging transaction.

(vi) *Number of transactions.* The fact that a taxpayer frequently enters into and terminates positions (even if done on a daily or more frequent basis) is not relevant to whether these transactions are hedging transactions. Thus, for example, a taxpayer hedging the risk associated with an asset or liability may frequently establish and terminate positions that hedge that risk, depending on the extent the taxpayer wishes to be hedged. Similarly, if a taxpayer maintains its level of risk exposure by entering into and terminating a large number of transactions in a single day, its transactions may nonetheless qualify as hedging transactions.

(vii) *Transactions that do not reduce risk.* A transaction that is not entered into to reduce a taxpayer's risk is not a hedging transaction. For example, assume that a taxpayer produces a commodity for sale, sells the commodity, and enters into a long futures or forward contract in that commodity in the hope that the price will increase. Because the long position does not reduce risk, the transaction is not a hedging transaction. Moreover, gain or loss on the contract is not made ordinary on the grounds that it is a surrogate for inventory. See paragraph (a)(3) of this section.

(2) *Entering into a hedging transaction.* A taxpayer may enter into a hedging transaction by using a position that was a hedge of one asset or liability to hedge another asset or liability (recycling).

(3) *No investments as hedging transactions.* If an asset (such as an investment) is not acquired primarily to reduce risk, the purchase or sale of that asset is not a hedging transaction even if the terms of the asset limit or reduce the taxpayer's risk with respect to other assets or liabilities. For example, a taxpayer's interest rate risk from a floating rate borrowing may be reduced by the purchase of debt instruments that bear a comparable floating rate. The acquisition of the debt instruments, however, is not a hedging transaction because the transaction is not entered into primarily to reduce the taxpayer's risk. Similarly, borrowings generally are not made primarily to reduce risk.

(4) *Normal course.* Solely for purposes of paragraph (b) of this section, if a transaction is entered into in furtherance of a taxpayer's trade or

business, the transaction is entered into in the normal course of the taxpayer's trade or business. This rule applies even if the risk to be reduced relates to the expansion of an existing business or the acquisition of a new trade or business.

(5) *Ordinary property and obligations*—(i) *In general.* Except as provided in paragraph (g)(3) of this section (which contains transition rules), property is ordinary property to a taxpayer only if a sale or exchange of the property by the taxpayer could not produce capital gain or loss regardless of the taxpayer's holding period when the sale or exchange occurs. Thus, for example, property used in a trade or business within the meaning of section 1231(b) (determined without regard to the holding period specified in that section) is not ordinary property. An obligation is an ordinary obligation if performance or termination of the obligation by the taxpayer could not produce capital gain or loss. For purposes of the preceding sentence, termination has the same meaning as in section 1234A.

(ii) *Hedges of noninventory supplies.* Notwithstanding paragraph (c)(5)(i) of this section, if a taxpayer sells only a negligible amount of a noninventory supply, then, only for purposes of determining whether a transaction to hedge the purchase of that noninventory supply is a hedging transaction, the supply is treated as ordinary property. A noninventory supply is a supply that a taxpayer purchases for consumption in its trade or business and that is not an asset described in sections 1221(1) through (5).

(6) *Borrowings.* Whether hedges of a taxpayer's debt issuances (borrowings) are hedging transactions is determined without regard to the use of the proceeds of the borrowing.

(7) *Hedging an aggregate risk.* The term hedging transaction includes a transaction that reduces an aggregate risk of interest rate changes, price changes, and/or currency fluctuations only if all of the risk, or all but a de minimis amount of the risk, is with respect to ordinary property, ordinary obligations, and borrowings.

(d) *Hedging by members of a consolidated group.* [Reserved].

(e) *Identification and recordkeeping*—(1) *Same-day identification of hedging transactions.* A taxpayer that enters into a hedging transaction (including recycling an existing hedge) must identify it as a hedging transaction. This identification must be made before the close of the day on which the taxpayer enters into the transaction.

(2) *Substantially contemporaneous identification of hedged item*—(i) *Content of the identification.* A taxpayer that enters into a hedging transaction must identify the item, items, or aggregate risk being hedged. Identification of an item being hedged generally involves identifying a transaction that creates risk, and the type of risk that the transaction creates. For example, if a taxpayer is hedging the price risk with respect to its June purchases of corn inventory, the transaction being hedged is the June purchase of corn and the risk is price movements in the market where the taxpayer buys its corn. For additional rules concerning the content of this identification, see paragraph (e)(3) of this section.

(ii) *Timing of the identification.* The identification required by this paragraph (e)(2) must be made substantially contemporaneously with entering into the hedging transaction. An identification is not substantially contemporaneous if it is made more than 35 days after entering into the hedging transaction.

(3) *Identification requirements for certain hedging transactions.* In the case of the hedging transactions described in this paragraph (e)(3), the identification under paragraph (e)(2) of this section must include the information specified.

(i) *Anticipatory asset hedges.* If the hedging transaction relates to the anticipated acquisition of assets by the taxpayer, the identification must include the expected date or dates of acquisition and the amounts expected to be acquired.

(ii) *Inventory hedges.* If the hedging transaction relates to the purchase or sale of inventory by the taxpayer, the identification is made by specifying the type or class of inventory to which the transaction relates. If the hedging transaction relates to specific purchases or sales, the identification must also include the expected dates of the purchases or sales and the amounts to be purchased or sold.

(iii) *Hedges of debt of the taxpayer*—(A) *Existing debt.* If the hedging transaction relates to accruals or payments under an issue of existing debt of the taxpayer, the identification must specify the issue and, if the hedge is for less than the full adjusted issue price or the full term of the debt, the amount and the term covered by the hedge.

(B) *Debt to be issued.* If the hedging transaction relates to the expected issuance of debt by the taxpayer or to accruals or payments under debt that is expected to be issued by the taxpayer, the identification must specify the following information: the expected date of issuance of the debt; the expected maturity or maturities; the total expected issue price of the issue; and the expected interest provisions. If the hedge is for less than the entire expected issue price of the debt or the full expected term of the debt, the identification must also include the amount or the term being hedged. The identification may indicate a range of dates, terms, and amounts, rather than specific dates, terms, or amounts. For example, a taxpayer might identify a transaction as hedging the yield on an anticipated issuance of fixed rate debt during the second half of its fiscal year, with the anticipated amount of the debt between $75 million and $125 million, and an anticipated term of approximately 20 to 30 years.

(iv) *Hedges of aggregate risk*—(A) *Required identification.* If a transaction hedges aggregate risk as described in paragraph (c)(7) of this section, the identification under paragraph (e)(2) of this section must include a description of the risk being hedged and of the hedging program under which the hedging transaction was entered. This requirement may be met by placing in the taxpayer's records a description of the hedging program and by establishing a system under which individual transactions are identified as being entered into pursuant to the program.

(B) *Description of hedging program.* A description of a hedging program must include an identification of the type of risk being hedged, a description of the type of items giving rise to the risk being aggregated, and sufficient additional information to demonstrate that the program is designed to reduce aggregate risk of the type identified. If the program contains controls on speculation (for example, position limits), the description of the hedging program must also explain how the controls are established, communicated, and implemented.

(4) *Manner of identification and records to be retained*—(i) *Inclusion of identification in tax records.* The identification required by this paragraph (e) must be made on, and retained as part of, the taxpayer's books and records.

(ii) *Presence or absence of identification must be unambiguous.* The presence or absence of an identification for purposes of this paragraph (e) must be unambiguous. The identification of a hedging transaction for financial accounting or regulatory purposes does not satisfy this requirement unless the taxpayer's books and records indicate that the identification is also being made for tax purposes. The taxpayer may indicate that individual hedging transactions, or

a class or classes of hedging transactions, that are identified for financial accounting or regulatory purposes are also being identified as hedging transactions for purposes of this section.

(iii) *Manner of identification.* The taxpayer may separately and explicitly make each identification, or, so long as paragraph (e)(4)(ii) of this section is satisfied, the taxpayer may establish a system pursuant to which the identification is indicated by the type of transaction or by the manner in which the transaction is consummated or recorded. An identification under this system is made at the later of the time that the system is established or the time that the transaction satisfies the terms of the system by being entered, or by being consummated or recorded, in the designated fashion.

(iv) *Examples.* The following examples illustrate the principles of paragraph (e)(4)(iii) of this section and assume that the other requirements of paragraph (e) of this section are satisfied.

(A) A taxpayer can make an identification by designating a hedging transaction for (or placing it in) an account that has been identified as containing only hedges of a specified item (or of specified items or specified aggregate risk).

(B) A taxpayer can make an identification by including and retaining in its books and records a statement that designates all future transactions in a specified derivative product as hedges of a specified item, items, or aggregate risk.

(C) A taxpayer can make an identification by placing a designated mark on a record of the transaction (for example, trading ticket, purchase order, or trade confirmation) or by using a designated form or a record that contains a designated legend.

(5) *Identification of hedges involving members of the same consolidated group.* [Reserved].

(6) *Consistency with section 1256(e)(2)(C).* Any identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of paragraph (e)(1) of this section.

(f) *Effect of identification and non-identification*—(1) *Transactions identified*—(i) *In general.* If a taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (e)(1) of this section, the identification is binding with respect to gain, whether or not all of the requirements of paragraph (e) of this section are satisfied. Thus, gain from that transaction is ordinary income. If the transaction is not in fact a hedging transaction described in paragraph (b) of this section, however, paragraphs (a)(1) and (a)(2) of this section do not apply and the character of loss is determined without reference to whether the transaction is a surrogate for a noncapital asset, serves as insurance against a business risk, serves a hedging function, or serves a similar function or purpose. Thus, the taxpayer's identification of the transaction as a hedging transaction does not itself make loss from the transaction ordinary.

(ii) *Inadvertent identification.* Notwithstanding paragraph (f)(1)(i) of this section, if the taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (e) of this section, the character of the gain is determined as if the transaction had not been identified as a hedging transaction if—

(A) The transaction is not a hedging transaction (as defined in paragraph (b) of this section);

(B) The identification of the transaction as a hedging transaction was due to inadvertent error; and

(C) All of the taxpayer's transactions in all open years are being treated on either original or, if necessary, amended returns in a manner consistent with the principles of this section.

(2) *Transactions not identified*—(i) *In general.* Except as provided in paragraphs (f)(2)(ii) and (iii) of this section, the absence of an identification that satisfies the requirements of paragraph (e)(1) of this section is binding and establishes that a transaction is not a hedging transaction. Thus, subject to the exceptions, the rules of paragraphs (a)(1) and (2) of this section do not apply, and the character of gain or loss is determined without reference to whether the transaction is a surrogate for a noncapital asset, serves as insurance against a business risk, serves a hedging function, or serves a similar function or purpose.

(ii) *Inadvertent error.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (e) of this section, the taxpayer may treat gain or loss from the transaction as ordinary income or loss under paragraph (a)(1) or (a)(2) of this section if—

(A) The transaction is a hedging transaction (as defined in paragraph (b) of this section);

(B) The failure to identify the transaction was due to inadvertent error; and

(C) All of the taxpayer's hedging transactions in all open years are being treated on either original or, if necessary, amended returns as provided in paragraphs (a)(1) and (a)(2) of this section.

(iii) *Anti-abuse rule.* If a taxpayer does not make an identification that satisfies all the requirements of paragraph (e) of this section but the taxpayer has no reasonable grounds for treating the transaction as other than a hedging transaction, then gain from the transaction is ordinary. Thus, a taxpayer may not elect to treat gain or loss from a hedging transaction as capital gain or loss. The reasonableness of the taxpayer's failure to identify a transaction is determined by taking into consideration not only the requirements of paragraph (b) of this section but also the taxpayer's treatment of the transaction for financial accounting or other purposes and the taxpayer's identification of similar transactions as hedging transactions.

(3) *Transactions by members of a consolidated group.* [Reserved].

(g) *Effective dates and transition rules*—(1) *Effective date for identification requirements*—(i) *In general.* Paragraph (e) of this section applies to transactions that—

(A) Are entered into on or after January 1, 1994; or

(B) Are entered into before that date and remain in existence on March 31, 1994.

(ii) *Transition rule.* In the case of a hedging transaction that is entered into before January 1, 1994, and remains in existence on March 31, 1994, an identification is timely if it is made before the close of business on March 31, 1994.

(iii) *Special rules for hedging transactions not described in § 1.1221–2T(b).* In the case of a transaction that is entered into before October 1, 1994, that is a hedging transaction within the meaning of paragraph (b) of this section (or is treated as a hedging transaction under paragraph (g)(3) of this section), and that the taxpayer reasonably treated as not being a hedging transaction within the meaning of paragraph (b) of § 1.1221–2T (26 CFR part 1 revised as of April 1, 1994)—

(A) If the transaction does not remain in existence on October 1, 1994, paragraph (e) of this section does not apply; and

(B) If the transaction remains in existence on October 1, 1994, paragraph (e) of this section applies, and an identification is timely if it is made before the close of business on October 1, 1994.

(2) *Reliance on § 1.1221–2T*—(i) *General rule.* A taxpayer may rely on any paragraph in § 1.1221–2T (26 CFR part 1 revised as of April 1, 1994), for transactions entered into prior to October 1, 1994, provided that the

taxpayer applies the paragraph reasonably and consistently.

(ii) *Identification.* In the case of a transaction entered into before October 1, 1994, an identification is deemed to satisfy paragraph (e) of this section if it satisfies § 1.1221–2T(c) (26 CFR part 1 revised as of April 1, 1994). For this purpose, identification of the hedged item is timely if it is made within the period specified in paragraph (e)(2)(ii) of this section.

(3) *Transition rules for hedges of certain property*—(i) *Transition rule for section 1231 assets.* For all taxable years that ended prior to July 18, 1994 and that, as of September 1, 1994, were still open for assessment under section 6501, a taxpayer may treat as hedging transactions all transactions that were entered into during those years and that hedge property used in the trade or business within the meaning of section 1231(b) (a section 1231 asset) if the taxpayer can establish that, during those years—

(A) Sales of section 1231 assets did not give rise to net gain treated as capital gain (after application of section 1231(c));

(B) All of the hedges of section 1231 assets would be hedging transactions under paragraph (b) of this section if section 1231 assets were ordinary property; and

(C) On original or amended returns, the taxpayer consistently treats all of the hedges of section 1231 assets as hedging transactions.

(ii) *Transition rule for noninventory supplies.* For all taxable years that ended prior to July 18, 1994 and that, as of September 1, 1994, were still open for assessment under section 6501, a taxpayer may treat as hedging transactions all hedges of purchases of noninventory supplies (as defined in paragraph (c)(5)(ii) of this section) that would not otherwise qualify as hedging transactions and that were entered into during those years if the taxpayer can establish that, during those years—

(A) The taxpayer did not sell in any of those years more than 15 percent of the greater of the total amount of the supply held at the beginning of the year or the total amount of the supply acquired during that year;

(B) All of the hedges would be hedging transactions under paragraph (b) of this section if noninventory supplies were ordinary property; and

(C) On original or amended returns, the taxpayer consistently treats all of the hedges of noninventory supplies as hedging transactions.

(4) *Effective date for hedges by members of a consolidated group.* [Reserved].

§ 1.1221–2T [Removed]

Par. 4. Effective October 1, 1994, § 1.1221–2T is effectively removed.

Par. 5. Effective July 18, 1994 § 1.1233–2T is redesignated § 1.1233–2 and is revised to read as follows:

§ 1.1233–2 Hedging transactions.

The character of gain or loss on a short sale that is (or is identified as being) part of a hedging transaction is determined under the rules of § 1.1221–2.

Par. 6. Effective July 18, 1994 § 1.1234–4T is redesignated § 1.1234–4 and is revised to read as follows:

§ 1.1234–4 Hedging transactions.

The character of gain or loss on an acquired or a written option that is (or is identified as being) part of a hedging transaction is determined under the rules of § 1.1221–2.

Par. 7. Effective July 18, 1994 § 1.1256(e)–1 is added to read as follows:

§ 1.1256(e)–1 Identification of hedging transactions.

(a) *Identification and recordkeeping requirements.* Under section 1256(e)(2)(C), a taxpayer that enters into a hedging transaction must identify the transaction as a hedging transaction before the close of the day on which the taxpayer enters into the transaction.

(b) *Requirements for identification.* The identification of a hedging transaction for purposes of section 1256(e)(2)(C) must satisfy the requirements of § 1.1221–2(e)(1). Solely for purposes of section 1256(f)(1), however, an identification that does not satisfy all of the requirements of § 1.1221–2(e)(1) is nevertheless treated as an identification under section 1256(e)(2)(C).

(c) *Consistency with § 1.1221–2.* Any identification for purposes of § 1.1221–2(e)(1) is also an identification for purposes of this section. If a taxpayer satisfies the requirements of paragraph (f)(1)(ii) of § 1.1221–2, the transaction is treated as if it were not identified as a hedging transaction for purposes of section 1256(e)(2)(C).

(d) *Effective date.* This section applies to transactions entered into on or after October 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. Effective July 18, 1994 § 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
. . . . .	
1.1221–2	1545–1403
. . . . .	

Par. 10. Effective October 1, 1994, in § 602.101(c), the entry for § 1.1221–2T(c) is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 3, 1994.

Samuel Y. Sessions,

Acting Assistant Secretary of the Treasury.

[FR Doc. 94–16867 Filed 7–13–94; 9:10 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Interim final rule; notice of public hearing procedures.

SUMMARY: The Department of Defense published in the **Federal Register** on July 12, 1994 (59 FR 35463), plans to hold a public hearing to receive comments on the interim final rule regarding Revitalizing Base Closure Communities published in the **Federal Register** on April 6, 1994 (59 FR 16123). Individuals wishing to present oral testimony are requested to adhere to the following procedures. Due to time limitations, it is expected that approximately 30 will have the opportunity to testify. As a result, interested individuals are asked to call Ms. Jennifer Nuber Atkin on 703–697–5743 to reserve a time slot. All telephone reservations will be taken on a first come, first served basis with each slot consisting of five minutes. Only 20 reservations will be taken over the phone, the remaining time slots (approximately 10) will be assigned on the day of the hearing on a first come, first served basis beginning at 9 a.m. DoD will also be accepting written

statements at the hearing for those unable to present oral testimony.

DATES: Friday, August 5, 1994, 9:30 a.m. to 12:30 p.m.

ADDRESSES: General Services Administration Headquarters Auditorium, 18th and F Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Nuber Atkin, telephone 703–697–5743.

Dated: July 12, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17038 Filed 7–15–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC09

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations; compliance with information collection requirements.

SUMMARY: On April 29, 1994, the Secretary of Education published in the **Federal Register** interim final regulations with an invitation for comment for the Student Assistance General Provisions (59 FR 22278). A notice of revised effective date was published for this document on June 30, 1994 (59 FR 33681). This document notifies affected parties that the Office of Management and Budget (OMB) has approved the information collection requirements in § 668.17(f) and (h) and notifies the public of the date for initiating an appeal under § 668.17(f)(3)(x).

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The final regulations published on April 29, 1994 included certain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1990, as amended. On June 23, 1994, OMB approved these information collection requirements, and affected parties must now comply with these requirements. An OMB control number for § 668.17 was published on July 7, 1994, reflecting this approval.

Under § 668.17(f)(3)(x), an institution has 10 days from the effective date of the regulations to initiate an appeal with the guaranty agency of cohort default rates issued by the Secretary for Federal fiscal years 1989 to 1991. For purposes of filing an appeal for these years, the 10-day period starts with the date this document is published in the **Federal Register.**

(Catalog of Federal Domestic Assistance Number: 84:032 Federal Family Education Loan Program)

Dated: July 13, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–17362 Filed 7–15–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–5011–7]

Extension of Interim Revised Durability Procedures for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 12, 1993, EPA published a final rule establishing interim durability procedures used for demonstrating compliance with emission standards for light-duty vehicles and light-duty trucks, applicable to model years 1994–1996 only. This direct final rule extends the applicability of those durability procedures by two years to model year 1998. The Agency intends to conduct a rulemaking to implement a long-term durability program; however, EPA believes this subsequent regulatory action will not be promulgated soon enough to provide manufacturers with adequate lead time to revise their model year 1998 durability programs in a cost-effective manner. A direct final rule is appropriate because this action resolves the lead time concerns for model year 1998 and adds no new requirements, but rather simply allows the extension of the interim program by two years.

DATES: This action will be effective September 16, 1994 unless notice is received by August 17, 1994 that adverse or critical comments will be submitted, or that an opportunity to submit such comments at a public hearing is requested. If adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing the rule before the effective date.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–93–46, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Materials relevant to this final rule have been placed in Docket No. A–93–46. The docket is located at the above address in room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and noon, and between 1:30 p.m. and 3:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: James A. McCargar, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4244.

SUPPLEMENTARY INFORMATION:

I. Background

On January 12, 1993, the Agency published interim procedures for motor vehicle manufacturers to use in demonstrating compliance with emission standards for light-duty vehicles and light-duty trucks (57 FR 3994). That rule, referred to as the "RDP–I rule," made the interim procedures applicable to model years 1994 through 1996, but not thereafter. The Agency plans to revise the RDP–I interim procedures through rulemaking addressing further improvements to the durability process that could not be addressed in the interim rulemaking due to the time constraints for finalizing guidance for Tier 1 vehicle emission certifications. That subsequent rulemaking has been referred to as the "RDP–II rule."

The Agency initially planned that the final RDP–II regulatory action would be effective in the 1997 model year. However, that has become impractical due to lead time constraints for manufacturers wishing to certify vehicles in that model year and the uncertainty that sufficient lead time exists for implementation in the 1998 model year as well. Consequently, the aim of this action is to simply extend the applicability of the RDP–I interim rulemaking through model year 1998. This will provide manufacturers with

timely notice of the regulations applicable for certifying vehicles through model year 1998 while EPA continues work on preparing and finalizing further technical and procedural improvements to the durability program. The Agency currently expects that the RDP–II rule will be applicable in the 1999 model year.

II. Environmental Effects and Economic Impacts

A. Economic Impacts

This action only extends an existing program without modification, and as such, the Agency does not expect any new economic impacts over and above those described in the interim rulemaking. In general, the RDP–I interim rulemaking projected annual cost savings with respect to the previously existing program of approximately $8.6 million, and although this number is highly dependent upon the interaction of several variables, all modeled scenarios resulted in some level of savings. A complete description of those impacts is contained in 57 FR 3994 (January 12, 1993).

B. Environmental and Cost-Benefit Impacts

The interim rulemaking revised testing and administrative procedures necessary to determine the compliance of light-duty vehicles and light-duty trucks with the Tier 1 emission standards promulgated in June 1991, and no environmental benefit was claimed over and above that already accounted for in the Tier 1 rule. This two model year extension will similarly claim no environmental benefit. A detailed discussion of the Tier 1 environmental impacts can be found in 56 FR 25734 (June 5, 1991).

III. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views it as non-controversial and anticipates no adverse comments. This action will be effective in 60 days from the date of publication of this Federal Register notice unless the Agency receives notice within 30 days of this publication that adverse or critical comments will be submitted, or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw this final rule and another will begin a new rulemaking by announcing a proposal of the rule and establishing a comment period.

IV. Statutory Authority

Authority for the actions promulgated in this final rule is granted to EPA by sections 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a), and 5 U.S.C. 553(b)).

V. Administrative Designation

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1990 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

The Agency has determined that this action will not have an adverse impact on small entities. Moreover, this regulation does not create any new regulatory requirements.

Therefore, under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

VII. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget clearance for any activity that will involve collecting substantially the same information from ten or more non-Federal respondents. On December 1, 1992, OMB approved collection of information required in 40 CFR 86.094–26 under ICR control no. 2060–0104. This regulation does not impose any new information collection requirements and will result in no change in the reporting burden.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 30, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 86 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

§ 86.094–13 [Amended]

2. In § 86.094–13, paragraphs (a)(1), (c)(1), (d)(1), (e)(1), and (f)(1) are amended by revising the words "1994, 1995, and 1996" to read "1994 through 1998".

§ 86.094–26 [Amended]

3. In § 86.094–26, paragraphs (a)(2), (b)(2)(i), and (b)(2)(ii) are amended by revising the words "1994, 1995, and 1996" to read "1994 through 1998".

[FR Doc. 94–17003 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7598]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Iowa: Barnum, city of, Webster County	190528	May 6, 1994	11–5–76
Washington: Creston, town of, Lincoln County	530108	May 12, 1994	9–30–88
Illinois: Hillcrest, village of, Ogle County	170956	May 23, 1994	9–15–78
Iowa:			
Paton, city of, Greene County	190397	.....do	9–19–75
Palo Alto County, unincorporated areas	190898	.....do	5–17–77
Swisher, city of, Johnson County	190810	.....do	8–13–76
Michigan: Kenockee, township of, St. Clair County	260915	.....do	.....
Nebraska: Wilsonville, village of, Furnas County	310335	.....do	12–3–76
Maine: Edinburg, town of, Penobscot County	230383	May 31, 1994	.....
Texas: Somerset, city of, Bexar County	481264	June 14, 1994	8–9–77
Iowa: Dakota City, city of, Humboldt County	190421	June 16, 1994	11–8–74
Michigan: Muir, village of, Ionia County	260916	June 20, 1994	.....
Oklahoma: Rogers Mills County, unincorporated areas	400542	.....do	.....
Iowa: Rutland, city of, Humboldt County	190422	June 27, 1994	11–5–76
New Eligibles—Regular Program			
Washington: Harrington, city of, Lincoln County	530110	May 12, 1994	9–30–88
South Carolina: James Island,[1] town of, Charleston County	450263	June 30, 1970, Emerg.; April 23, 1971, Reg	.....

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Florida: Archer, city of,[2] Alachua County	120670	June 9, 1994	.....
Illinois: Beach Park, village of, Lake County	171022	June 13, 1994	6–2–94
Louisiana: Sterlington, town of, Ouachita Parish	220400	June 14, 1994	3–15–94
Texas: Gun Barrel, city of, Henderson County	480328	.....do	9–27–91
Reinstatements—Regular Program			
Pennsylvania: Colwyn, borough of, Delware County	420409	September 15, 1972, Emerg.; May 2, 1977, Reg.; December 3, 1993, Susp.; May 5, 1994, Rein.	9–30–93
New Mexico: Silver City, city of, Grant County	350022	July 22, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.; May 12, 1994, Rein.	5–17–88
Pennsylvania:			
Hawley, borough of, Berks County	420863	July 18, 1974, Emerg.; August 19, 1991, Reg.; March, 15, 1994, Susp.; May 20, 1994, Rein.	3–15–94
Hereford, township of, Berks County	421379	November 20, 1975, Emerg.; May 3, 1990, Reg.; May 3, 1990, Susp.; May 20, 1994, Rein.	5–3–90
Utah:			
Paragonah, town of, Iron County	490075	March 12, 1975, Emerg.; September 24, 1984, Reg.; September 15, 1989, Susp.; May 26, 1994, Rein.	9–24–84
Summit County, unincorporated areas	490134	June 10, 1975, Emerg.; July 17, 1986, Reg.; July 17, 1986, Susp.; May 26, 1994, Rein.	7–17–86
Illinois: Maywood, village of, Cook County	170124	July 22, 1975, Emerg.; August 11, 1978, Reg.; March 15, 1993, Susp.; May 31, 1994, Rein.	10–18–88
Tennessee: Liberty, city of, DeKalb County	470044	May 23, 1975, Emerg.; September 4, 1986, Reg.; September 4, 1986, Susp.; May 31, 1994, Rein.	9–4–86
West Virginia: Keystone, town of, McDowell County	540119	May 21, 1975, Emerg.; February 1, 1985, Reg.; February 1, 1985, Susp.; March 6, 1985, Rein.; November 18, 1992, Susp.; June 6, 1994, Rein.	2–1–85
New York: Canton, town of, St. Lawrence County	361172	June 9, 1975, Emerg.; December 19, 1984, Reg.; June 2, 1993, Susp.; June 9, 1994, Rein.	6–2–93
Maine:			
Chapman, town of, Aroostook County	230015	April 20, 1976, Emerg.; September 4, 1985, Reg.; September 4, 1985, Susp.; June 20, 1994, Rein.	9–4–85
Embden, town of, Somerset County	230359	August 11, 1976, Emerg.; September 4, 1985, Reg.; September 4, 1985, Susp.; June 20, 1994, Rein.	9–4–85
West Virginia: Hurricane, city of, Putnam County	540167	July 11, 1975, Emerg.; March 4, 1986, Reg.; November 18, 1992, Susp.; June 20, 1994, Rein.	3–4–86
Pennsylvania: Modena, borough of, Chester County	420282	October 10, 1974, Emerg.; November 19, 1987, Reg.; January 19, 1994, Susp.; June 27, 1994, Rein.	11–19–87
Regular Program Conversions			
Region II			
New Jersey: New Providence, borough of, Union County	345306	May 16, 1994, suspension withdrawn	5–16–94
Region V			
Ohio:			
Munroe Falls, city of, Summit County	390843	.....do	5–16–94
Rock Creek, village of, Ashtabula County	390665	.....do	5–16–94
Region VI			
Texas: Granbury, city of, Hood County	480357	.....do	5–16–94
Region I			
Massachusetts: Topsfield, town of, Essex County	250106	June 2, 1994, suspension withdrawn	6–2–94
Region III			
Maryland: Princess Anne, town of, Somerset County	240063	.....do	6–2–94
Pennsylvania: Texas, township of, Wayne County	422176	.....do	6–2–94
Region V			
Indiana: Hendricks County, unincorporated areas	180415	.....do	3–16–81
Illinois: Jacksonville, city of, Morgan County	170516	.....do	6–2–94
Michigan:			
Baldwin, township of, Iosco County	260099	.....do	6–2–94
East Tawas, city of, Iosco County	260100	.....do	6–2–94

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Tawas City, city of, Iosco County	260102	.....do	6–2–94
Minnesota:			
Afton, city of, Washington County	275226	.....do	1–2–76
Belle Plaine, city of, Scott County	270429	.....do	12–18–86
Freeborn County, unincorporated areas	270134	.....do	5–3–82
Red Lake County, unincorporated areas	270387	.....do	7–2–87
Region VI			
Arkansas: Hardy, city of, Sharp County	050330	.....do	6–2–94
Louisiana: Concordia Parish, unincorporated areas	220053	.....do	6–2–94
Texas: Denton County, unincorporated areas	480774	.....do	6–2–94
Region I			
Maine:			
Augusta, city of, Kennebec County	230067	June 15, 1994, Suspension withdrawn	6–15–94
Chelsea, town of, Kennebec County	230234	.....do	6–15–94
Strong, town of, Franklin County	230061	.....do	6–15–94
Region II			
New York:			
Hebron, town of, Washington County	361443	.....do	6–15–94
Dexter, village of, Jefferson County	360333	.....do	6–15–94
Region V			
Michigan: Kalamazoo, town of, Kalamazoo County	260429	.....do	6–15–94
Region X			
Washington:			
Benton County, unincorporated areas	530011	.....do	6–15–94
Kennewick, city of, Benton County	530237	.....do	6–15–94

[1] This is a newly incorporated community, eligible May 31, 1994, that was participating in the Regular Program as an unincorporated area of Charleston, SC. The Town has adopted by reference the County's Flood Insurance Study and Flood Insurance Rate Map for flood insurance and floodplain management purposes.

[2] The City of Archer has adopted by reference Alachua County's (#120001) Flood Insurance Study and Flood Insurance Rate Map dated 11–4–88 for flood insurance and floodplain management purposes.

Code for reading third column:
Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 12, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–17342 Filed 7–15–94; 8:45 am]

BILLING CODE 6718–21–P

Proposed Rules

Federal Register
Vol. 59, No. 136
Monday, July 18, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 322

[Docket No. 89–117–3]

Importation of Honeybees and Honeybee Semen From New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening the comment period for a proposal that would amend the honeybee and honeybee semen regulations to allow honeybees and honeybee semen to be imported from New Zealand into the United States, subject to certain conditions. The proposed action appears warranted based on our determination that New Zealand is free of, and has adequate protection against the introduction of, diseases and parasites of honeybees, and undesirable species or subspecies of honeybees and their semen. The proposed action would relieve certain restrictions on the importation of honeybees and honeybee semen from New Zealand without presenting a significant risk of introducing harmful diseases or parasites of honeybees into the United States. Reopening the comment period will provide interested persons with another opportunity to comment on the proposed rule.

DATES: Consideration will be given only to comments received on or before August 17, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–117. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James Fons, Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 322 (referred to below as the regulations) govern the importation into the United States of honeybees and honeybee semen. These regulations were established pursuant to the Honeybee Act (7 U.S.C. 281 *et seq.*). The Honeybee Act was designed to prevent the movement into the United States of diseases and parasites harmful to honeybees. In addition, the Honeybee Act was designed to prevent the movement into the United States of undesirable species or subspecies of honeybees, such as *Apis mellifera scutellata*, commonly known in the United States as the African honeybee.

In this regard, 7 U.S.C. 281 provides, in relevant part, that:

(a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germplasm of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) From countries determined by the Secretary of Agriculture—

(A) To be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

(B) To have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees exist; or

(3) From Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.

These provisions are set forth at § 322.1 as criteria for determining which countries may be listed in the regulations as countries from which honeybees or honeybee semen may be imported into the United States.

Under the regulations, honeybees may be imported into the United States from New Zealand only by the United States Department of Agriculture (USDA) for experimental or scientific purposes. Honeybee semen may be imported from New Zealand only after issuance of a permit by Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

On February 6, 1990, we published in the **Federal Register** (55 FR 3968–3969, Docket No. 89–117) a proposal to amend the regulations by removing these restrictions on honeybees and honeybee semen imported into the United States from New Zealand. We stated that the proposal was warranted because it had been determined that New Zealand met the criteria set forth in § 322.1, based on USDA review of the scientific literature; an ongoing sampling program of New Zealand honeybees by the USDA; an ongoing exchange of information between New Zealand and the United States relating to bee diseases and parasites, and undesirable species and subspecies of honeybees; and a review by USDA of the bee enforcement program in New Zealand.

However, we recognized that shipments of honeybees or honeybee semen from New Zealand could, during transit through countries from which honeybees and honeybee semen may not be imported into the United States, come in contact with foreign honeybees that may be diseased. We therefore proposed to allow honeybees and honeybee semen to be imported from New Zealand into the United States if they were shipped to the United States nonstop and if they were accompanied by a certificate of origin issued by the New Zealand Department of Agriculture certifying that the honeybees and honeybee semen were of New Zealand origin. We also proposed to amend § 322.2 to add a definition for "certificate of origin."

We solicited comments concerning the 1990 proposal for a 15-day comment period ending February 21, 1990. In response to a comment, we published a notice in the **Federal Register** on March 2, 1990 (55 FR 7499, Docket No. 90–025), that extended the comment period to April 2, 1990. We received 37 comments by that date. The comments were from apiaries, queen breeders, beekeeper associations, and State departments of agriculture.

We did not at that time publish a final rule. However, we now wish to proceed with rulemaking. We have consulted the most current scientific literature and discussed this action with experts within and outside of the Department, and we have confirmed that the actions described in the original proposal are still appropriate. Nevertheless, because considerable time has elapsed since publication of the original proposed rule, we are reopening the comment period on the 1990 proposal to allow interested persons another opportunity to comment.

Done in Washington, DC, this 13th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17346 Filed 7–15–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 50, 77, and 92

[Docket No. 93–014–2]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and a 60-day post-entry tuberculin test. The proposed rule also would deny claims for indemnity for Mexican-origin steers or spayed heifers that test positive to the 60-day post-entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 93–014–1 that are received on or before September 16, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–014–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Vantiem, Senior Staff Veterinarian, Cattle Disease and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION: On May 9, 1994, we published in the **Federal Register** (59 FR 23810–23817, Docket No. 93–014–1) a proposed rule that would require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and a 60-day post-entry tuberculin test. The proposed rule also would deny claims for indemnity for Mexican-origin steers or spayed heifers that test positive to the 60-day post-entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals. Comments on the proposed rule were required to be received on or before July 8, 1994.

During the comment period, we received requests that we extend the comment period. The requests came from four State Veterinarians, who stated that they would like to present their views to the Binational Tuberculosis Committee, then submit a comment on the proposed rule. The Binational Tuberculosis Committee is scheduled to meet July 21, 1994.

In response to these requests, and so that we may consider comments received after July 8, 1994, we are reopening and extending the public comment period until 60 days after publication of this notice. This action will allow the requestors and all other interested persons additional time to prepare comments.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111–113, 114, 114a, 114a–1, 115–117, 120, 121, 125, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 13th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17347 Filed 7–15–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the first quarter, January through March, of 1994. This agenda provides the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936), Vol. 13, No. 1, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 415–7163, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 11th day of July 1994.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–17334 Filed 7–15–94; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–22–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10–10, −10F, −30, and −30F series airplanes, that currently requires inspections to detect ice or snow accumulation on top of the fuselage and in the inlet of the number 2 engine, and removal of ice and snow accumulation. This action would add certain airplanes to the applicability of the rule and would limit the inspection requirement to only a certain group of airplanes. This proposal is prompted by the development of improved fan blades on certain engines and the identification of additional airplanes that are subject to the unsafe condition. The actions specified by the proposed AD are intended to minimize damage to the number 2 engine due to ingestion of ice and snow.

DATES: Comments must be received by September 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–22–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA issued AD 75–04–11, amendment 39–2094, applicable to all McDonnell Douglas Model DC–10–10, −10F, −30, and −30F series airplanes, to require inspection to detect ice and snow accumulation on top of the fuselage and in the inlet of the number 2 engine, and removal of ice and snow. That action was prompted by reports from operators of Model DC–10 series airplanes that ice was ingested into the number 2 engine. In these incidents, the number 2 engine on airplanes that had been parked during icing conditions ingested ice and sustained damage shortly after the engine was started. The requirements of that AD are intended to prevent damage to the number 2 engine due to ingestion of ice and snow.

Since the issuance of that AD, the General Electric (GE) Company has issued design changes to the GE Model CF6 series engines that include replacement of the gundrilled fan blades (that is, blades having radial lightening holes) with solid blades. The FAA has determined that in the event of excessive ice ingestion, these solid fan blades are less likely to result in an uncontained failure. Therefore, the FAA finds that the applicability of the existing rule must be revised to exclude airplanes equipped with these engines and fan blades from the AD requirement to inspect to detect ice and snow on top of the fuselage and in the inlet of the number 2 engine. (Similarly, Model DC–10–40 series airplanes equipped with Pratt and Whitney Model JT9D series engines having solid fan blades were excluded from the requirements of AD 75–04–11 since they, too, are not subject to the unsafe condition.)

Further, since the issuance of AD 75–04–11, the FAA has determined that Model DC–10–15 series airplanes and Model KC–10A (military) airplanes are subject to the addressed unsafe condition since they utilize the same gundrilled blade engines as Model DC–10–10, −10F, −30, and −30F series airplanes, which are subject to the requirements of AD 75–04–11 and are also susceptible to ice and snow ingestion into the number 2 engine. Therefore, the FAA finds that the applicability of the existing rule must be expanded to include Model DC–10–15 series airplanes and Model KC–10A (military) airplanes.

Ingestion of ice and snow into the number 2 engine could result in damage to that engine.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 75–04–11 to require inspections to detect ice and snow accumulation on top of the fuselage and in the inlet of the number 2 engine, and removal of ice and snow. The applicability of this proposal would be revised to include all Model DC–10–10, −10F, −30, −30F, and −15 series

airplanes and Model KC–10A (military) airplanes, equipped with GE Model CF6 series turbofan engines having gundrilled blades.

Additionally, paragraph (b) of AD 75–04–11, which relates to making "appropriate maintenance record entries" after accomplishing the requirements of the AD, has not been reiterated in this proposed AD since those requirements are redundant of the requirements contained in sections 43.9 ("Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records") and 43.11 ("Content, form, disposition of records for inspections . . ") of the Federal Aviation Regulations (14 CFR 43.9 and 43.11). As such, operators are not relieved from the requirement to make appropriate entries in their maintenance records.

There are approximately 379 McDonnell Douglas Model DC–10–10, −10F, −30, −30F, and −15 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 226 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 75–04–11, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the inspection requirement on U.S. operators is estimated to be $12,430, or $55 per airplane, per inspection. This proposal would only add the cost of inspections for the operators of Model KC–10A (military) airplanes. Currently, there are no Model DC–10–15 series airplanes of U.S. registry that would be affected by this proposal.

For operators of Model DC–10–10, −10F, −30, and −30F series airplanes having all solid fan blades in the number 2 engine position, the economic burden would be reduced since the previous requirement to inspect these airplanes in accordance with the existing AD would be eliminated by this proposal. However, this does not relieve operators of the responsibility to comply with the requirements of sections 91.527 ("Operating in icing conditions") and 121.629 ("Operation in icing conditions"—air carriers) of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2094, and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 94–NM–22–AD. Supersedes AD 75–04–11, Amendment 39–2094.

Applicability: Model DC–10–10, –10F, –30, –30F, and –15 series airplanes, and Model KC–10A (military) airplanes, on which the number 2 engine is a General Electric Model CF6 series turbofan engine having one or more gundrilled fan blades installed, including but not limited to part numbers 9010M33 and 9137M39; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent possible damage to the number 2 engine due to ingestion of ice and snow, accomplish the following:

(a) As of the effective date of this AD, prior to starting the number 2 engine on any airplane that has been parked during icing conditions (freezing rain, snow, sleet) for any period of time during which ice or snow may have accumulated on the airplane in the area of the number 2 engine, inspect to detect ice and snow accumulation on top of the fuselage and in the inlet of the number 2 engine. If ice or snow accumulation is found, prior to further flight, remove the ice or snow accumulation.

Note 1: Guidelines for inspection and safeguarding the aircraft are contained in these documents:

Douglas All Operators Letter (AOL) 10–546, dated January 11, 1974
Douglas AOL 10–673, dated August 7, 1974
DC–10 Airplane Maintenance Manual, Chapter 12–31–01

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17327 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–14–AD]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that currently requires repetitive visual and dye penetrant inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary

That AD also provided an optional terminating modification for the repetitive inspections. This action would require visual and eddy current inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary. This proposal is prompted by reports that the currently required inspections are not effective in detecting fatigue cracks in a timely manner. The actions specified by the proposed AD are intended to prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section.

DATES: Comments must be received by October 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–14–AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA issued AD 68–18–03, amendment 39–2056, applicable to certain Boeing Model 707 and 720 series airplanes, to require repetitive inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary. That AD also provided an optional terminating modification for the repetitive inspections. That action was prompted by several reports of fatigue cracking and one report of skin blowout (failure of the wing skin panel) on Model 720 series airplanes. Model 707 series airplanes were included in the applicability of AD 68–18–03 because those airplanes are similar in design to Model 720 series airplanes. The requirements of that AD are intended to prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section.

Since the issuance of AD 68–18–03, the FAA has received several reports that the visual and dye penetrant inspection techniques required by that AD have not been effective in detecting cracks in a timely manner. The FAA, in conjunction with the airplane manufacturer and the Boeing Model 707 Aging Fleet Structures Working Group (SWG), conducted a structural review of those airplanes and determined that inspections using visual and eddy current methods are necessary in order to effectively detect cracks in a timely manner for airplanes on which the optional terminating modification specified in AD 68–18–03 has not been accomplished.

Fatigue cracking in the upper forward skin panels of the wing center section, if not detected and corrected in a timely manner, could result in failure of the wing skin panels.

The FAA has reviewed and approved Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991, that describes procedures for repetitive visual and eddy current inspections to detect cracks in certain areas of the upper forward skin panels of the wing center section, and repair, if necessary. This service bulletin is part of Boeing Master Inspection Service Bulletins 3484 (for Model 707–100 and –200 airplanes), 3485 (for Model 720 and 720B airplanes), and 3486 (for Model 707–300, –300B, –300C, and –400 airplanes), all dated December 12, 1991. Boeing Service Bulletin 2590 references these master inspection service bulletins as additional sources of service information concerning accomplishment of the repetitive inspections. The master inspection service bulletins describe an expanded inspection area that includes a 4-inch wide strip centered on each chordwise bulb angle stiffener installed in accordance with AD 68–18–03.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 68–18–03 to require repetitive visual and eddy current inspections to detect cracks in certain areas of the upper forward skin panels of the wing center section, and repair, if necessary. This AD also would provide an optional terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with Boeing Service Bulletin 2590, described previously.

There are approximately 416 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 82 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $144,320, or $1,760 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 1,250 work hours to accomplish it, at an average labor rate of $55 per work hour.

The cost of required parts would be approximately $45,000 per airplane. Based on these figures, the total cost impact of the optional terminating action would be $113,750 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2056, and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–14–AD. Supersedes AD 68–18–03, Amendment 39–2056.

Applicability: All Model 707 and 720 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section, accomplish the following:

(a) For Model 707–100, –200, –300, –300B, –300C, and –400 airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in paragraphs b. and f.(1) of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(1) For Model 707–300, –300B, –300C, and –400 airplanes: Inspect at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 6,000 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–100 and –200 airplanes: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 7,000 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(b) For Model 720 and 720B airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the area of the upper forward skin of the wing center section specified in paragraph b. of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(1) Prior to the accumulation of 4,000 total landings; or

(2) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(c) For Model 720 and 720B, and 707–100, –200, –300, –300B, –300C, and –400 airplanes on which bulb angle stiffeners have been installed, but on which the wing skin has not been replaced, in accordance with Boeing Service Bulletin 2590: Accomplish the inspections required by paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991. Repeat these inspections thereafter at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

Note 1: Revision 11 of Boeing Service Bulletin 2590 is part of Boeing Master Inspection Service Bulletins 3484 (for Model 707–100 and –200 airplanes), 3485 (for Model 720 and 720B airplanes), and 3486 (for Model 707–300, –300B, –300C, and –400 airplanes), all dated December 12, 1991. Boeing Service Bulletin 2590 references these master inspection service bulletins as additional sources of service information concerning accomplishment of the inspections required by paragraph (c) of this AD.

(1) For Model 720 and 720B airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3485, dated December 12, 1991, at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–300, –300B, –300C, and –400 airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3486, dated December 12, 1991, at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(3) For Model 707–100 and –200 airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3484, dated December 12, 1991, at the later of the times specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(d) If any crack is found during any of the inspections required by paragraphs (a), (b), and (c) of this AD, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991.

(e) Accomplishment of the "Reinforcing Stiffener Installation and Skin Panel Replacement" in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 6, dated July 8, 1968; Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991; constitutes

terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17326 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N–0155]

RIN 0905–AB68

Food Labeling; Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Guidelines for Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the guidelines for voluntary nutrition labeling of raw fruit, vegetables, and fish; revise the definition for compliance with respect to adherence by retailers to those guidelines; and revise the labeling regulations and labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish. This action is in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: Submit written comments by September 16, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean A.T. Pennington, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–205–5434.

SUPPLEMENTARY INFORMATION:

I. Background

In response to requirements of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), FDA published final regulations in the **Federal Register** of November 27, 1991 (56 FR 60880, and corrected at 57 FR 8174, March 6, 1992) (hereinafter referred to as the "voluntary nutrition labeling final rule") that: (1) Identified the 20 most frequently consumed raw fruit, vegetables, and fish in the United States; (2) established guidelines for the voluntary nutrition labeling of these foods; and (3) determined the criteria for substantial compliance by food retailers with the guidelines for the voluntary nutrition labeling of these foods.

Under section 403(q)(4)(C)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)(4)(C)(i)), FDA was to issue a report by May 8, 1993, on actions taken by food retailers to provide consumers with nutrition information for raw fruit, vegetables, and fish under the guidelines established by the agency for such information. The act states that this report is to include a determination as to whether there is substantial compliance with the guidelines. FDA defined "substantial compliance" in § 101.43(c) (21 CFR 101.43(c)) to mean that at least 60 percent of all stores that are evaluated are in compliance. Under section 403(q)(4)(C)(ii) of the act, if FDA were to find that compliance is substantial, then nutrition labeling of raw fruit, vegetables, and fish would remain voluntary, with compliance to be assessed at 2-year intervals. If the agency were to find that compliance is not substantial, section 403(q)(4)(D)(i) of the act requires that FDA issue proposed regulations requiring that any person who offers raw fruit, vegetables, or raw fish to consumers provide, in a manner prescribed by regulation, the nutrition information required by section 403 (q)(1) and (q)(2) of the act.

In the **Federal Register** of May 18, 1993 (58 FR 28985), FDA announced the availability of its "Report on Voluntary Compliance of Food Retailers in Providing Nutrition Labeling Information for Raw Fruit and Vegetables and for Raw Fish" (Ref. 1). This report was based on the results of a survey conducted in November and December 1992 by the Ehrhart-Babic Group under contract to FDA. Based on the results of the survey (Ref. 2), FDA found that compliance of retailers with the nutrition labeling guidelines is substantial both for fruit and vegetables (75.7 percent compliance) and for fish (73.2 percent compliance). Annual commodity volume (ACV) compliance estimates (reflecting compliance on the basis of sales volume) were similar to compliance based on the number of stores surveyed. For raw fruit and vegetables, stores in compliance accounted for 76.9 percent of annual sales of all food stores. For raw fish, the estimate was 74.3 percent.

FDA interprets the ACV data as showing that a minimum of three-fourths of U.S. consumers are exposed to nutrition labeling information for raw fruit, vegetables, and fish. FDA believes that these percentages represent a minimum estimate because some consumers shop in several different retail stores, which increases their chance of exposure to nutrition labeling of raw fruit, vegetables, and fish.

Thus, the nutrition labeling of raw fruit, vegetables, and fish will remain voluntary until at least May 8, 1995. The agency notes, however, that a lawsuit challenging FDA's criterion for substantial compliance was filed in 1992 (*Arent* v. *Shalala*, Civ. No. 92–0148–JLG). The outcome of this case could affect whether nutrition labeling of raw fruit, vegetables, and fish remains voluntary.

FDA stated in § 101.45(i) (21 CFR 101.45(i)) that it will publish and provide an opportunity for comment on updates of the nutrition labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish (or a notice that nutrition labeling values have not changed from the previous publication) at least every 2 years. In addition, in the preamble to the voluntary nutrition labeling final rule (56 FR 60880 at 60881), FDA advised that in order to make the guidelines as consistent as possible with the regulations governing the rest of the food supply (except for those foods subject to regulation by the United States Department of Agriculture (USDA)), the guidelines would be subject to change after the agency issued its report in 1993 on compliance by retailers.

FDA published the final regulations implementing the 1990 amendments in the **Federal Register** of January 6, 1993, including regulations on mandatory nutrition labeling (58 FR 2079); reference daily intakes (RDI's) and daily reference values (DRV's) (hereinafter referred to as "the RDI/DRV final rule") (58 FR 2206); and serving sizes (hereinafter referred to as "the serving size final rule") (58 FR 2229). It made technical changes in these final rules on August 18, 1993 (58 FR 44020).

FDA is now proposing to update the nutrition labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish and to revise the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish to reflect the January 1993 final rules as modified.

II. Substantial Compliance by Food Retailers with the Guidelines for the Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish

FDA is proposing to make two minor changes and one substantive change to § 101.43. As explained in detail below, FDA is proposing to revise § 101.45. To reflect these revisions, FDA is proposing to amend § 101.43(a)(1) to reference § 101.45(a)(1) and § 101.43(a)(2) to reference § 101.45(a)(2), (a)(3), and (a)(4).

In addition, FDA is proposing to revise § 101.43(a)(3) to provide that retailers must use the data provided by FDA in proposed Appendices C and D to part 101 (21 CFR part 101) for the 20 most frequently consumed raw fruit, vegetables, and fish to be in compliance with the guidelines for the voluntary nutrition labeling program. Current § 101.43(a)(3) allows for the use of: values that have been provided by FDA, (2) values that have been accepted by FDA, or (3) values that are consistent with current § 101.45 (d) and (e) and have not been found to be out of compliance after a review under § 101.9(e). (This reference is to the version of § 101.9(e) in effect in 1991 and not that in the January 6, 1993, final rule (see 58 FR 2079 at 2181).) FDA provided this flexibility because, given the time constraints imposed by the 1990 amendments, the agency did not have an opportunity to subject the nutrition labeling values that it provided for retailer use (see 56 FR 60880 at 60888 through 60889, and corrected at 57 FR 8174 (hereinafter referred to as the "1991 interim nutrition labeling values")) to public comment. Therefore, FDA did not require that these values be used to achieve retailer compliance. With more time, however, FDA has now developed a set of values that it believes are representative and is soliciting comment on those values, which are set out in proposed Appendices C and D to part 101. Interested persons should comment on the proposed nutrition labeling values themselves and provide any relevant information that would affect those values. The agency intends to require that these specific values be used by those retailers who decide to provide nutrition labeling for raw fruit, vegetables, and fish.

FDA tentatively finds that requiring the use of the nutrition labeling values is appropriate because these values reflect available data for the covered foods; their use will ensure that consumers receive consistent information from retail stores across the country; and will facilitate compliance determinations by FDA. Use of different values for the same food by different stores will likely cause consumer confusion and will only serve to undercut the credibility of the nutrition labeling that is provided.

If this proposal is adopted, retailers who use other data for these foods will not to be in compliance with the guidelines.

III. Updating the Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish

FDA is proposing to revise the nutrition labeling values for the most frequently consumed raw fruit, vegetables, and fish (proposed Appendices C and D to part 101) to: (1) Be consistent with the nutrition labeling requirements in § 101.9 (b), (c), and (d) that affect serving sizes, nutrient content, and label format; (2) reflect newer or additional data for these foods that have been submitted or made available to the agency; and (3) apply FDA compliance calculations, where possible, to data derived from USDA sources.

A. Changes Necessary for Consistency With Nutrition Labeling Requirements in § 101.9 (b), (c), and (d)

FDA has designed proposed Appendices C and D to be consistent with the final regulations on nutrition labeling.

Consistent with § 101.9(c) (58 FR 2229 at 2291), which lists the nutrients that are to be included in the nutrition label, FDA is proposing to add values for calories (cal) from fat, saturated fat, cholesterol, dietary fiber, and sugar to the list of nutrients in the appendices. The 1991 interim nutrition labeling values included dietary fiber for fruits and vegetables, and saturated fat and cholesterol for fish. However, these specific values were not required for retailer compliance with the guidelines. FDA is proposing to require that these items be included in the nutrition label for raw fruit, vegetables, and fish to ensure that consistent nutrition information is provided across the food supply.

Consistent with § 101.9(c)(2) and (c)(2)(i) (58 FR 44063 at 44076, August 18, 1993), FDA is proposing to provide the values for total fat and saturated fat in 0.5-gram (g) increments for quantities of less than 5 g and in whole gram increments for quantities above 5 g. The values for fat and saturated fat in the 1991 interim nutrition labeling values were rounded to whole numbers, but FDA has concluded that for foods other than raw fruit, vegetables, and fish, the available methodology is sensitive enough to present fat and saturated fat levels in half g increments up to 5 grams (58 FR 44063 at 44064). FDA tentatively finds, based on the need for consistency of nutrition labeling among food products (see 58 FR 44063 at 44065), that it is appropriate to declare fat and saturated fat in similar increments for raw fruit, vegetables, and fish.

Consistent with § 101.9(c)(5), information on potassium is provided in the proposed labeling values as a voluntary component. If FDA adopts proposed § 101.43(a)(3) and Appendices C and D to part 101, retailers could comply with the guidelines even if they do not provide the information for potassium. Nevertheless, FDA is proposing to include the information on potassium because many raw fruits, vegetables, and fish are good sources of this nutrient. Some retailers and marketing associations have expressed an interest in providing information on potassium levels. FDA tentatively finds that the potassium information will be useful to consumers who are attempting to increase or restrict their intake of this substance. Inclusion of information on potassium in proposed Appendices C and D makes it likely that this information will be provided to consumers.

Consistent with § 101.9(b)(7) (58 FR 2229 at 2292), FDA is proposing to declare the serving sizes in the appendices in ounce (oz) equivalents, using slashes between metric and oz weights, and rounding to the nearest 0.1-oz increment. Consistent with § 101.9(b)(5)(iv), 28 g is equivalent to 1 oz in the proposed appendices.

FDA is proposing to change the serving sizes for a number of items from those listed in the 1991 interim nutrition labeling final rule. FDA is proposing to change the serving size for

peach from "2 medium (174 g)(6 oz)" to "1 medium (98 g/3.5 oz)." The value of 174 g for 2 peaches was derived from Agriculture Handbook No. 8–9 (Ref. 3). However, more recent information (Ref. 4) shows that a medium peach weighs about 98 g.

FDA is proposing to change the serving size for avocado from "⅓ medium (55 g)(2 oz)" to "⅕ medium (30 g/1.1 oz)" to be consistent with the serving size final rule (§ 101.12(b)) for this food. The serving size for avocado was 55 g in the serving size proposal (November 27, 1991, 56 FR 60394 at 60419), but based on comments received in response to this proposal, FDA changed the serving size to 30 g in the final regulation (see 58 FR 2229 at 2296).

FDA is proposing to change the serving size for tangerine from "2 medium, 2⅜" diameter (168 g)(6 oz)" to "1 medium (109 g/3.9 oz)" to reflect newer information available about this fruit from the Produce Marketing Association (PMA) (Ref. 5).

Consistent with § 101.9 (d)(7) and (d)(8) (58 FR 44063 at 44077), FDA is proposing to provide information on the percent daily values (DV's) for potassium and all mandatory nutrients except sugars and protein. The agency calculated the percent DV's in the proposed appendices by dividing the rounded quantitative values by the DRV's for macronutrients and electrolytes and by the RDI's for vitamins and minerals. As provided in § 101.9 (c)(8)(iv) and (c)(9) of the RDI/DRV final rule (58 FR 2206 at 2227), these DRV's are 65 g total fat, 20 g saturated fat, 300 milligram (mg) cholesterol, 2,400 mg sodium, 3,500 mg potassium, 300 g total carbohydrate, and 25 g dietary fiber, and the RDI's are 5,000 International Units (IU) vitamin A, 60 mg vitamin C, 1,000 mg calcium, and 18 mg iron.

Consistent with § 101.9(c)(8)(iii) (58 FR 2079 at 2178), FDA has replaced the asterisks that it used to represent less than 2 percent of the U.S. recommended daily allowance (RDA) for vitamin A, vitamin C, calcium, and iron, with zeros for the percent DV's of these nutrients. Section 101.9(c)(8)(iii) allows the use of zeros or asterisks for values that are less than 2 percent of the DV for vitamins and minerals. However, FDA tentatively finds that the use of asterisks for vitamins and minerals on the charts that are likely to be used for raw fruit, vegetables, and fish will be inconsistent with the zeros used for other nutrients, and that charts presenting a mixture of zeros and asterisks will be confusing for consumers. Therefore, where appropriate, FDA has used zeros for vitamins and minerals as well as for other nutrients in the proposed appendices.

B. Data Submitted or Made Available to the Agency

In proposed Appendix C to part 101, FDA has used information on the composition of bananas submitted to FDA by Nutrition Network on behalf of the International Banana Association (Ref. 6). The nutrition labeling values that FDA provided for bananas in the 1991 interim values were based on data provided by PMA (Ref. 7). The information provided by Nutrition Network included the data provided by PMA plus data on additional samples of bananas. Therefore, FDA tentatively concludes that the revised values for bananas in Appendix C to part 101 are superior to the 1991 interim nutrition labeling values because the revised values are based on a larger number of analytical values.

In proposed Appendix C to part 101, FDA has used information on the serving size and composition of tangerines that was provided by PMA (Ref. 5) after the final rule on the nutrition labeling of raw fruit and vegetables was published. The new information has permitted FDA to arrive at values for tangerines that are based on FDA calculations using procedures derived from the FDA Nutrition Labeling Manual (Ref. 8). The nutrition labeling values that FDA provided for tangerines in the 1991 interim values were based on mean nutrient values from the Agriculture Handbook No. 8–9 (Ref. 3). Therefore, FDA tentatively concludes that the revised values for tangerines in Appendix C to part 101 are superior to the 1991 interim nutrition labeling values, which are based on mean values, because the revised values are more reliable.

The labeling values previously provided by FDA for grapes reflected "American type" (adherent skin) grapes. USDA informed FDA, after the publication of the final rule on nutrition labeling of raw fruit, vegetables, and fish, that the grapes described as "American type" include varieties, such as concord, that are not generally consumed without processing, and that the grapes described as "European type" are the most common type of raw grapes consumed in the United States (Ref. 9). USDA stated that it would be more appropriate for FDA to use data for "European type" grapes as the type most frequently consumed in the United States.

Therefore, the nutrition labeling values for grapes proposed in Appendix C to part 101 are based on data from the USDA National Nutrient Databank (Ref. 10) and reflect European type (slipskin) grapes. FDA used the USDA National Nutrient Databank (Ref. 10) as the source of data because it provides information on sample size, means, and standard deviations. This information is necessary to obtain values appropriate for nutrition labeling.

C. Application of Compliance Calculations to Data From USDA

In the preamble to the voluntary nutrition labeling final rule (56 FR 60880 at 60884), FDA stated that if it did not receive new data for specific foods, it would subject the 1991 interim nutrition labeling values derived from USDA data to FDA compliance calculations and publish the revised labeling values in the **Federal Register**. Compliance calculations, which are fully discussed in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases" (Ref. 8), consider the variation of nutrients in foods. The nutrient content of foods varies according to inherent, environmental, and processing factors. Some nutrients are more variable than others.

FDA believes that, when possible, the nutrition labeling values provided for raw fruit, vegetables, and fish should be based on FDA compliance calculations, rather than on mean nutrient values. When mean nutrient values are used on a nutrition label, they provide only a 50 percent confidence level that the declared values accurately reflect the nutrient levels in the food. Compliance calculations, on the other hand, involve the use of algorithms (formulas) that use mean values for nutrients in the food and estimates of variance (i.e., standard deviations) to produce labeling values. These values are less likely than mean nutrient values to overestimate nutrients like vitamins and minerals or to underestimate nutrients like sodium, fat, saturated fat, and calories. When compliance calculations are used, they provide 95 percent confidence that the levels of protein, vitamins, and minerals will be at least 80 percent of label declarations, and that the levels of calories, fat, saturated fat, cholesterol, and sodium will not be more than 120 percent of label declarations.

Compliance calculations require information on the number of samples, mean nutrient content, and estimates of variance (i.e., standard deviations). The 1991 interim nutrition labeling values derived from Agriculture Handbooks (Refs. 3, 11, and 12), Seafood Nutri-Facts (Ref. 13), and other sources (Refs. 14 through 16) had not been subjected to compliance calculations because

information on number of samples and variance was not consistently available from these sources.

When using USDA data for nutrition labeling values for this proposed revision, FDA obtained the data, where possible, directly from the USDA National Nutrient Databank (Ref. 10) (which is the source of the aggregated data provided in Refs. 3, and 11 through 13). The agency used the USDA National Nutrient Databank (Ref. 10) because it provides individual data points from analyses completed by various sources (i.e., government, academic, industry, and private laboratories). The other sources of USDA data (Refs. 3, and 11 through 13) provide aggregated mean values. The agency used the individual points from the USDA National Nutrient Databank to determine the number of samples, mean nutrient values, and estimates of variance that are necessary to complete the compliance calculations. Statutory deadlines for publishing the 1991 proposed and final regulations for the voluntary nutrition labeling program did not allow the agency sufficient time to obtain, evaluate, and perform compliance calculations on data from the USDA National Nutrient Databank (Ref. 10).

The tentative selection of the USDA National Nutrient Databank (Ref. 10) as the preferred source of data for purposes of applying compliance calculations results in some changes in the listing of the names and descriptors (i.e., presence of skin and cooking method) for fish. The listing of fish names in the 1991 interim nutrition labeling values was accompanied by specific cooking methods and, where appropriate, the term "skinless." These descriptive terms were derived from Seafood Nutri-Facts (Ref. 13). The data sources used for the proposed fish nutrition labeling values (Refs. 10 and 12) do not include a detailed description of how the fish were cooked (although they do indicate if dry or moist heat was applied), or whether the skin was present or removed. Therefore, FDA is not including detailed descriptive terms in the listing of fish names with the proposed nutrition labeling values in Appendix D to part 101. The nutrient values in Appendix D to part 101 reflect cooking methods that do not add fat, breading, or seasoning. The footnote for this appendix states this fact.

D. Nutrient Data

The derivation of each nutrition labeling value in proposed Appendices C and D to part 101 is documented in Reference 17. Reference 17 also lists the 1991 interim nutrition labeling values, so that the proposed values can be compared with the previous values.

1. Fruits and Vegetables

The information that FDA used in arriving at the 1991 interim nutrition labeling values for fruits and vegetables included data from PMA (Ref. 18) (subjected to compliance calculations), mean values from Agriculture Handbooks No. 8–9 (Ref. 3) and No. 8–11 (Ref. 11), and data from other sources (Refs. 15 and 16). The data that FDA used in arriving at the proposed nutrition labeling values for fruits and vegetables include (in descending order of priority):

a. Market basket sampling and analyses completed by PMA (Refs. 5, 18, and 19) and Nutrition Network (on behalf of the International Banana Association) (Ref. 6). PMA submitted sampling plans, analytical data, and suggested nutrition labeling values for various fruits and vegetables to FDA for review between 1982 and 1991. PMA subjected the data to FDA compliance calculations and subsequently revised the nutrition labeling values that it had developed (Ref. 19) to be in accordance with the mandatory nutrition labeling final rules (58 FR 2079) with regard to label content, serving size, DV's, and rounding. One of the changes that PMA made in revising its values was to include both available carbohydrate and dietary fiber in the values for total carbohydrate. The values for raw fruit and vegetables that FDA obtained from PMA and used in arriving at the 1991 interim nutrition labeling values included only available carbohydrate.

Nutrition Network (Ref. 6) submitted information on the sampling, analysis, and suggested nutrition labeling values of bananas on behalf of the International Banana Association. FDA reviewed the data provided by Nutrition Network and developed nutrition labeling values for bananas based on FDA compliance calculations (Ref. 8). In some cases, the nutrition labeling values developed by FDA for bananas (shown in Appendix C to part 101) were different than those suggested by Nutrition Network.

b. Data from the USDA National Nutrient Databank (Ref. 10) subjected to FDA compliance calculations with appropriate rounding. FDA obtained nutrient data tapes and disks from USDA and used the data to arrive at mean nutrient values and standard deviations and to develop nutrition labeling values, using FDA compliance calculations.

c. Mean values from Agriculture Handbook No. 8–9 for fruits (Ref. 3) and from No. 8–11 for vegetables (Ref. 11).

2. Fish

The information that FDA used in arriving at the 1991 interim nutrition labeling values for raw fish included Seafood Nutri-Facts (Ref. 13), Agriculture Handbook No. 8–15 (Ref. 12), and a technical memorandum from the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service (Ref. 14). The data that FDA used in arriving at the proposed nutrition labeling values for fish (in descending order of priority) are:

a. Data for cooked fish (3 oz basis) from the USDA National Nutrient Databank (Ref. 10), subjected to FDA compliance calculations with appropriate rounding. FDA obtained data tapes and disks from USDA, estimated mean nutrient values and standard deviations, and developed nutrition labeling values using FDA compliance calculations.

b. Data for raw fish (4 oz basis for finfish and crustacea and 5 oz basis for mollusks) from the USDA National Nutrient Databank (Ref. 10), subjected to FDA compliance calculations with appropriate rounding. FDA obtained data tapes and disks from USDA, estimated mean nutrient values and standard deviations, and developed nutrition labeling values using FDA compliance calculations.

c. Mean values for cooked fish from Agriculture Handbook No. 8–15 for fish (Ref. 12). A special situation is presented by orange roughy. Orange roughy is one of the few edible plants and animals that contains wax esters. Because the wax esters are extracted with lipids during analysis, under § 101.9(c)(2), which requires that the nutrition label list the total fat in a serving of food, the fat value for orange roughy should reflect the presence of these wax esters (even though they do not provide a metabolizable source of energy for humans). The value for fat in cooked orange roughy in Agriculture Handbook 8–15 (1990 Supplement), upon which FDA relied in developing proposed Appendix D, does not, however, include the wax esters. FDA is not aware of any other source for a value for this nutrient in this food that includes the wax esters. Therefore, FDA requests that information that provides a basis for establishing a value for total fat in cooked orange roughy that reflects the presence of the wax esters be submitted in comments on this proposal. If the agency receives acceptable information, FDA intends to include that value in any version of Appendix D that it adopts.

d. Mean values for raw fish (4 oz basis for finfish and crustacea and 5 oz basis

for mollusks) from Agriculture Handbook No. 8–15 for fish (Ref. 12).

3. Corrections for Cooking

As stated above, FDA used analytical data for cooked (rather than raw) fish when they were available. If data for cooked fish were not available, it used data for raw fish. When it was necessary to use data for raw fish, the agency used a weight retention factor of 75 percent to convert the weight of raw finfish to a cooked weight and a factor of 60 percent to convert the raw weight of mollusks to a cooked weight (Refs. 12 and 20). Based on information provided by USDA, FDA assumed that the weight loss during cooking resulted from moisture only, and that there was no loss of fat or minerals with cooking (Ref. 20). Therefore, 4 oz of raw finfish were used to obtained data for 3 oz cooked finfish, and 5 oz of raw mollusk (clam, oyster, scallop) were used to obtain data for 3 oz cooked mollusk.

FDA applied a retention factor of 90 percent to the vitamin A value of raw chum/pink salmon to achieve the value for the cooked chum/pink salmon (Ref. 12). The application of this retention factor did not change the value of 2 percent DV for this vitamin. All the other vitamin A values for the fish were either negligible or were available on a cooked basis.

4. Calories from Fat

FDA calculated calories from fat using 8.37 cal per g of fat for fruits and vegetables and 9.02 cal per g of fat for fish. These caloric equivalents are provided in Agriculture Handbook No. 8–9 for fruits (Ref. 3), No. 8–11 for vegetables (Ref. 11), and No. 8–15 for fish (Ref. 12).

5. Saturated Fat

Saturated fat is defined in § 101.9(c)(2)(i) (58 FR 2079 at 2176) as the sum of fatty acids without double bonds. Because complete fatty acid profiles are not available for most foods in the National Nutrient Databank (Ref. 10), FDA was not able to obtain the saturated fat value for these foods by summing the individual saturated fatty acids or to apply the compliance calculations to this component. FDA used mean saturated fat values obtained from Agriculture Handbooks 8–9 (Ref. 3), No. 8–11 (Ref. 11), and No. 8–15 (Ref. 12) in proposed Appendices C and D to part 101.

6. Sugars

The sugars values included in proposed Appendix C to part 101 reflect total sugars and are derived primarily from the USDA Home Economics Research Report No. 48 (Ref. 21). FDA also obtained some newer data on the sugars content of raw fruit from USDA by personal communication (Ref. 22). For some fruits, the sugars values from reference 19 were high relative to the values for total carbohydrate and dietary fiber, i.e., the sugars value when added to dietary fiber exceeded total carbohydrate. Ideally, the sugars value when added to dietary fiber should be less than or equal to total carbohydrate. FDA adjusted the total carbohydrate for apple, watermelon, and grapes to reflect the sum of sugars and dietary fiber. FDA considers this adjustment to be appropriate because analysis of individual sugars and dietary fiber is more accurate than estimation of total carbohydrate, which is calculated by subtracting the sum of the weight of water, fat, protein, and ash from the weight of the food (i.e., carbohydrate by difference) (Ref. 22).

7. Other Values

Information on the vitamin C content of fish was available for only four species on the most frequently consumed list. Two of these values were negligible (Atlantic/Pacific mackerel and swordfish), and two of them were 4 percent of the DV (ocean perch and rainbow trout). FDA assigned a value of zero to the vitamin C content of the other 18 listed fish based on information provided by USDA (Ref. 20) indicating that fish are not a reliable source of vitamin C because the quantity of this vitamin in fish flesh is low and variable.

In the absence of other information, FDA used several well-known principles of food composition to develop the nutrition labeling values in proposed Appendices C and D to part 101. FDA used a value of zero for each of the following: (1) Cholesterol in fruit and vegetables because cholesterol is found only in animal tissues; (2) saturated fat in all fruit and vegetables that have a zero total fat content because saturated fat is included in total fat; (3) dietary fiber in fish because dietary fiber is found only in plant materials; and (4) sugars in fish because sugars are not found (or are very low) in fish.

IV. Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish in the United States

FDA is not proposing any changes in the listing of the 20 most frequently consumed raw fruit and vegetables in § 101.44 (21 CFR 101.44) because it is not aware of any information that suggests that different or additional fruit or vegetables need to be added to the list. However, FDA is proposing to make four changes to the list of the 20 most frequently consumed raw fish.

First, FDA is proposing to list chum, pink, and sockeye subspecies of salmon instead of just Atlanta/Coho. FDA initially listed in § 101.44(c) only the subspecies "salmon, Atlantic/Coho" (56 FR 60880 at 60890). However, comments that the agency has received (Refs. 23 and 24) since the publication of the voluntary nutrition labeling final rule have requested that FDA include listings for salmon subspecies that have different nutrient profiles than the Atlantic/Coho subspecies. In addition to Atlantic and Coho (silver), other subspecies of salmon consumed in the United States include chum, pink, chinook (king), and sockeye (red) (Ref. 23).

The U.S. market for fresh salmon species varies with availability of the catch, and economic factors dictate which species are sold fresh or canned and which are exported (Ref. 23). In addition to Atlantic and Coho salmon, chum, pink, and sockeye salmon are generally available in the fresh fish section of retail stores, whereas chinook salmon is most often smoked before retail sale or is sold to restaurants (Ref. 23). Atlantic and Coho salmon contain 6 to 7 g of fat and 160 cal per 3 oz cooked (proposed Appendix D to part 101). Chum and pink salmon are lower in fat and calories than other species. They contain 4 g of fat and 130 cal per 3 oz cooked (proposed Appendix D to part 101). Sockeye salmon has higher fat and calorie levels, containing 9 g of fat and 180 cal per 3 oz cooked (proposed Appendix D to part 101).

Based on the differences in fat and calorie levels of salmon subspecies, FDA is proposing to revise § 101.44(c) to add chum/pink salmon and sockeye salmon to the list of the most frequently consumed raw fish as subspecies under salmon. FDA has tentatively concluded that chinook salmon should not be added to the list because it is not widely available in the fresh fish section of retail stores (Ref. 23).

Secondly, FDA is proposing to consolidate the listing for flounder and sole as one item, "flounder/sole," because the nutrient data for these two species are very similar, and they are grouped together in Agriculture Handbook No. 8–15 (Ref. 12), the primary source of the values for these fish that are presented in proposed Appendix D to part 101. Agriculture Handbook No. 8–15 groups these fish together under the heading of "flatfish." FDA is continuing to use "flounder/sole," however, because the agency notes that these names are commonly used at the retail level. The agency's

tentative view is that the term "flatfish" would not be commonly known or understood among consumers and could lead to consumer confusion.

The nutrition labeling values for flounder and sole in the 1991 voluntary nutrition labeling final rule were obtained from Seafood Nutri-Facts (Ref. 13), which provided separate nutrient profiles for these fish. As explained in section III.C. of this document, FDA has tentatively decided to use the USDA National Nutrient Databank as the primary source for data on fish, when available, and the Agriculture Handbook No. 8–15 (Ref. 12) as the secondary source. These sources are more up-to-date, and provide more documentation, than Seafood Nutri-Facts (Ref. 13).

Thirdly, FDA is proposing to remove the word "jack" from the description of mackerel. FDA is proposing this change because the previous data source used for determining the nutrition labeling values, Seafood Nutri-Facts (Ref. 13), provided a single nutrient profile for "Pacific & jack mackerel," whereas the data source that FDA is using as a basis for the proposed nutrition labeling for this fish, the USDA National Nutrient Databank (Ref. 10), describes the species as "Pacific mackerel." Nutrient data for both Atlantic and Pacific mackerel are available in the USDA National Nutrient Databank (Ref. 10), but data for jack mackerel are available only on the canned form from this source. Therefore, to include both the Atlantic and Pacific subspecies (which have similar nutrient profiles); to reflect raw, rather than canned, mackerel; and to accurately identify the fish associated with the nutrition labeling values, FDA is proposing to describe the fish as "Mackerel, Atlantic/Pacific."

Fourthly, FDA is proposing to add swordfish to the list to keep the number of fish at 20. The 1990 amendments directed FDA to identify the 20 most frequently consumed raw fruit, vegetables, and fish (section 403(q)(4)(B)(i) of the act). FDA used information provided by the National Fisheries Institute (Ref. 25) to identify the most frequently consumed species of fish in the United States for the voluntary nutrition labeling final rule. According to this information, swordfish is the next fish in decreasing order of consumption after lobster.

FDA is proposing to revise § 101.44(c) based on the four changes discussed above to read as follows: "The 20 most frequently consumed raw fish are: Shrimp, cod, pollock, catfish, scallop, salmon (Atlantic/Coho, chum/pink, sockeye), flounder/sole, oyster, orange roughy, Atlantic/Pacific mackerel, ocean perch, rockfish, whiting, clam, haddock, blue crab, rainbow trout, halibut, lobster, and swordfish."

V. Updating the Guidelines for the Nutrition Labeling of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish

As stated above, FDA is proposing to revise the guidelines in § 101.45 for the nutrition labeling of raw fruit, vegetables, and fish to make them as consistent as possible with the nutrition labeling requirements that FDA has established in § 101.9 (b), (c), and (d). The agency believes that consistency in nutrition labeling among various types of food products is necessary to help consumers compare products and make appropriate food choices. It is also consistent with section 2(b)(1)(A) of the 1990 amendments because it will foster consumer understanding of the nutrition label and help consumers to put the nutrient values that are presented into the context of the total daily diet.

The agency is proposing to subdivide § 101.45(a) into four parts. In § 101.45(a)(1), FDA is proposing to provide how the nutrition labeling of raw fruit, vegetables, and fish should be displayed. The agency states that the information should be displayed at the point of purchase by appropriate means, such as by a label affixed to the food or through labeling including shelf labels, signs, posters, brochures, notebooks, or leaflets. The agency also states that the information should be readily available and in close proximity to the foods. Proposed § 101.45(a)(1) remains the same as current § 101.45(a), except that the agency has made editorial changes to the first sentence to distinguish between nutrition labels (nutrition information affixed to foods), and nutrition labeling (nutrition information in proximity but not necessarily attached to foods), and to clarify that shelf labels and posters may be used as a form of labeling for raw fruit, vegetables, and fish.

To be consistent with the final mandatory nutrition labeling rule (58 FR 2079), FDA is proposing in § 101.45(a)(2) that serving sizes should be determined, and required nutrients should be declared, in accordance with § 101.9 (b) and (c).

Current § 101.45(b) provides that nutrition labeling on raw fruit, vegetables, and fish should be provided in accordance with § 101.9, but it does not explicitly refer to the provisions of § 101.9 that have direct application to the nutrition labeling of raw fruit, vegetables, and fish. Proposed § 101.45(a)(2) acknowledges the specific applicability of new § 101.9 (b) and (c) to the voluntary nutrition labeling program. If consumers are to make meaningful comparisons between raw and processed foods, the serving sizes on which those comparisons are based must have a consistent basis. By cross-referencing § 101.9(b), which it adopted in response to section 403(q)(1)(A)(i) of the act, FDA is proposing to ensure that the serving sizes for raw fruit, vegetables, and fish are consistent with the serving sizes for processed foods.

By cross-referencing § 101.9(c), FDA is proposing to make explicit the list of nutrients that must be included in nutrition labeling for raw fruit, vegetables, and fish, if the nutrition labeling is to be in compliance with FDA's regulations. Under this proposal, and to reflect the changes made by the January 1993 final rules, this list will supersede the nutrient list in current § 101.45(b)(1), which allows for voluntary labeling of thiamine, riboflavin, and niacin, as well as complex carbohydrates, sugars, dietary fiber, saturated fat, and cholesterol. In addition, proposed § 101.45(a)(2) incorporates current § 101.45(b)(4), which states that the nutrition label values should be based on a raw edible portion for fruit and vegetables and on a cooked edible portion for fish, and that the methods used to cook the fish must not add fat, breading, or seasoning.

In proposed Appendices C and D to part 101, FDA is providing serving sizes and nutrient values that fully comply with proposed § 101.45(a)(2) for the 20 most frequently consumed fruit, vegetables, and fish.

Proposed § 101.45(a)(3) provides that nutrition labeling may be presented on charts in horizontal or vertical columns. Proposed § 101.45(a)(3) will allow for increased flexibility over current § 101.45(b)(2) in the development of posters, brochures, and other labeling materials by allowing for horizontal columns. However, to be consistent with § 101.9(d)(2), adopted as part of the January 1993 final rules, the agency is proposing that any nutrition labeling that is provided must bear the heading "Nutrition Facts" in type larger than all other print used in the nutrition label. Consumers will be familiar with this heading and understand its significance from its use on packaged foods.

Under proposed § 101.45(a)(3), nutrition labeling on raw fruit, vegetables, or fish that is presented in a linear (as opposed to columnar) format will not be considered to be in compliance by FDA. Although presentation of nutrition information in lines is allowed by current § 101.45(b)(2), FDA is concerned that this format is too difficult for consumers

to read when so many items are listed. Given that the space constraints that apply to labels on food packages do not apply to the signs, placards, and notebooks that are used to label raw fruit, vegetables, and fish, FDA tentatively concludes that there is no basis to permit the use of this format in the labeling of these products. Therefore, FDA is proposing to provide that it will not accept the use of this format. FDA requests comment on this change from the current regulation.

FDA is also proposing in § 101.45(a)(3) that the nutrition information be clearly presented and of sufficient type size and color contrast to be plainly legible. This provision is authorized by section 2(b)(1)(A) of the 1990 amendments, which states that nutrition labeling must be readily observable and comprehensible. Moreover, FDA's view is that nutrition information will only be of use to consumers if it is clearly visible.

Consistent with § 101.9(d)(1)(iv), FDA is proposing in § 101.45(a)(3) that the values for percent DV's be highlighted in contrast to the quantitative amounts by weight. FDA believes that this highlighting, which may be accomplished by bolding the percent DV's, will assist the consumer in focusing on the most important information on the label.

Proposed § 101.45(a)(3)(i) provides that the number of servings per container need not be included in the nutrition labeling of foods under the voluntary program. This provision remains the same as in current § 101.45(b)(3). FDA's view is that retailers need not provide the number of servings per container because raw fruits, vegetables, and fish are not usually available in containers, and even when they are, retailers may not be able to determine the number of servings per container because it could vary from one container to another. The number of servings is variable and difficult to predict because whole sizes of fruits, vegetables, and fish vary, and when containers are used the number of items per container varies. Thus, FDA tentatively concludes that it is not reasonable to expect retailers to predict the number of items per container.

In proposed § 101.45(a)(3)(ii), FDA provides that the statement "Percent Daily Values are based on a 2,000 calorie diet" be a required part of the nutrition labeling information (i.e., on posters, brochures, or other labeling materials) for raw fruits, vegetables, and fish. Requiring that this information be included is consistent with information requirements for other foods under § 101.9(d)(9)(i). However, FDA is not proposing to require that the entire footnote specified in § 101.9(d)(9)(i), which lists the DV's for six nutrients for two levels of caloric intake. FDA tentatively concludes that the space required for this footnote is likely to be such that retailers will make it so small that it will be difficult for consumers to read or will simply not provide nutrition labeling at all because the poster that would be needed to provide all the required information would be so large as to be unwieldy. However, FDA does encourage the use of this footnote when nutrition labeling information for raw fruit and vegetables or for raw fish is provided in brochures, notebooks, or leaflets, where the space in which to present information is less at a premium.

In proposed § 101.45(a)(3)(iii), FDA is providing that when the nutrition labeling information for raw fruits and vegetables is provided on a chart, the columns for saturated fat and cholesterol may be omitted with use of the following footnote, "Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 1.0 g of saturated fat per oz." FDA is also proposing in this section that when the nutrition labeling information for raw fish is provided on a chart, the columns for dietary fiber and sugars may be omitted with use of the following footnote, "Fish provide negligible amounts of dietary fiber and sugars." FDA is proposing these changes, as stated above, because fruits and vegetables (other than avocados which contain saturated fat) do not contain saturated fat and cholesterol, and because fish do not contain dietary fiber or sugars. FDA tentatively concludes that these changes will reduce the size of the charts (making them easier to read) without reducing the amount of information that is provided to consumers.

FDA is aware that producers and packers who package fruit, vegetables, and fish may wish to put nutrition information directly on food packages. When that is done, FDA believes that the nutrition label format can and should be entirely consistent with the format requirements in § 101.9(d) if there is sufficient space for meeting the nutrition label format requirements. The nutrition label format requirements under proposed § 101.45 are designed to cover the situation in which raw fruit, vegetables, and fish are sold in bulk and nonpackaged form, circumstances that create space constraints on the voluntary presentation of nutrition information and that require the use of such mechanisms as posters, signs, or shelf labels. If producers and packers choose to provide nutrition labeling on raw fruit, vegetables, or fish that are sold in packaged form, that labeling should comply with format and other regulations that apply to other foods sold in packaged form. In addition, if retailers or producers wish to provide nutrition labeling on individual signs posted above, or in close proximity to bins or containers of raw fruit, vegetables, or fish, the nutrition information should be presented in a format that is consistent with the format requirements in § 101.9(d).

Therefore, proposed § 101.45(a)(4) states that when nutrition information is provided on foods sold in packaged form or on signs for individual foods in retail stores, it should be displayed in accordance with § 101.9(d), except that consistent with proposed § 101.45(a)(3)(i), the declaration of the number of servings per container need not be provided. As stated above, the number of servings is variable and difficult to predict because whole sizes of fruits, vegetables, and fish vary, and the number of items per container varies. FDA tentatively concludes that it is not reasonable to expect producers and packers to predict the number of items per container.

FDA is also proposing in § 101.45(a)(4) to accept the use of the simplified format set forth in § 101.9(f) if the food contains insignificant amounts of seven or more of the following food components: Calories, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, or iron. FDA allows the use of simplified nutrition label formats on packaged, processed foods under section 403(q)(5)(C) of the act and is not aware of any reason why the simplified nutrition labeling format should not be allowed on raw fruit, vegetables, or fish that bear individual labels. Fruits and vegetables among the 20 most frequently consumed that qualify for a simplified format (based on the nutrition labeling values in proposed Appendix C to part 101) include: Apple, avocado, pineapple, lime, mushrooms, and radishes. Fish that qualify for a simplified format (based on the nutrition labeling values in proposed Appendix D to part 101) are pollock, catfish, and orange roughy.

Proposed § 101.45(b) provides that the nutrition labeling values provided by FDA in proposed Appendices C and D to part 101 for the 20 most frequently consumed raw fruit, vegetables, and fish must be used by retailers who participate in the voluntary nutrition labeling program if they are to be in compliance. As explained above, FDA

believes that the use of these values will help to ensure uniformity in the values presented to consumers in various retail stores, and that uniformity will prevent or decrease consumer confusion. Consumers could be confused by seeing different values for the same foods in different retail stores. FDA believes that the nutrition labeling values that it has provided in proposed Appendices C and D to part 101 are the most appropriate values for these foods based on data currently available. FDA intends to keep these values up-to-date by revising them based on additional or newer information and by making the revised values available for public comment in the **Federal Register** at least every 2 years. This provision is the same as in current § 101.45(i).

In proposed § 101.45(b)(1), FDA encourages interested persons to submit data bases to the agency with new or additional nutrient data for any of the 20 most frequently consumed raw fruit, vegetables, and fish. FDA intends to review data for these foods as it receives them (including data received during the public comment period) and incorporate them, as appropriate, into the biennial revisions of the nutrition labeling values.

Proposed § 101.45(b)(1)(i) states that FDA guidance in the development of data bases can be found in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" (Ref. 6), which is available from the FDA Office of Food Labeling (HFS–150). This provision is an update of current § 101.45(e), which references the older version of the FDA Nutrition Labeling Manual.

Proposed § 101.45(b)(1)(ii) provides that the submission of data to FDA should include, but need not be limited to, information on the following: Source of the data, number of samples, sampling design, analytical method, and statistical treatment of the data. This provision remains the same as current § 101.45(c) with editorial changes. Proposed § 101.45(b)(1)(ii) also states that proposed quantitative label declarations may be included. It states that these proposed values should be determined in accordance with the FDA Nutrition Labeling Manual (Ref. 6).

Current § 101.45(c) describes how to submit data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to the agency for review and possible acceptance. The current provision includes data bases for raw fruit, vegetables, and fish that are not among those identified as most frequently consumed, as well as data bases for items identified as most frequently consumed.

FDA is proposing in new § 101.45(c) that data bases of nutrient values for specific varieties, species, or cultivars of raw fruit, vegetables, and fish, that are not among the 20 most frequently consumed, may be used to develop nutrition labeling values for these foods and may be submitted for review under § 101.9(g)(8). Although these fruits, vegetables, and fish need not bear nutrition labeling, FDA is aware that various retail stores and trade associations have developed nutrition labeling values for them. While the agency does not have resources to develop nutrition labeling values for these foods, it encourages the voluntary provision of such information because it will assist consumers in making healthy food choices.

Data bases for these raw fruit, vegetables, and fish may voluntarily be submitted to FDA for review if the developers wish to avail themselves of the provisions in § 101.9(g). FDA believes that individuals or organizations that desire FDA acceptance of data bases and nutrition labeling values should be able to submit this information to the agency for review. Proposed § 101.45(c)(1) provides that if a food retailer decides to provide nutrition information about raw fruit, vegetables, and fish not among the most frequently consumed, it should use food names and descriptions that clearly identify these raw fruit, vegetables, and fish as distinct from those for which FDA is providing nutrition labeling values. This provision remains the same, except for editorial changes, as the second sentence of current § 101.45(d). FDA believes the information for the foods will only be useful to consumers if the foods are clearly identified, so that consumers will not confuse them with the foods listed in proposed Appendices C and D to part 101. For example, retailers might provide nutrition labeling values for red cabbage, valencia oranges, or winter squash, foods for which FDA is not currently providing values.

Proposed § 101.45(c)(2) states that guidance on the development of data bases may be found in the FDA Nutrition Labeling Manual (Ref. 6). This provision, like proposed § 101.45(b)(1)(i), is an update of current § 101.45(e) which references the older version of the FDA Nutrition Labeling Manual.

In proposed § 101.45(c)(3), FDA states that the nutrition labeling values computed from data bases for raw fruit, vegetables, and fish that are not among the 20 most frequently consumed, or for specific species or cultivars of raw fruit, vegetables, and fish, are subject to the compliance provisions of § 101.9(g). This provision is the same as current § 101.45(h) except that the reference to review and acceptance of data bases is removed. FDA intends to provide surveillance of the nutrition labeling of raw fruit, vegetables, and fish that are not among the 20 most frequently consumed in the same manner that it provides surveillance for foods for which nutrition labeling is mandatory.

In proposed § 101.45(c)(3)(i), FDA states that compliance with the provisions of § 101.9(g) may be achieved by use of a data base that has been developed following FDA guideline procedures and that has been approved by FDA. Proposed § 101.45(c)(3)(i)(A) provides that the submission of a data base to FDA should include, but need not be limited to, information on the following: Source of the data, number of samples, sampling design, analytical methods, statistical treatment of the data, and proposed quantitative label declarations. This provision remains the same, except for editorial changes, as current § 101.45(c). Proposed § 101.45(c)(3)(i)(A) states that the values for declaration should be determined in accordance with the FDA Nutrition Labeling Manual (Ref. 8).

Proposed § 101.45(c)(3)(i)(B) provides information about FDA approval of data bases, namely the need for written approval by FDA, the time limits on approval, revocation of approval, and approval requests. This provision replaces current § 101.45(b) and is consistent with § 101.9(g)(8), which concerns approval of data bases for nutrition labeling of most foods.

The agency notes that in this document it is modifying the terminology that it uses to describe the results of the FDA review process from "accept" to "approve." The agency is making this change in § 101.45 to reflect the terminology that it used in the final rule on mandatory labeling of food in § 101.9.

Although the agency is proposing to change the terminology in § 101.45, it is not proposing any change in the underlying process. The purpose of § 101.45(c) has been, and continues to be under this proposal, to provide a mechanism whereby interested persons may obtain agency agreement that the values in the data bases that they have developed are an accurate reflection of the nutrient levels in the subject food. It is the agency's intent to evaluate data bases whether for the voluntary or mandatory labeling programs in a consistent manner. Thus, for the purposes of the FDA data base review process, the terms "accept" and "approve" are interchangeable. Because

"approve" is the term that FDA used in § 101.9, the agency is moving to make its use consistent across its regulations.

The agency notes, however, that the process by which it reviews data bases has been a problem for a variety of reasons, especially given the greatly increased interest in data base use following the passage of the 1990 amendments. In the preamble to the nutrition labeling final rule that issued on January 6, 1993 (58 FR 2079 at 2164), FDA encouraged manufacturers who wish to use a data base for nutrition labeling to follow the statistical procedures outlined in the FDA Nutrition Labeling Manual (Ref. 8) and to have the data base reviewed and approved by FDA. Several food companies and trade associations have submitted data bases, ingredient data base systems, and proposed nutrition labeling values to FDA for review and evaluation. The agency has found that its resources for data base review simply are not adequate to handle the volume of submissions that the agency has received. Thus, the agency has been left trying to decide how it can accommodate the interest in agency review and approval of data bases, and the assurances that approval provides, and at the same time maintain a system that is responsive to review requests; that is, that provides reasonable and timely responses to requests for agency review but that does not overwhelm the resources that the agency has available for such reviews.

Based on its very preliminary review of the situation in the short time since the January 6, 1993, final rule was published, FDA believes that some modifications in its approach to data bases may be necessary. The agency is considering the possibility that it can adequately evaluate a data base using less information than it would expect to receive under the guidance in FDA's Nutrition Labeling Manual. The agency is also considering the possibility that the system can be made more flexible and responsive if manufacturers could be authorized to begin labeling their products, if they choose to do so, based on an abbreviated, preliminary review by FDA. Such a system could offer a manufacturer some assurance that FDA would not take action against its products, although the manufacturer would have to agree to quickly move to modify its labeling should the agency find the data base to be unrepresentative or inadequate.

Thus, FDA is soliciting comments on all aspects of the FDA data base review process. The agency is specifically requesting comments about the evaluation criteria as related to: (1) The nature and rigor of the evaluation process, including the need for information on the source of the data, number of samples, sampling design, analytical methods, statistical treatment of data, and proposed quantitative label declarations; and (2) the appropriate basis for an "interim" approval and guidelines to determine key minimal criteria for such "interim" status, as well as guidelines to establish followup procedures and timeframes to ensure that data base developers are stimulated to continue to collect data and continue to improve their data bases intended for nutrition labeling purposes.

As background information for comments, FDA notes that the "FDA Nutrition Labeling Manual: A Guide to Developing and Using Databases" (Ref. 8) and the "Guide to FDA's Database Review System" (Ref. 26) are available from the Office of Food Labeling, HFS–150, 200 C Street SW., Washington, DC 20204.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because compliance with the guidelines for the labeling of raw fruit, vegetables, and fish is voluntary, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

A. Regulatory Options

Executive Order 12866 requires agencies also to estimate costs to government. The 1990 amendments require that FDA determine every 2 years if there is substantial compliance with the labeling guidelines. If substantial compliance does not exist, FDA must make compliance mandatory FDA estimates that the costs to government are approximately $150,000 every 2 years to establish a contract to survey food retailers, oversee the contract, and publish a report on the status of voluntary compliance.

If compliance with the guidelines becomes mandatory, costs to the government will not significantly change because the costs associated with determining if there is substantial compliance would be replaced by enforcement costs. If compliance becomes mandatory, costs to retailers would increase to $9.9 million in the first year.

B. Benefits of the Proposed Regulation

In the "Regulatory Impact Analysis of the Proposed Rules to Amend the Food Labeling Regulations" (November 27, 1991, 56 FR 60856), FDA stated that the benefit of labeling raw fruit, vegetables, and fish is "some change in purchase behavior." At present, the majority of consumers are exposed to the nutrition labeling of raw fruit, vegetables, and fish. As stated previously, approximately 75.7 percent of retailers (representing 76.9 percent of annual sales) of raw fruit and vegetables are in compliance with current nutrition labeling guidelines. Approximately 73.2 percent of retailers (representing 74.3 percent of annual sales) of raw fish are in compliance. Therefore, this regulation will continue to inform consumers by providing them with information on the nutrient content of raw fruit, vegetables, and fish and allowing them to compare the nutrient content of these foods with other raw and processed foods. By providing nutrient values for the 20 most frequently consumed raw fruit, vegetables, and fish, this regulation has the benefit of facilitating the provision of this information to consumers.

The actions proposed in this document are designed to promote consistency. FDA is revising the guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish to be more consistent with the nutrition labeling of foods subject to § 101.9. Similarly, FDA is specifying that compliance requires that retailers

use the nutrition values provided by FDA for the 20 most frequently consumed raw fruit, vegetables, and fish, thus providing consistency among retailers. FDA believes that the flexibility of allowing manufacturers to use other appropriate values does not outweigh the consumer confusion caused by different values for the same food in different stores. Thus, the regulations will benefit consumers by helping them to recognize and understand nutrition labeling information and to avoid confusion.

C. Costs of the Proposed Regulation

The costs of a labeling regulation are the incremental administrative, analytical, redesign, label inventory, and label disposal costs associated with the regulatory action. Because FDA is requiring that retailers use the nutrition values provided by FDA, there will be no analytical costs or other costs of obtaining the information. FDA has information that the typical sign, which is the most frequently used form of labeling of raw products, has an expected useful life of 6 months. Therefore, there will be no label inventory disposal costs because existing with current §§ 101.42 to 101.45 or with the provisions of this proposal. However, for all surveys after fall 1994, only values in accordance with the regulations in place at the time will constitute compliance.

IX. Comments

Interested persons may, on or before September 16, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Drug Administration, Center for Food Safety and Applied Nutrition, "Report on the Voluntary Compliance of Food Retailers in Providing Nutrition Labeling Information for Raw Fruit and Vegetables and for Raw Fish," Washington, DC, May 8, 1993.
2. The Ehrhart-Babic Group, National Retail Tracking Index, "Results of the Survey on the Compliance of Retailers with FDA's Guidelines for the Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish," (FDA contract 223–92–2003), Englewood Cliffs, NJ. March 1993.
3. Gebhardt, S.E., R. Cutrufelli, and R. H. Matthews, "Composition of Foods Raw, Processed, Prepared, Fruits and Fruit Juices, Agriculture Handbook No. 8–9, Human Nutrition Information Service, USDA, Washington, DC, 1982.
4. Gebhardt, S.E., Human Nutrition Information Service, USDA, Hyattsville, MD, memorandum of phone conversation between Human Nutrition Information Service, USDA, and the Office of Food Labeling, FDA, October 15, 1993.
5. Hegenauer J., and E. Pivonka, "Tangerine Nutrition Study," Produce Marketing Association Nutrition Labeling Program, Newark, DE, August 3, 1992.
6. Rainey, C.J., and L.A. Nyquist, "Updated Nutrition Labeling Values for Bananas," Prepared by Nutrition Network for the International Banana Association, Irving, CA, February 23, 1993.
7. Hegenauer J., and N.J. Tucker, "Banana Nutrition Study," Produce Marketing Association Nutrition Labeling Program, Newark, DE, December 13, 1990.
8. McClure, F.D., and J.K. Lee, Division of Mathematics, Office of Toxicological Sciences, Center for Food Safety and Applied Nutrition, FDA, "FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases," 1993.
9. Gebhardt, S.E., Human Nutrition Information Service, USDA, Hyattsville, MD, letter to FDA dated February 12, 1992.
10. National Nutrient Databank, maintained at the Human Nutrition Information Service, USDA, 6505 Belcrest Rd., Hyattsville, MD.
11. Haytowitz D.B., and R.H. Matthews, "Composition of Foods—Raw, Processed, Prepared, Vegetables and Vegetable Products," Agriculture Handbook No. 8–11, Human Nutrition Information Service, USDA, Washington, DC, 1984.
12. Exler, J. "Composition of Foods— Raw, Processed, Prepared, Finfish and Shellfish Products," Agriculture Handbook No. 8–15, Human Nutrition Information Service, USDA, Washington, DC, 1987.
13. Food Marketing Institute and National Fisheries Institute, Seafood Nutri-Facts, Fresh Seafood Nutrition Information Program, Washington, DC, 1988.
14. Sidwell, V.D., "Chemical and Nutritional Composition of Finfishes, Whales, Crustaceans, Mollusks, and their Products," NOAA Technical Memorandum NMFS F/SEC–11, National Oceanic and Atmospheric Administration (NOAA) and National Marine Fisheries Service, 1981.
15. Paul, A.A., and D.A.T. Southgate, *McCance and Widdowson's The Composition of Foods*, 4th ed. Elsevier/North-Holland Biomedical Press, NY, 1978.
16. Davies, J., and J. Dickerson, "Nutrient Content of Food Portions," The Royal Society of Chemistry, Cambridge, UK, 1991.
17. Pennington, J.A.T., "FDA Voluntary Nutrition Labeling Program for Raw Fruit, Vegetables, and Fish: Documentation for the Proposed Nutrition Labeling Values," FDA, Washington, DC, October 1993.
18. "Individual Reports on the Nutrient Content of Raw Fruits and Vegetables," Produce Marketing Association (PMA), Newark, DE, 1982–91.
19. "Updates on the Nutrition Labeling Information for Raw Fruit and Vegetables," Produce Marketing Association, Newark, DE, March 1993.
20. Exler, J., Human Nutrition Information Service, USDA, Hyattsville, MD, memorandum of phone conversation between Human Nutrition Information Service, USDA, and the Office of Food Labeling, FDA, March 1, 1993.
21. Matthews, R.H., P.R. Pehrsson, and M. Farhat-Sabet, "Sugar Content of Selected Foods: Individual and Total Sugars," USDA Home Economics Research Report No. 48, September 1987.
22. Pehrsson, P.R., Human Nutrition Information Service, USDA, Hyattsville, MD, memorandum of phone conversation between Human Nutrition Information Service, USDA, and the Office of Food Labeling, FDA, November 19, 1992.
23. Weddig, L., National Fisheries Institute (NFI), Arlington, VA, memorandum of phone conversation between NFI, and the Office of Food Labeling, FDA, February 4, 1993.
24. O'Sullivan, K., Alaska Seafood Marketing Institute, letter to FDA dated March 25, 1993.
25. Weddig, L., National Fisheries Institute, Arlington, VA, letter to FDA dated January 4, 1991 and updated March 1 and 4, 1991.
26. Pennington, J.A.T., J.I. Rader, and F.D. McClure, "Guide to FDA's Database Review System," FDA, Washington, DC, April 1994.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.43 is amended by revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 101.43 Substantial compliance of food retailers with the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) * * *

(1) Be presented in the store or other type of establishment in a manner that is consistent with § 101.45(a)(1);

(2) Be presented in content and format that are consistent with § 101.45 (a)(2), (a)(3), and (a)(4); and

(3) Include data that have been provided by FDA in Appendices C and D to part 101 of this chapter, except that the information on potassium is voluntary.

* * * * *

3. Section 101.44 is amended by revising paragraph (c) to read as follows:

§ 101.44 Identification of the 20 most frequently consumed raw fruit, vegetables, and fish in the United States.

* * * * *

(c) The 20 most frequently consumed raw fish are: Shrimp, cod, pollock, catfish, scallop, salmon (Atlantic/Coho, chum/pink, sockeye), flounder/sole, oyster, orange roughy, Atlantic/Pacific mackerel, ocean perch, rockfish, whiting, clam, haddock, blue crab, rainbow trout, halibut, lobster, and swordfish.

4. Section 101.45 is revised to read as follows:

§ 101.45 Guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) Nutrition labeling for raw fruit, vegetables, and fish listed in § 101.44 should be presented to the public in the following manner:

(1) Nutrition labeling information should be displayed at the point of purchase by an appropriate means such as by a label affixed to the food or through labeling including shelf labels, signs, posters, brochures, notebooks, or leaflets that are readily available and in close proximity to the foods. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media.

(2) Serving sizes should be determined, and required nutrients declared, in accordance with § 101.9 (b) and (c), respectively, except that the nutrition labeling data should be based on the raw edible portion for fruit and vegetables and on the cooked edible portion for fish. The methods used to cook fish should be those that do not add fat, breading, or seasoning (e.g., salt or spices).

(3) When nutrition labeling information is provided on signs, posters, brochures, notebooks, or leaflets, it may be presented in charts in horizontal or vertical columns. Nutrition labeling that is presented in a linear format will not be considered to be in compliance. The nutrition labeling must bear the identifying heading "Nutrition Facts" in type larger than all other print size in the nutrition label. The required information (i.e., headings, serving sizes, list of nutrients, quantitative amounts by weight (except for vitamins and minerals), and percent of DV's (except for sugars and protein)) must be clearly presented and of sufficient type size and color contrast to be plainly legible, with numeric values for percent of DV highlighted in contrast to the quantitative amounts by weight.

(i) Declaration of the number of servings per container need not be included in nutrition labeling of raw fruit, vegetables, and fish.

(ii) Except for the statement "Percent Daily Values are based on a 2,000 calorie diet," the footnote required in § 101.9(d)(9) is not required. However, when labeling is provided in brochures, notebooks, leaflets, or similar types of materials, retailers are encouraged to provide such information.

(iii) When the nutrition labeling information for raw fruits and vegetables is provided on a chart, the columns for saturated fat and cholesterol may be omitted with use of the following footnote, "Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 1.0 g of saturated fat per ounce." When the nutrition labeling information for raw fish is provided on a chart, the columns for dietary fiber and sugars may be omitted with use of the following footnote, "Fish provide negligible amounts of dietary fiber and sugars."

(4) When nutrition information is provided on foods sold in packaged form or on signs for individual foods in retail stores, it should be displayed in accordance with § 101.9(d), except that the declaration of the number of servings per container need not be included. The declaration of nutrition information may be presented in the simplified format set forth in § 101.9(f) when the food contains insignificant amounts of seven or more of the following: Calories, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron.

(b) Nutrition label values provided by the Food and Drug Administration (FDA) in Appendices C and D to this part 101 for the 20 most frequently consumed raw fruit, vegetables, and fish listed in § 101.44 shall be used to ensure uniformity in declared values. FDA will publish proposed updates of the nutrition label data for these foods (or a notice that the data sets have not changed from the previous publication) at least every 2 years in the **Federal Register.**

(1) The agency encourages the submission of data bases with new or additional nutrient data for any of the most frequently consumed raw fruit, vegetables, and fish to the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204, for review and evaluation. FDA may incorporate these data in the next revision of the nutrition labeling information for the top 20 raw fruit, vegetables, and fish.

(i) Guidance in the development of data bases may be found in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases," available from the FDA Office of Food Labeling.

(ii) The submission to FDA should include, but need not be limited to, information on the following: Source of the data (names of investigators, name of organization, place of analysis, dates of analyses), number of samples, sampling design, analytical methods, and statistical treatment of the data. Proposed quantitative label declarations may be included. The proposed values for declaration should be determined in accordance with the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases."

(2) [Reserved]

(c) Data bases of nutrient values for raw fruit, vegetables, and fish that are not among the 20 most frequently consumed may be used to develop nutrition labeling values for these foods. This includes data bases of nutrient values for specific varieties, species, or cultivars of raw fruit, vegetables, and fish not specifically identified among the 20 most frequently consumed.

(1) The food names and descriptions for the fruit, vegetables, and fish should clearly identify these foods as distinct from foods among the most frequently consumed list for which FDA has provided data.

(2) Guidance in the development of data bases may be found in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases."

(3) Nutrition labeling values computed from data bases are subject to the compliance provisions of § 101.9(g).

(i) Compliance with the provisions of § 101.9(g) may be achieved by use of a data base that has been developed following FDA guideline procedures and approved by FDA.

(A) The submission to FDA for approval should include but need not be limited to information on the following: Source of the data (names of investigators, name of organization, place of analysis, dates of analyses), number of samples, sampling design, analytical methods, statistical treatment of the data, and proposed quantitative label declarations. The values for declaration should be determined in accordance with the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases."

(B) FDA approval of a data base and nutrition labeling values shall not be considered granted until the Center for Food Safety and Applied Nutrition has agreed to all aspects of the data base in writing. Approvals will be in effect for a limited time, e.g., 10 years, and will be eligible for renewal in the absence of significant changes in agricultural or industry practices (e.g., a change occurs in a predominant variety produced). FDA will take steps to revoke its approval of the data base and nutrition labeling values if FDA monitoring suggests that the data base or nutrition labeling values are no longer representative of the item sold in this country. Approval requests shall be submitted in accordance with the provisions of § 10.30 of this chapter.

(ii) [Reserved]

5. Appendices C and D are added to part 101 to read as follows:

BILLING CODE 4160-01-P

Appendix C to Part 101
Nutrition Facts for Raw Fruit and Vegetables

Nutrition Facts[1] for Raw Fruit and Vegetables Edible Portion	Calories	Calories from fat	Total Fat (g)	(%)	Saturated Fat (g)	(%)	Cholesterol (mg)	(%)	Sodium (mg)	(%)	Potassium (mg)	(%)	Total Carbohydrate (g)	(%)	Dietary Fiber (g)	(%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Banana, 1 medium (126g / 4.5 oz)	110	0	0.5	1	0	0	0	0	0	0	390	11	29	10	1	4	21	1	0	0	0	0
Apple, 1 medium (154g / 5.5 oz)	80	10	1.0	2	0	0	0	0	0	0	160	5	24	8	4	16	20	0	0	6	0	0
Watermelon, 1/18 medium melon; 2 cups diced pieces (280g / 10.0 oz)	90	0	0	0	0	0	0	0	10	0	230	7	26	9	1	4	25	1	10	25	0	2
Orange, 1 medium (154 g / 5.5 oz)	80	0	0	0	0	0	0	0	0	0	250	7	21	7	5	20	14	1	0	120	4	0
Canteloupe, 1/4 medium melon (134 g / 4.8 oz)	50	0	0	0	0	0	0	0	35	1	210	6	13	4	1	4	11	1	80	80	2	2
Grapes, 1 1/2 cups (138 g / 4.9 oz)	90	10	1.0	2	0	0	0	0	0	0	270	8	24	8	1	4	23	1	2	25	2	2
Grapefruit, 1/2 medium (154 g / 5.5 oz)	70	0	0.5	1	0	0	0	0	0	0	210	6	18	6	5	20	10	1	10	80	4	0
Strawberries, 8 medium (147 g / 5.3 oz)	70	0	0.5	1	0	0	0	0	0	0	220	6	17	6	3	12	8	1	0	130	2	2
Peach, 1 medium (98 g / 3.5 oz)	40	0	0	0	0	0	0	0	0	0	190	5	10	3	2	8	9	1	2	10	0	0
Pear, 1 medium (166 g / 5.9 oz)	100	10	1.0	2	0	0	0	0	0	0	210	6	25	8	4	16	17	1	0	10	2	0
Nectarine, 1 medium (140 g / 5.0 oz)	70	0	0.5	1	0	0	0	0	0	0	300	9	16	5	2	8	12	1	4	15	0	2
Honeydew Melon, 1/10 medium melon (134 g / 4.8 oz)	50	0	0	0	0	0	0	0	45	2	290	8	14	5	1	4	12	1	0	40	0	2
Plums, 2 medium (132 g / 4.7 oz)	80	10	1.0	2	0	0	0	0	0	0	220	6	19	6	2	8	10	1	6	20	0	0
Avocado, California, 1/5 medium (30 g / 1.1 oz)	60	50	6	9	1.0	5	0	0	0	0	105	3	2	1	1	4	0	0	0	2	0	0
Lemon, 1 medium (58 g / 2.1 oz)	20	0	0	0	0	0	0	0	10	0	65	2	6	2	1	4	1	0	0	15	2	0
Pineapple, 2 slices, 3" diameter, 3/4" thick (112 g / 4 oz)	70	0	0	0	0	0	0	0	10	0	100	3	17	6	1	4	13	0	0	25	0	0
Tangerine, 1 medium (109 g / 3.9 oz)	80	10	1.0	2	0	0	0	0	5	0	120	3	20	7	3	12	12	0	0	35	2	0
Sweet cherries, 21 cherries; 1 cup (140 g / 5.0 oz)	90	10	1.0	2	0	0	0	0	0	0	260	7	23	8	3	12	19	1	0	8	2	0
Kiwifruit, 2 medium (148 g / 5.3 oz)	100	15	1.5	2	0	0	0	0	0	0	450	13	25	8	4	16	16	2	2	200	6	4
Lime, 1 medium (67 g / 2.4 oz)	20	0	0	0	0	0	0	0	0	0	75	2	7	2	2	8	0	0	0	35	0	0

Appendix C to Part 101
Nutrition Facts for Raw Fruit and Vegetables (Continued)

Nutrition Facts[1] for Raw Fruit and Vegetables Edible Portion	Calories	Calories from fat	Total Fat (g)	(%)	Saturated Fat (g)	(%)	Cholesterol (mg)	(%)	Sodium (mg)	(%)	Potassium (mg)	(%)	Total Carbohydrate (g)	(%)	Dietary Fiber (g)	(%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Potato, 1 medium (148g / 5.3oz)	120	0	0	0	0	0	0	0	5	0	680	19	27	9	2	8	3	3	0	40	0	6
Lettuce, 1/6 medium head (89g / 3.2oz)	20	0	0	0	0	0	0	0	10	0	85	2	3	1	1	4	2	1	2	4	0	0
Tomato, 1 medium (148g / 5.3oz)	35	10	1.0	2	0	0	0	0	5	0	300	9	7	2	3	4	4	3	15	35	0	2
Onion, 1 medium (148g / 5.3oz)	60	0	0	0	0	0	0	0	5	0	200	6	16	5	3	12	9	1	0	15	4	0
Carrot, 7" long, 1 1/4" diameter (78g / 2.8oz)	40	0	0	0	0	0	0	0	50	2	220	6	9	3	2	8	5	3	220	8	2	0
Celery, 2 medium stalks (110g / 3.9oz)	25	0	0	0	0	0	0	0	125	5	300	9	5	2	2	8	0	1	2	10	4	2
Sweet corn, kernels from 1 medium ear (90g / 3.2oz)	80	10	1.0	2	0	0	0	0	0	0	240	7	18	6	3	12	5	3	2	10	0	2
Broccoli, 1 medium stalk (148g / 5.3oz)	50	0	0.5	1	0	0	0	0	70	3	480	14	9	3	4	16	3	4	10	200	6	4
Green cabbage, 1/12 medium head (84g / 3.0oz)	25	0	0	0	0	0	0	0	25	1	170	5	6	2	2	8	3	1	0	60	4	0
Cucumber, 1/3 medium (99g / 3.5oz)	15	0	0	0	0	0	0	0	0	0	160	5	3	1	0	0	2	1	4	8	2	2
Bell pepper, 3 medium (148g / 5.3oz)	30	0	0	0	0	0	0	0	0	0	240	7	7	2	2	8	4	1	6	150	0	0
Cauliflower, 3/6 medium head (99g / 3.5oz)	25	0	0	0	0	0	0	0	40	2	250	7	5	2	2	8	2	2	0	100	2	2
Leaf lettuce, 1 1/2 cups shredded (85g / 3.0oz)	15	0	0	0	0	0	0	0	40	2	210	6	3	1	3	4	2	1	30	4	2	0
Sweet Potato, medium, 5" long, 2" diameter (130g / 4.6oz)	130	0	0	0	0	0	0	0	45	2	350	10	33	11	4	16	7	2	440	30	2	2
Mushrooms, 5 medium (84g / 3.0oz)	20	0	0	0	0	0	0	0	0	0	280	8	3	1	1	4	0	2	0	0	0	0
Green onion, 1/4 cup chopped (25g / 0.9oz)	30	0	0	0	0	0	0	0	5	0	70	2	2	1	1	4	3	0	2	8	0	0
Green (snap) beans, 3/4 cup cut (83g / 3.0oz)	25	0	0	0	0	0	0	0	0	0	190	5	5	2	3	12	2	1	2	8	4	0
Radishes, 7 radishes (85g / 3.0oz)	20	0	0	0	0	0	0	0	30	1	180	5	4	1	0	0	2	0	0	30	0	0
Summer squash, 1/2 medium (98g / 3.5oz)	20	0	0	0	0	0	0	0	0	0	240	7	4	1	1	4	2	1	4	25	2	2
Asparagus, 5 spears (93g / 3.3oz)	20	0	0	0	0	0	0	0	0	0	210	6	5	2	2	8	2	2	10	10	0	0

[1](g)-grams; (mg)-milligrams; (oz)-ounces; (%)-percent Daily Value. Percent Daily Values are based on a 2,000 calorie diet.

Appendix D to Part 101 Nutrition Facts for Cooked Fish

Nutrition Facts[1] Fish-(84 g / 3.0 oz) Edible Portion, cooked[2]	Calories	Calories from fat	Total Fat (g)	(%)	Saturated Fat (g)	(%)	Cholesterol (mg)	(%)	Sodium (mg)	(%)	Potassium (mg)	(%)	Total Carbohydrate (g)	(%)	Dietary Fiber (g)	(%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Shrimp	80	10	1.0	2	0	0	165	55	190	8	140	4	0	0	0	0	0	18	0	0	2	15
Cod	90	0	0.5	1	0	0	45	15	60	3	450	13	0	0	0	0	0	20	0	0	2	2
Pollock	90	10	1.0	2	0	0	80	27	110	5	360	10	0	0	0	0	0	20	0	0	0	2
Catfish	170	80	9	14	1.5	8	55	18	40	2	350	10	0	0	0	0	0	21	0	0	0	0
Scallops (about 6 large or 14 small)	120	10	1.0	2	0	0	55	18	260	11	280	8	2	1	0	0	0	22	0	0	2	2
Salmon Atlantic / Coho	160	60	7	11	1.0	5	50	17	50	2	490	14	0	0	0	0	0	22	0	0	0	4
Chum / Pink	130	35	4.0	6	1.0	5	70	23	65	3	410	12	0	0	0	0	0	22	2	0	0	2
Sockeye	180	80	9	14	1.5	8	75	25	55	2	320	9	0	0	0	0	0	23	4	0	0	2
Flounder / Sole	100	14	1.5	2	0.5	3	60	20	90	4	290	8	0	0	0	0	0	21	0	0	2	2
Oysters (about 12 medium)	100	35	3.5	5	1.0	5	115	38	190	8	390	11	4	1	0	0	0	10	0	0	6	45
Orange roughy	80	10	1.0	2	0	0	20	7	70	3	330	9	0	0	0	0	0	16	0	0	0	0
Mackerel, Atlantic / Pacific	210	120	13	20	6	30	60	20	100	4	400	11	0	0	0	0	0	21	0	0	0	5
Ocean perch	110	25	3.5	5	0	0	75	25	200	8	330	9	0	0	0	0	0	20	0	4	4	2
Rockfish	100	20	2.0	3	0	0	40	13	70	3	430	12	0	0	0	0	0	21	4	0	0	2
Whiting	110	25	3.0	5	0.5	3	70	23	95	4	320	9	0	0	0	0	0	19	2	0	6	0
Clams (about 12 small)	100	15	1.5	2	0	0	55	18	95	4	530	15	0	0	0	0	0	22	10	0	6	60
Haddock	100	10	1.0	2	0	0	80	27	85	4	340	10	0	0	0	0	0	21	0	0	2	6
Blue Crab	100	10	1.0	2	0	0	90	30	320	13	360	10	0	0	0	0	0	20	0	0	8	4
Rainbow Trout	140	50	6	9	2.0	10	60	20	35	1	370	11	0	0	0	0	0	21	4	4	6	2
Halibut	110	20	2.0	3	0	0	35	12	60	3	490	14	0	0	0	0	0	23	2	0	4	4
Lobster	80	5	0.5	1	0	0	60	20	320	13	300	9	1	0	0	0	0	17	0	0	4	2
Swordfish	130	35	4.5	7	1.0	5	40	13	100	4	310	9	0	0	0	0	0	22	2	2	0	4

[1](g)-grams; (mg)-milligrams; (oz)-ounces; (%)-percent Daily Value. Percent Daily Values are based on 2,000 calorie diet.

[2]Cooked without fat, breading, or seasoning.

Dated: July 11, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17287 Filed 7–15–94; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–34–94]

RIN 1545–AS75

Hedging Transactions by Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group. These proposed regulations apply when one member of the group hedges the risk of another member or enters into a hedge with another member. The regulations are needed because related-party hedging is a common business practice and existing regulations treat as hedging transactions only hedges entered into by a taxpayer to reduce its own risk. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 26, 1994. Requests to speak (with outlines of oral comments) at a public hearing scheduled for October 18, 1994, must be received by September 26, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–34–94) room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (FI–34–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. The public hearing has been scheduled to be held in room 3718, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3920 (not a toll-free number); concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in §§ 1.1221–2(d)(2)(iv) and 1.1221–2(e)(5). This information is required by the IRS to aid it in administering the law and to prevent manipulation, such as recharacterization of transactions in view of later developments. This information will be used to determine whether the taxpayer has elected separate-entity treatment under § 1.1221–2(d)(2) and to verify that the taxpayer is properly reporting its business hedging transactions. The likely respondents and recordkeepers are businesses or other for-profit institutions.

Estimated total annual reporting and recordkeeping burden: 75,000 hrs.

The estimated annual burden per respondent or recordkeeper varies from 1.0 to 40.0 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents and recordkeepers: 15,000.

Estimated frequency of responses: once in the existence of each respondent.

Background

Final regulations under section 1221, published elsewhere in this issue of the **Federal Register**, generally provide for ordinary gain or loss from hedging transactions. To qualify as a hedging transaction, a transaction must be entered into in the normal course of business to reduce certain specified risks of the taxpayer. Final regulations under section 446, published elsewhere in this issue of the **Federal Register**, require taxpayers to account for hedging transactions in a manner that clearly reflects income by reasonably matching the timing of income, deduction, gain, or loss from the hedge with the timing of the income, deduction, gain, or loss from the item being hedged.

Because a hedging transaction must reduce the taxpayer's own risk, the regulations do not apply where a taxpayer hedges the risk of another taxpayer, even if that other taxpayer is a related party. In the preamble to TD 8493, which was published on October 20, 1993 (58 FR 54037), the IRS requested comments on the treatment of transactions involving related parties.

Several commentators suggested extending the definition of hedging transaction to the hedging of a related party's risk. Many businesses that are conducted through separate but related entities centralize their hedging operations in a single entity or a small number of entities that hedge the risks of the entire business. Centralizing the hedging function creates economies of scale and allows the risks of the business to be netted or offset against each other, with the hedging entity entering into hedges with unrelated parties only for the remaining net risk. Thus, various commentators suggested that the term hedging transaction should include hedges of the risk of other members of the same consolidated group, of affiliated corporations filing separate returns, of controlled but unaffiliated corporations, and of controlled partnerships.

Explanation of Provisions

As a general rule, the proposed regulations adopt a single-entity approach to consolidated groups, applying the hedging rules to a member's transactions that hedge the risk of other members of the same consolidated group. Proposed § 1.1221–2(d)(1) provides that the risk of one member of a consolidated group is treated for purposes of the hedging rules as the risk of the other members of the group as if all of the members of the group were divisions of a single corporation. Thus, if a transaction entered into by a centralized hedging member reduces the risk of the group as a whole and the other requirements of § 1.1221–2 are met, the transaction qualifies as a hedging transaction.

Many consolidated groups that centralize their hedging operations execute contracts or enter into other transactions between the members to transfer risk from the operating members to the hedging member. For example, an operating member that assumes a floating rate liability may enter into an interest rate swap with the hedging member pursuant to which the operating member will pay fixed and receive floating. The hedging member nets this risk with its other interest rate risk and, if it has a net risk, may enter into an interest rate swap with a third party to offset this net risk.

Under the single-entity approach of the proposed regulations, transactions between members of a consolidated group are not hedging transactions because they do not reduce the risk of the group. Instead, these transactions are subject to the rules of section 1502 and the regulations thereunder, which govern the timing and character of income on intercompany transactions and obligations. Thus, only a transaction with a third party can qualify as a hedging transaction.

Several commentators on the proposed character and timing regulations requested that the IRS adopt a separate-entity regime for related-party hedges. They expressed concern that, under a single-entity regime, a hedging member may not have the information necessary to comply with the identification requirements imposed on hedging transactions. That is, the hedging member may not have information with respect to the transaction that gave rise to the risk that was transferred to it in the intercompany transaction.

Under a separate-entity approach, an intercompany transaction that met the definition in § 1.1221–2(b) would be respected as a hedging transaction and accounted for as such, and the transaction would not be subject to the intercompany transaction regime. In other words, if a member of a consolidated group enters into a transaction to transfer risk to another member, the transaction would be treated as if it had been entered into with an unrelated party.

The IRS and Treasury recognize that, where a consolidated group uses intercompany transactions to transfer risk within the group, the separate-entity approach may facilitate the identification of hedging transactions and simplify the accounting for those transactions. A generally applicable separate-entity approach, however, frequently would not clearly reflect the income of the consolidated group and might be subject to manipulation. Moreover, a general separate-entity approach for hedges would be contrary to the single-entity approach of recently proposed § 1.1502–13, and it would be difficult to coordinate the treatment of intercompany hedging transactions with the treatment of other intercompany transactions.

Despite the concern with a general separate-entity approach, the IRS and Treasury believe that there is less opportunity for manipulation or distortion if a member of a group enters into a hedging transaction with another member that is using mark-to-market accounting for tax purposes. Thus, when a group contains a hedging member that accounts for the transaction on a mark-to-market method of accounting, a limited separate-entity approach may be acceptable.

Therefore, the proposed regulations allow a consolidated group to make a separate-entity election. The election is made by the group for all of its hedging activities and may not be revoked without the consent of the Commissioner. If a group makes the election, the risk of one member is not treated as risk of the other members. Thus, a member can hedge only its own risk, and an intercompany transaction must be used if one member of the group wishes to transfer risk to another member.

In an electing group, certain intercompany transactions are recognized as hedging transactions for purposes of § 1.1221–2. An intercompany transaction is treated as a hedging transaction if it would be a hedging transaction if entered into with an unrelated party, and if it is entered into with another member that, under its method of accounting, marks the position to market. Thus, for example, an operating member could enter into a hedging transaction with a hedging member that marks the position obtained to market under section 475. As a result of the separate-entity election, the hedging transaction is not treated as an intercompany transaction or obligation for purposes of section 1502 and the regulations thereunder, and any gain or loss to the member marking to market the position obtained is ordinary.

This special treatment is provided only for intercompany transactions entered into with a member that marks its position to market. If an identical transaction is entered into with a member of the group that does not mark to market the position obtained, the transaction is subject to the intercompany transaction rules under section 1502. Thus, the separate-entity election is likely to be made only by a group whose intercompany hedging activity is done with a member that uses a mark-to-market method of accounting.

The proposed regulations provide identification rules that conform to the treatment of hedging transactions described above. If a consolidated group is under the general rule of the regulations (the single-entity approach), identification is done as if the members of the group were divisions of a single corporation. The member engaging in a hedging transaction with an unrelated party identifies the transaction and the item, items, or aggregate risk being hedged, even if the item, items, or aggregate risk is that of another member.

If a group is under the general rule but uses intercompany transactions to transfer risk within the group, it may satisfy the identification requirement by identifying the item, items, or aggregate risk being hedged, its intercompany transactions, and its hedging transactions with unrelated parties. Although the intercompany transactions are not respected as hedging transactions, their identification should enable the group to associate hedging transactions with the item, items, or aggregate risk being hedged.

If a group makes the separate-entity election, each member must identify its hedging transactions with unrelated parties, its intercompany transactions that are treated as hedging transactions under these regulations, and the item, items, or aggregate risk being hedged, as appropriate.

The proposed regulations also provide rules with respect to the effects of identification and nonidentification. If a group is under the general rule, the rules of § 1.1221–2(f) apply to a hedging transaction, but not to intercompany transactions. If a group makes the separate-entity election, the rules of § 1.1221- 2(f) are extended to intercompany transactions that are treated as hedging transactions under these regulations.

Finally, the proposed regulations provide new rules with respect to timing under § 1.446–4. If a group is under the general rule, it accounts for hedging transactions as if the members of the group were divisions of a single corporation. The income, deduction, gain, or loss on a hedging transaction is matched with the income, deduction, gain, or loss on the item, items, or aggregate risk being hedged and not with an intercompany transaction. If a group makes the separate-entity election, the rules of § 1.446–4 apply on a member-by-member basis to hedging transactions with unrelated parties and to intercompany transactions that are treated as hedging transactions under these regulations.

It is anticipated that these regulations will apply to transactions entered into on or after the date that is 60 days after the publication of final regulations on this subject in the **Federal Register.**

All of the rules described above apply only in the case of a consolidated group. Thus, the proposed regulations do not treat as a hedging transaction the hedging of the risk of a related party that is not a member of the same consolidated group. The IRS is concerned that the single-entity approach is generally not appropriate

where the parties are not members of the same consolidated group.

Outside the context of a consolidated group, taxpayers with ordinary business risk sometimes enter into transactions to transfer risk to a related party. Commentators have requested that these transactions be treated as hedging transactions and that the entities to which risk is transferred be treated as realizing ordinary gain or loss on their positions in these transactions. The IRS is concerned, however, about whether these transactions reduce risk, whether the requested ordinary treatment to the entities receiving risk is authorized under the Internal Revenue Code (Code), and whether the approach would create opportunities for manipulation. Therefore, the proposed regulations do not include the requested rule.

The IRS intends to issue guidance under section 475 of the Code to coordinate the hedging exception of section 475(b)(1)(C) with these rules. In particular, if a consolidated group has not made a separate-entity election, the IRS is considering whether the identification of a hedging transaction by a member subject to section 475 should generally be sufficient to identify the transaction as a hedge under section 475(b)(1)(C), provided the hedged item or items are not securities subject to section 475(a). In this case, gain or loss on the hedging transaction would generally be subject to the timing rules of § 1.446–4 rather than to mark-to-market treatment under section 475. Comments are requested on this matter.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, October 18, 1994, at 10:00 a.m. in room 3718, 1111 Constitution Avenue, NW., Washington, DC, 20224. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by September 26, 1994, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 26, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.1221–2 and by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.446–4 also issued under 26 U.S.C. 1502. * * *

Section 1.1221–2 also issued under 26 U.S.C. 1502 and 6001. * *.*

Par. 2. Section 1.446–4 is amended by adding the text of paragraph (e)(9) to read as follows:

§ 1.446–4 Hedging transactions.

* * * * *

(e) * * *

(9) *Hedging by members of a consolidated group*—(i) *General rule.* In general, a member of a consolidated group that hedges the risk of another member must account for its hedging transactions as if all of the members were separate divisions of a single corporation. Thus, the timing of the income, deduction, gain, or loss on a hedging transaction must be matched with the timing of income, deduction, gain, or loss from the item or items being hedged rather than with an intercompany transaction.

(ii) *Separate-entity election.* If a consolidated group makes an election under § 1.1221–2(d)(2), each member of the consolidated group must account for its hedging transactions (including its intercompany transactions that are treated as hedging transactions) in a manner that meets the requirements of paragraph (b) of this section. Thus, each member of the group must comply with this section for its hedging transactions without regard to the fact that the taxpayer is a member of a consolidated group.

(iii) *Definitions.* For definitions of consolidated group, member of a consolidated group, and intercompany transaction, see section 1502 and the regulations thereunder.

(iv) *Effective date.* This paragraph (e)(9) applies to transactions entered into on or after the date 60 days after publication of final regulations on this subject in the **Federal Register**

Par. 3. Section 1221–2 is amended by adding the text of paragraphs (d), (e)(5), (f)(3), and (g)(4) to read as follows:

§ 1.1221–2 Hedging transactions.

* * * * *

(d) *Hedging by members of a consolidated group*—(1) *General rule.* For purposes of this section, the risk of one member of a consolidated group is treated as the risk of the other members as if all of the members of the group were divisions of a single corporation. For example, if any member of a consolidated group hedges the risk of another member of the group by entering into a transaction with an unrelated person, that transaction may potentially qualify as a hedging transaction. Under this rule, intercompany transactions are not hedging transactions because they are treated as transactions between divisions of a single corporation and thus do not reduce the risk of the group.

(2) *Separate-entity election.* In lieu of the treatment specified in paragraph (d)(1) of this section, a consolidated group may elect separate-entity treatment of its hedges. If a group makes this separate-entity election, the following rules apply.

(i) *Risk of one member not risk of other members.* Notwithstanding

paragraph (d)(1) of this section, the risk of one member is not treated as the risk of other members.

(ii) *Intercompany transactions.* An intercompany transaction or obligation is a hedging transaction with respect to a member of a consolidated group if and only if it meets the following requirements—

(A) The position of the member in the intercompany transaction or obligation would qualify as a hedging transaction with respect to that member if that member entered into the transaction with an unrelated party; and

(B) The position of the other member (the marking member) in the transaction is marked to market under the marking member's method of accounting.

(iii) *Treatment of intercompany hedging transactions.* An intercompany transaction or obligation that is a hedging transaction (because it meets the requirements of paragraphs (d)(2)(ii)(A) and (B) of this section) is treated as follows—

(A) Neither the hedging transaction nor any intercompany obligation with respect to that transaction is treated as an intercompany transaction or obligation for purposes of section 1502 and the regulations thereunder; and

(B) Except as provided in paragraph (f)(3) of this section, the character of the marking member's gain or loss from the transaction is ordinary.

(iv) *Making and revoking the election.* The election described in this paragraph (d)(2) must be made in a separate statement that is filed with the group's consolidated return for the taxable year that includes the first date for which the election is to apply. The statement must specify that the election is being made and must indicate the date that the election is to be effective. The election applies to all transactions entered into on or after the date so indicated. In no event, however, does the election apply to transactions entered into before the date 60 days after final regulations on this subject are published in the Federal Register. The election cannot be revoked without the consent of the Commissioner.

(3) *Definitions.* For definitions of consolidated group, member of a consolidated group, intercompany transaction, and intercompany obligation, see section 1502 and the regulations thereunder.

(4) *Examples.* These examples illustrate this paragraph (d). In these examples, *O* and *H* are members of the same consolidated group. *O*'s business operations give rise to interest rate risk "*A*," which *O* wishes to hedge. *O* enters into an intercompany transaction with *H* that transfers the risk to *H*. *O*'s position in the intercompany transaction is "*B*," and *H*'s position in the contract is "*C*." *H* enters into position "*D*" with a third party to reduce the interest rate risk it has with respect to its position *C*. *D* would be a hedging transaction with respect to risk *A* if *O*'s risk *A* were *H*'s risk.

Example 1. Single-entity treatment—(i) *General rule.* Under paragraph (d)(1) of this section, *O*'s risk *A* is treated as *H*'s risk, and therefore *D* is a hedging transaction with respect to risk *A*. Thus, the character of *D* is determined under the rules of this section, and *D* must be accounted for under a method of accounting that satisfies § 1.446–4. The intercompany transaction *B–C* is not a hedging transaction, and the *B–C* transaction is accounted for according to the regulations under section 1502.

(ii) *Identification. D* must be identified as a hedging transaction under paragraph (e)(1) of this section, and *A* must be identified as the hedged item under paragraph (e)(2) of this section. Under paragraph (e)(5) of this section, the identification of *A* as the hedged item can be accomplished by identifying the positions in the intercompany transaction as hedges or hedged items, as appropriate. Thus, substantially contemporaneously with entering into *D*, *H* may identify *C* as the hedged item and *O* may identify *B* as a hedge and *A* as the hedged item.

Example 2. Separate-entity election; no marking. In addition to the facts stated above, assume that the group makes a separate-entity election under paragraph (d)(2) of this section. If *H* does not mark *C* to market under its method of accounting, then *B* is not a hedging transaction, and the *B–C* intercompany transaction is accounted for under the rules of section 1502. *D* is not a hedging transaction with respect to *A*, but *D* may be a hedging transaction with respect to *C* if the requirements of paragraph (b) of this section are met. If *D* is not part of a hedging transaction, then *D* may be part of a straddle for purposes of section 1092.

Example 3. Separate-entity election; marking. The facts are the same as in Example 2 above. If *H* marks *C* to market under its method of accounting and *B* would be a hedging transaction with respect to *O* if *O* had entered into that transaction with an unrelated party, then the *B–C* transaction is a hedging transaction with respect to *O*. Thus, *O*'s position *B* is a hedging transaction with respect to its risk *A*, the *B–C* transaction is not treated as an intercompany transaction or obligation, and *H*'s income, deduction, gain or loss on *C* is ordinary. *D* is a hedge of *C* if it meets the requirements of paragraph (b) of this section.

(e) * * *

(5) *Identification of hedges involving members of the same consolidated group*—(i) *General rule.* If one member of a consolidated group hedges the risk of another member under the general rule of paragraph (d)(1) of this section, then the identification requirements of this paragraph (e) must be met as if all of the members of the group were divisions of a single corporation. Thus, the member entering into the hedging transaction with a third party must identify the hedging transaction under paragraph (e)(1) of this section. Under paragraph (e)(2) of this section, that member must also identify the item, items, or aggregate risk that is being hedged, even if the item, items, or aggregate risk relates primarily or entirely to other members of the group. If the members of a group use intercompany transactions or obligations to transfer risk within the group, the requirements of paragraph (e)(2) of this section may be met by identifying the intercompany transactions or obligations as hedges or hedged items, as appropriate. Because identification of the intercompany transaction as a hedge serves solely to identify the hedged item, the identification is timely if made within the period required by paragraph (e)(2) of this section. For example, if a member transfers risk in an intercompany transaction, it may identify under the rules of this paragraph (e) both its position in that transaction and the item, items, or aggregate risk being hedged. The member that hedges the risk outside the group may identify under the rules of this paragraph (e) both its position with the third party and its position in the intercompany transaction. See paragraph (d)(4) of this section for an example of this identification.

(ii) *Rule for taxpayers making the separate-entity election.* If a consolidated group makes the separate-entity election under paragraph (d)(2) of this section, each member of the group must satisfy the requirements of this paragraph (e) as though it were not a member of a consolidated group.

* * * * *

(f) * * *

(3) *Transactions by members of a consolidated group*—(i) *General rule.* If a consolidated group is under the general rule of paragraph (d)(1) of this section, the rules of this paragraph (f) apply only to hedging transactions and not to intercompany transactions.

(ii) *Separate-entity election.* If a consolidated group has made the election under paragraph (d)(2) of this section, then, in addition to the rules of paragraphs (f)(1) and (f)(2) of this section, the following rules apply.

(A) If an intercompany transaction is identified as a hedging transaction but does not meet the requirements of paragraphs (d)(2)(ii)(A) and (B) of this section, then both parties to the transaction are subject to the rules of paragraph (f)(1) of this section with

respect to the transaction as though both had identified their positions in the transaction as hedging transactions, notwithstanding the regulations under section 1502.

(B) If a transaction that meets the requirements of paragraphs (d)(2)(ii) (A) and (B) is not identified as a hedging transaction, then both parties to the transaction are subject to the rules of paragraph (f)(2).

(g) * * *

(4) *Effective date for hedges by members of a consolidated group.* Paragraphs (d), (e)(5), and (f)(3) of this section apply to transactions entered into on or after the date that is 60 days after publication of final regulations in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–16869 Filed 7–13–94; 9:10 am]

BILLING CODE 4830–01–U

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207–AA23

Tolls for Use of Canal and Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Proposed rule; recommendation to the President.

SUMMARY: The Panama Canal Commission proposes a major revision of the rules for measurement of vessels using the Panama Canal to become effective October 1, 1994. The existing rules of measurement will be replaced with a simplified, objective approach which brings the Commission's system in line with an international practice which will enter into full application worldwide on July 18, 1994. The proposed rules apply a mathematical formula to the vessel's total volume to produce the basis for assessing tolls. The tonnage values computed under the proposed system are comparable to those calculated under the Commission's existing rules and, in the aggregate, are equal to existing tonnages; accordingly, no changes are proposed to the rates of toll for use of the Canal; however, certain administrative changes to the regulations dealing with Canal tolls are necessary to ensure their consistency with the revised rules of measurement.

DATES: The anticipated effective date of the final rule is October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402, (Telephone: (202) 634–6441) (Facsimile: (202) 634–6439).

SUPPLEMENTARY INFORMATION: A complete revision to the Rules for Measurement of Vessels for the Panama Canal contained in 35 CFR part 135 is proposed. The proposed revision is designed to simplify the Commission's measurement procedures which since the Canal's inception have been based on the Moorsom system. The change is designed to bring measurement rules at the Canal in line with the worldwide standard of tonnage measurement and achieve compatibility with the 1969 International Convention on Tonnage Measurement of Ships (Convention). The Convention, which establishes a universal system of measurement for vessels engaged on an international voyage, came into effect in the United States on February 10, 1983.

This new 35 CFR part 135 would provide for:

a. Establishment of measurement rules for the Panama Canal Commission which are based on Annex 1 of the Convention;

b. Transitional relief measures for certain vessels, provided they do not have a structural change which results in an alteration of 10 percent or more in their total volume;

c. Continued use of foreign tonnage authorities, and for acceptance of reasonably accurate volumes provided by them;

d. Correction of tonnage values as necessary to satisfy the Commission's desire for accuracy; and

e. Calculation of volumes for vessels without an International Tonnage Certificate 1969 (ITC 69) through an alternative tonnage estimating formula.

Subpart A contains general provisions concerning use of the Panama Canal Universal Measurement System (PC/UMS) Net Tonnage for the purpose of calculating tolls and measurement fees. It provides for the presentation of an ITC 69 or suitable substitute or the application of alternative measurement procedures. It retains provision for Commission control over the measurement determination, verification of tonnage certificates and the administration of these rules.

Subpart B establishes the PC/UMS. Under it, tolls will be assessed on the basis of the PC/UMS Net Ton. The Commission will apply a mathematical formula to the total volume in order to determine the PC/UMS Net Tonnage. This formula has been established so as to produce tonnage and, hence, revenues that in the aggregate are equal to those produced annually under the current system. The first of the two mathematical factors, K_4, is applied to V (Volume) and reduces it to a value that, in most cases, is equal to the Net Tonnage under existing measurement rules. In some instances—generally, ships, other than passenger ships, with exceptional amounts of enclosed spaces, a second factor, K_5, a gradually increasing additive factor, is applied to V. When the tonnage produced by K_5 is added to the tonnage value developed by K_4 the result once again closely approximates tonnage values produced under the current system. Relevant definitions are set forth in this subpart. The subpart also establishes the rules concerning measurement and calculations. Finally, the subpart addresses measurement rules in the event of a total volume change.

Subpart C continues without substantive change of the present rules for the measurement of warships, dredges and floating drydocks. Tolls for these vessels will continue to be based on their tonnage of actual displacement.

Subpart D provides transitional relief measures for vessels which previously transited the Canal and have not had a significant structural change. These measures provide relief to almost 100% of the Canal's existing customers and will apply during the vessels's entire service life. The relief measures provide that all vessels with a previous transit between March 23, 1976 (the date of the last major measurement rule change) and October 1, 1994 will be grandfathered at the Net Tonnage of their Panama Canal tonnage certificate as of September 30, 1994. This grandfathered tonnage value will continue unless a change is made in the enclosed volume of the vessel of ten percent or more. Changes of less than 10% shall accumulate; however, reductions in volume shall be deducted from any increases. Only a few vessels a year are expected to lose their relief status due to this provision.

Subpart E sets forth the measurement procedures the Commission will use when it becomes necessary for the Commission to determine the total volume of a vessel. The Commission anticipates using digitizing techniques whenever possible and anticipates an accuracy level equal to that of the governmental and commercial classification societies. As a last resort, the Commission has two tonnage estimating formulas. The first and preferred formula, set forth in § 135.42(a)(2)(i), provides for an estimate of the volume of the underdeck that is close to that which would have been developed if adequate plans and documentation were available. The

Commissions's testing of this formula on a representative sample of ships demonstrated a standard deviation of 2.8% for this formula. The second formula, § 135.42(a)(2)(ii), has a standard deviation and distribution pattern comparable to the tonnage estimating formula used by the Commission for years and set forth currently at § 135.212 (1993).

In addition to the changes to 35 CFR part 135, certain administrative changes to 35 CFR part 133 (Tolls for Use of Canal) are required. These changes will reconcile the language of part 133 with the revised part 135 by allowing for the use of the ITC 69 to obtain the required total volume information.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Commission must follow in proposing changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR part 70, which provide interested parties with instructions for participating in the process governing changes in the measurement rules.

Pursuant to the statute and regulations, on April 18, 1994, an advance notice of proposed rulemaking was published in the **Federal Register** (59 FR 18332) recommending the approval of the PC/UMS. At that time, a written analysis showing the basis and justification for the proposed revision or the measurement rules was made available to interested parties.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington DC on May 25, 1994. The views presented by the interested parties, as well as other relevant information, were considered by the Board of Directors of the Commission at its quarterly meeting of July 1994. On July 13, 1994, the Board voted to recommend to the President that the rules for the measurement of vessels using the Panama Canal be revised so as to adopt the PC/UMS effective October 1, 1994. A complete record of the proceedings since the initiation of the proposal, including the data, views and comments submitted by the interested parties will be forwarded to the President with the Commission's recommendation. In considering the proposal, the President has the authority to approve, disapprove, or modify any recommendation of the Commission. The final rule, approved and published by the President, shall be effective October 1, 1994, or 30 days from the date of publication in the **Federal Register**, whichever occurs later.

The Commission has been exempted from Executive Order 12866 and, accordingly, the provisions of that directive do not apply to this proposed rule. Even if the Order were applicable, the proposed regulation, which concerns "rates" and "practices relating" thereto, would not constitute a "rule" as that term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(2)) and would not have a significant impact on a substantial number of small entities under that Act.

A review of the environmental effect of the proposed measurement rule changes concludes that the proposed change will not have a significant effect on the quality of the human environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Finally, the Administrator of the Panama Canal Commission certifies that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 35 Parts 133 and 135

Measurement, Navigation, Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR parts 133 and 135 be amended as follows:

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 is revised to read as follows:

Authority: 22 U.S.C. 3791, E.O. 12215, 45 FR 36043, 3 CFR, 1981 Comp., p. 257.

2. Section 133.1 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.21 per PC/UMS Net Ton—that is, the Net Tonnage determined in accordance with part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.76 per PC/UMS Net Ton.

* * * * *

3. Section 133.31 is revised to read as follows:

§ 133.31 Measurement of vessels; vessels to secure tonnage certificate.

The rules for the measurement of vessels are fixed by part 135 of this chapter. Vessels desiring to transit the Canal shall provide themselves with a tonnage certificate in accordance with § 133.32.

4. Section 133.32 is revised to read as follows:

§ 133.32 Measurement of vessels; making and correction of measurements; plans and copies.

Measurements may be made by the admeasurers of the Canal or certain other officials worldwide as designated by the Panama Canal Commission. Each transiting vessel should have aboard and available to Canal authorities a full set of plans and a copy of the measurements which were made at the time of issue of its International Tonnage Certificate (1969), as well as the tonnage certificate itself. A copy of the International Tonnage Certificate (1969) shall be provided to Canal authorities. The Commission reserves the right to check and correct the total volume that is to be used in the calculation of the PC/UMS Net Tonnage. (Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

5. Section 133.33 is revised to read as follows:

§ 133.33 Measurement of vessels; temporary retention of certificate at Canal.

The official PC/UMS Net Tonnage certificate shall be delivered by the Canal authorities to the vessel or to the owner or agent of the vessel after transit completion. This certificate shall be retained on board the vessel and shall be used to certify that the vessel has been inspected and its PC/UMS Net Tonnage has been determined by the Commission.

PART 135—RULES FOR MEASUREMENT OF VESSELS

6. Part 135 is revised to read as follows:

Subpart A—General Provisions

Sec.

Subpart B—PC/UMS Net Tonnage Measurement

Authority: 22 U.S.C. 3791, E.O. 12215, 45 FR 36043, 3 CFR 1981 Comp., p. 257.

Subpart A—General Provisions

§ 135.1 Scope.

This part establishes the procedures for determining the Panama Canal Universal Measurement System (hereinafter PC/UMS) Net Tonnage. The tonnage shall be used to assess tolls for use of the Panama Canal. Also, the tonnage may be used, when adequate volume information is not provided, to assess the charge for admeasurement services.

§ 135.2 Vessels generally to present tonnage certificate or be measured.

All vessels except warships, floating drydocks, dredges, and vessels subject to transitional relief measures, applying for passage through the Panama Canal shall present a duly authenticated International Tonnage Certificate (1969) (hereinafter ITC 69), or suitable substitute (i.e., a certificate derived from a system which is substantially similar to that which was provided for in the 1969 International Convention on Tonnage Measurement of Ships, and which contains the total volume or allows for the direct mathematical determination of total volume). Vessels without such total volume information shall be inspected by Canal authorities who shall determine an appropriate volume for use in the calculation of a PC/UMS Net Tonnage of such vessels.

(Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

§ 135.3 Determination of total volume.

(a) The determination of total volume used in the calculation of PC/UMS Net Tonnage shall be carried out by the Panama Canal Commission. In so doing, however, the Commission may rely upon total volume information provided by such officials as are authorized by national governments to undertake surveys and issue national tonnage certificates. Total volume information presented at the Panama Canal shall be subject to verification, and if necessary, correction insofar as may be necessary to ensure accuracy to a degree acceptable to the Panama Canal Commission.

(b) The Commission may, when it is deemed necessary to verify information contained on the ITC 69, require the submission of additional documents. Failure to submit the requested documentation may result in the Commission's developing a figure that accurately reflects the vessel's volume.

(Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

§ 135.4 Administration and interpretation of rules.

The rules of measurement provided in this part shall be administered and interpreted by the Administrator of the Panama Canal Commission.

Subpart B—PC/UMS Net Tonnage Measurement

§ 135.11 Tonnage.

(a) The tonnage of a ship shall consist of PC/UMS Net Tonnage.

(b) The net tonnage shall be determined in accordance with the provisions of the regulations in this subpart.

(c) The net tonnage of novel types of craft whose constructional features are such as to render the application of the provisions of the regulations in this subpart unreasonable or impracticable shall be determined in a manner which is acceptable to the Panama Canal Commission.

§ 135.12 Definitions.

(a) *Upper deck* means the uppermost complete deck exposed to weather and sea, which has permanent means of weathertight closing of all openings in the weather part thereof, and below which all openings in the sides of the ship are fitted with permanent means of watertight closing. In a ship having a stepped upper deck, the lowest line of the exposed deck and the continuation of that line parallel to the upper part of the deck is taken as the upper deck.

(b) *Moulded depth* means the vertical distance measured from the top of the keel to the underside of the upper deck at side.

(1) In wood and composite ships the distance is measured from the lower edge of the keel rabbet. Where the form at the lower part of the midship section is of a hollow character, or where thick garboards are fitted, the distance is measured from the point where the line of the flat of the bottom continued inwards cuts the side of the keel.

(2) In ships having rounded gunwales, the moulded depth shall be measured to the point of intersection of the moulded lines of the deck and side shell plating, the lines extending as though the gunwales were of angular design.

(3) Where the upper deck is stepped and the raised part of the deck extends over the point at which the moulded depth is to be determined, the moulded depth shall be measured to a line of reference extending from the lower part of the deck along a line parallel with the raised part.

(c) *Breadth* or *moulded breadth* means the maximum breadth of the ship, measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material.

(d) *Enclosed spaces* mean all spaces which are bounded by the ship's hull, by fixed or portable partitions or bulkheads, by decks or coverings other than permanent or movable awnings. No break in a deck, nor any opening in the ship's hull, in a deck or in a covering of a space, or in the partitions or bulkheads of a space, nor the absence of a partition or bulkhead, shall preclude a space from being included in the enclosed space.

(e) *Excluded spaces* mean, notwithstanding the provisions of paragraph (d) of this section, the spaces referred to in paragraphs (e)(1) to (e)(5) of this section. Excluded spaces shall not be included in the volume of enclosed spaces, except that any such space which fulfills at least one of the following three conditions shall be treated as an enclosed space:

—The space is fitted with shelves or other means for securing cargo or stores;
—The openings are fitted with any means of closure; or
—the construction provides any possibility of such openings being closed:

(1)(i) A space within an erection opposite an end opening extending from deck to deck except for a curtain plate of a depth not exceeding by more than 25 millimeters (one inch) the depth of the adjoining deck beams, such opening having a breadth equal to or greater than 90 percent of the breadth of the deck at the line of the opening of the space. This provision shall be applied so as to exclude from the enclosed spaces only the space between the actual end

opening and a line drawn parallel to the line or face of the opening at a distance from the opening equal to one-half of the width of the deck at the line of the opening (Figure 1).

In the figure:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

(1)(ii) Should the width of the space because of any arrangement except by convergence of the outside plating, become less than 90 percent of the breadth of the deck, only the space between the line of the opening and a parallel line drawn through the point where the athwartships width of the space becomes equal to, or less than, 90 percent of the breadth of the deck shall be excluded from the volume of enclosed spaces. (Figures 2, 3 and 4).

In the figures:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

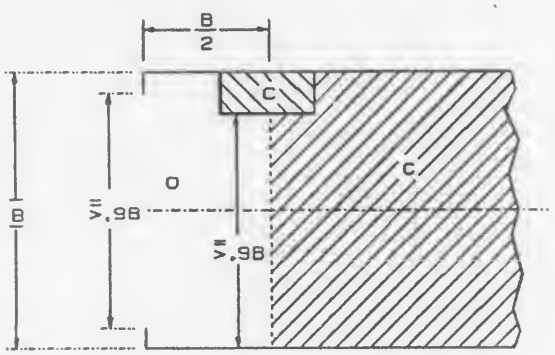


Fig 1

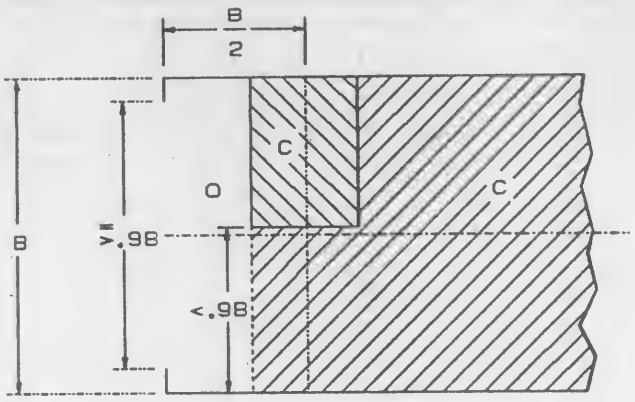


Fig 2

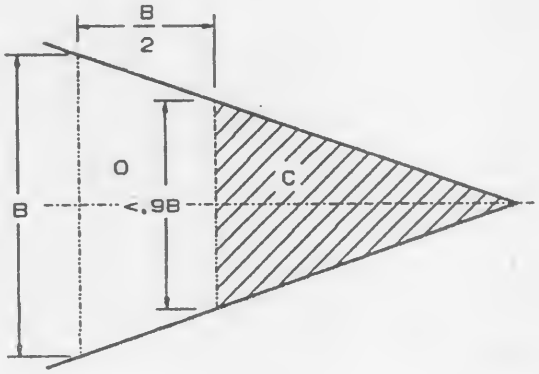


Fig 3

(1)(iii) Where an interval which is completely open except for bulwarks or open rails separates any two spaces, the exclusion of one or both of which is permitted under paragraphs (e)(1)(i) and/or (e)(1)(ii) of this section, such exclusion shall not apply if the separation between the two spaces is less than the least half breadth of the deck in way of the separation. (Figures 5 and 6).

In the figures:

O = excluded space

C = enclosed space

I = space to be considered as an enclosed space

Hatched-in parts to be included as enclosed spaces.

B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

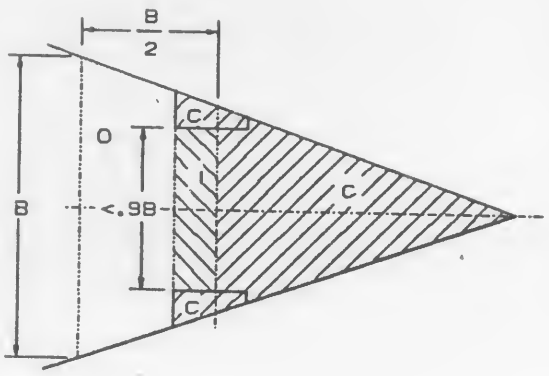


Fig. 4

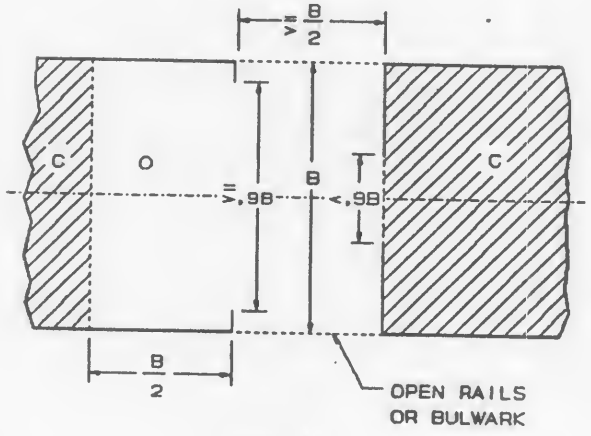


Fig. 5

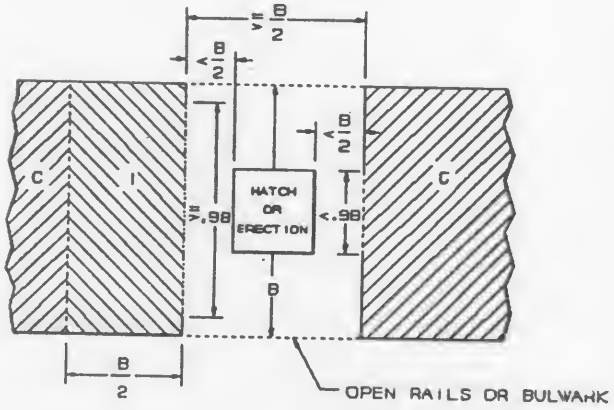
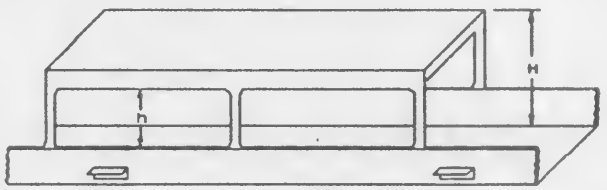


Fig. 6

(2) A space under an overhead deck covering open to the sea and weather, having no other connection on the exposed sides with the body of the ship than the stanchions necessary for its support. In such a space, open rails or a bulwark and curtain plate may be fitted or stanchions fitted at the ship's side, provided that the distance between the top of the rails or the bulwark and the curtain plate is not less than 0.75 meters (2.5 feet) or one-third of the height of the space, whichever is the greater. (Figure 7).



h=AT LEAST $\frac{H}{3}$OR
0.75 m (2.5 FEET)
WHICHEVER IS
THE GREATER

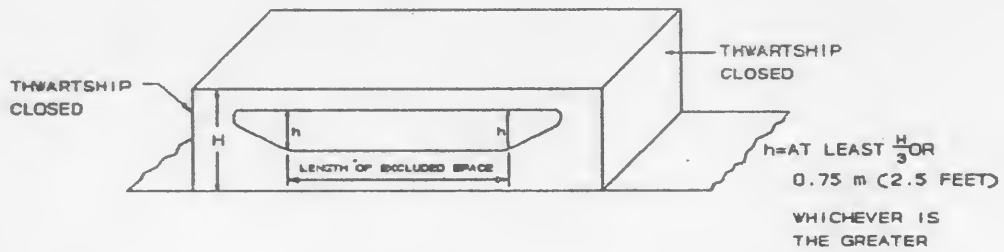
FIG. 7

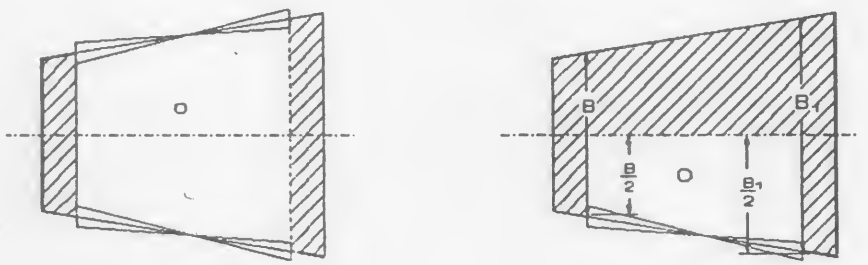
(3) A space in a side-to-side erection directly in way of opposite side openings not less in height than 0.75 meters (2.5 feet) or one-third of the height of the erection, whichever is the greater. If the opening in such an erection is provided on one side only, the space to be excluded from the volume of enclosed spaces shall be limited inboard from the opening to a maximum of one-half of the breadth of the deck in way of the opening. (Figure 8).

In the figures:

O = excluded space
C = enclosed space
J = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).





OPPOSITE SIDE OPENINGS

OPENING ON ONE SIDE ONLY

FIG. 8

(4) A space in an erection immediately below an uncovered opening in the deck overhead, provided that such an opening is exposed to the weather and the space excluded from

enclosed spaces is limited to the area of the opening. (Figure 9).

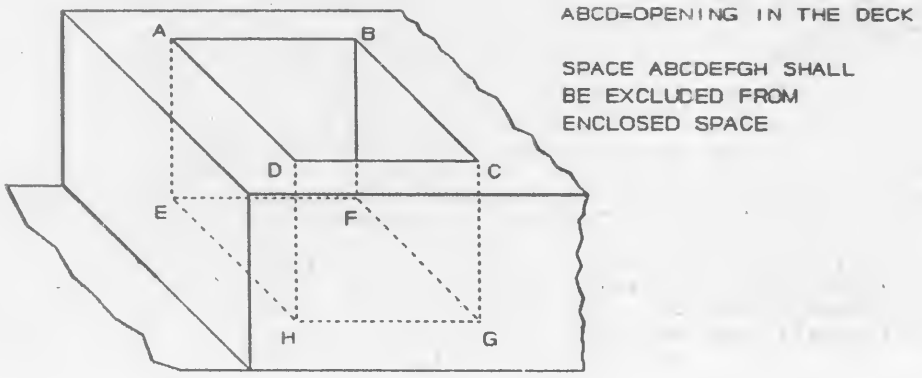


Fig 9

(5) A recess in the boundary bulkhead of an erection which is exposed to the weather and the opening of which extends from deck to deck without means of closing, provided that the interior width is not greater than the width at the entrance and its extension into the erection is not greater than twice the width of its entrance. (Figure 10).

In the figure:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.

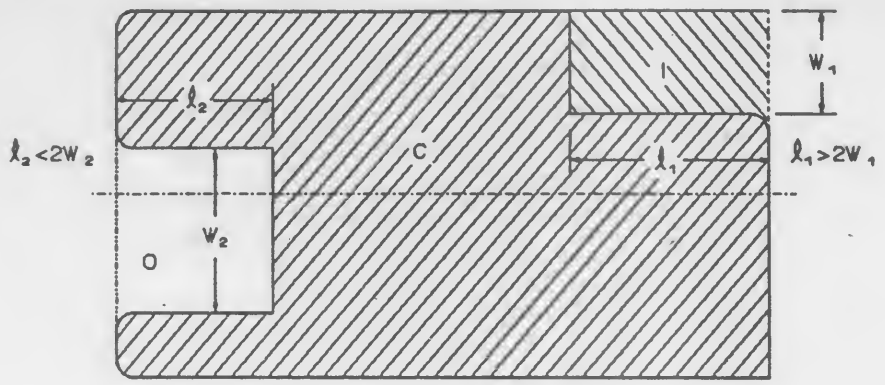


Fig. 10

SHIPS WITH ROUNDED GUNWALES

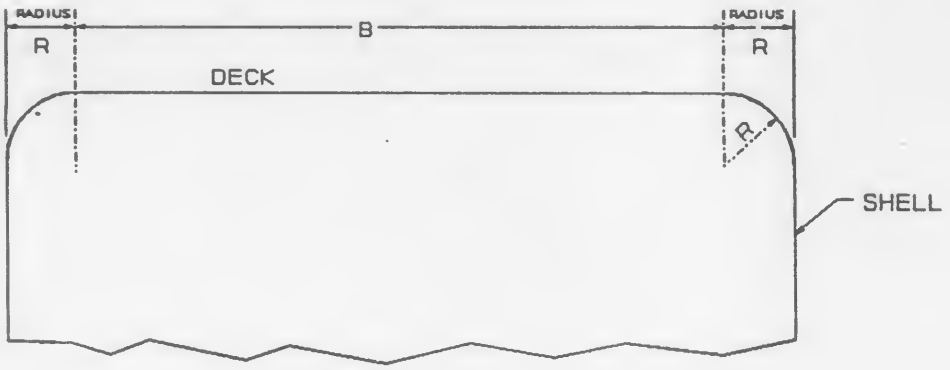


Fig. 11

(f) *Passenger* means every person other than:

(1) The master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and

(2) A child under one year of age.

(g) *Weathertight* means that in any sea conditions water will not penetrate into the ship.

§ 135.13 Determination of PC/UMS Net Tonnage.

PC/UMS Net Tonnage shall be determined as follows:

(a) For all vessels with tolls fixed in accordance with § 133.1 (a) or (b) of this chapter, unless subject to the transitional relief measures established in § 135.31 of this chapter, the formula for determining PC/UMS Net Tonnage is:

PC/UMS Net Tonnage=$K_4(V)+K_5(V)$

in which formula:

(1) "K_4"={0.25+[0.01×Log_{10}(V)]}×0.830.

(2) "K_5"=[Log_{10}(DA−19)]/{[Log_{10}(DA−16)]×17}. If the number of passengers (N1+N2) is greater than 100 or DA is equal to or less than 20.0 meters then K_5 is equal to zero.

(3) "V"=Total volume of all enclosed spaces of the ship in cubic meters and is identical to V as specified in the 1969 International Convention on Tonnage Measurement of Ships.

(4) "DA" (Average depth)=The result of the division of the Total Volume by the product of the length in meters multiplied by the moulded breadth in meters. DA=V/(L×MB).

(5) "L" (Length) is defined as 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the fore side of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline.

(6) Moulded breadth is defined in § 135.12(c).

(7) N_1=number of passengers in cabins with not more than 8 berths.

(8) N^2=number of other passengers.

(9) N_1+N_2=total number of passengers the ship is permitted to carry as indicated in the ship's passenger certificate.

(b) For vessels subject to transitional relief measures, the existing Panama Canal Net Tonnage as specified on the certificate issued by Panama Canal Commission shall be the PC/UMS Net Tonnage. In such case, the formula for determining PC/UMS Net Tonnage is: PC/UMS Net Tonnage = Panama Canal Net Tonnage.

§ 135.14 Change of PC/UMS Net Tonnage.

(a) Vessels whose PC/UMS Net Tonnage is determined in accordance with § 135.13(a) shall have a new PC/UMS Net Tonnage issued if "V" changes.

(b) A vessel whose PC/UMS Net Tonnage is determined in accordance with § 135.13(b) shall retain that tonnage until the vessel undergoes a significant structural change as defined in § 135.14(c). In the event of a significant structural change, the vessel's PC/UMS Net Tonnage shall be determined in accordance with § 135.13(a).

(c) For the purposes of paragraph (b) of this section, significant structural change means an actual change of at least 10 percent in the total volume of the vessel. Vessels without comparative ITC 69 total volumes, or other suitable sources of total volume comparison, shall have a fair and equitable volume comparison made by the Commission to determine if a significant structural change has occurred.

§ 135.15 Calculation of volumes.

(a) All volumes included in the calculation of PC/UMS Net Tonnage shall be measured, irrespective of the fitting of insulation or the like, to the inner side of the shell or structural boundary plating in ships constructed of metal, and to the outer surface of the shell or to the inner side of structural boundary surfaces in ships constructed of any other material.

(b) Volumes of appendages shall be included in the total volume.

(c) Volumes of spaces open to the sea may be excluded from the total volume.

§ 135.16 Measurement and calculation.

(a) All measurements used in the calculation of volumes shall be taken to the nearest centimeter or one-twentieth of a foot.

(b) The volumes shall be calculated by generally accepted methods for the space concerned and with an accuracy acceptable to the Commission.

(c) The calculation shall be sufficiently detailed to permit easy checking.

Subpart C—Warships, Dredges and Floating Drydocks

§ 135.21 Warships, dredges and floating drydocks to present documents stating displacement tonnage.

All warships, dredges and floating drydocks shall present documents stating accurately the tonnage of displacement at each possible mean draft. The term "warship" means any vessel of government ownership that is being employed by its owners for military or naval purposes and shall include armed coast guard vessels and vessels devoted to naval training purposes, but shall not include naval auxiliary vessels such as tankers, ammunition ships, refrigerator ships, repair ships, tenders or vessels used to transport general military supplies. (Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

§ 135.22 Tolls on warships, dredges and floating drydocks levied on actual displacement.

The toll on warships, dredges and floating drydocks shall be based upon their tonnage of actual displacement at the time of their application for passage through the Canal. The actual displacement of these vessels shall be determined in a manner acceptable to the Commission and shall be expressed in tons of 2240 pounds. Should any of these vessels not have on board documents from which the displacement can be determined, Commission officials may use any practicable method to determine the displacement tonnage for assessment of tolls.

Subpart D—Transitional Relief Measures

§ 135.31 Transitional relief measures.

Transitional relief measures as specified in § 135.13(b) shall be applied to a vessel which has made a transit of the Panama Canal between March 23, 1976 and September 30, 1994, inclusive, and has not had a significant structural change as defined in § 135.14(c) since the last transit during the above period. Any significant structural change made after the granting of transitional relief measures shall disqualify a vessel for further relief, and the vessel shall be handled in accordance with the provisions of § 135.13(a). Transitional relief measures are applied to the vessel during its entire active service life as long as the vessel does not undergo a significant structural change. Vessels subject to transitional relief measures shall present their existing Panama Canal Tonnage Certificate on their first transit after September 30, 1994. Vessels subject to relief measures shall not be required to present an ITC 69 or any other total volume certification. (Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

Subpart E—Alternative Method for Measurement of Vessels

§ 135.41 Measurement of vessels when volume information is not available.

When an ITC 69 or suitable substitute is not presented or the certificate or substitute presented does not have an accuracy acceptable to the Commission, vessels shall be measured in a manner which includes the entire cubical contents as required by the definition of total volume and enclosed spaces. The Commission shall endeavor to determine an accurate total volume of the vessel using the best information available at the time of the determination. The total volume shall be calculated by generally accepted methods for the space concerned and with an accuracy acceptable to the Commission.

§ 135.42 Measurement of vessels when tonnage cannot be otherwise ascertained.

(a) Vessels without an ITC 69, a suitable substitute or documentation from which to calculate total volume shall be measured as follows:

(1) The volume of structures above the upper deck may be determined by any accepted method or combination of methods. These methods include but are not limited to simple geometric formulas, Simpson's rules, and other standard mathematical formulas. If special procedures are used, they should be identified. In all cases, measurements and calculations should be sufficiently detailed to permit easy review.

(2) The volume of the hull below the upper deck (UDV) shall be determined as follows:

(i) The formula:

$$UDV=(0.91 \times [(LOA \times MB) \times (D-SLD)])+(SLDISP/1.025)$$

Where:

UDV=Total volume of all enclosed spaces below the upper deck in cubic meters.

LOA=The Length overall, i.e., the length of the ship in meters from the

foremost to the aftermost points, including a bulbous bow if present.

MB=Moulded breadth in meters as defined in § 135.12(c).

D=Moulded depth in meters as defined in § 135.12(b).

SLD=Summer loaded draft (in meters) i.e., the maximum depth to which the vessel's hull may be immersed when in a summer zone.

SLDISP=Summer loaded displacement, i.e., the actual weight in metric tons of the water displaced by the vessel when immersed to her SLD.

(ii) If § 135.42(a)(2)(i) proves unworkable, the total volume of the hull below the upper deck shall be determined by multiplying the product of the LOA, MB and D by the appropriate coefficient listed in the following table:

LOA in meters	Coefficient
0 to 30	.7150
>30 to 60	.7250
>60 to 90	.7360
>90 to 120	.7453
>120 to 150	.7328
>150 to 180	.7870
>180 to 210	.8202
>210 to 240	.7870
>240 to 270	.7328
>270	.7453

(3) The total volume of a vessel is the sum of the volume of the structures above the upper deck as determined in accordance with § 135.42(a)(1) and the volume of the hull below the upper deck as determined in accordance with § 135.42(a)(2) (i) or (ii).

(b) Vessels which have had their total volume determined in accordance with § 135.41 or this section may apply for readmeasurement when they have a new or corrected ITC 69, a suitable substitute or present documentation sufficient to calculate total volume.

Dated: July 7, 1994.

Gilberto Guardia F.,

Administrator, Panama Canal Commission.

[FR Doc. 94–17331 Filed 7–15–94; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH14–1–6483; A–1–FRL–5014–6]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Enhanced Inspection and Maintenance in Hillsborough, Merrimack, Rockingham, and Strafford Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA proposes to conditionally approve or, in the alternative, disapprove the New Hampshire Enhanced Inspection and Maintenance (I/M) State Implementation Plan (SIP) which was submitted to EPA for approval on March 1, 1994, April 20, 1994, and April 28, 1994. These submittals were supplemented by letters dated May 19, 1994 and June 28, 1994 providing additional information and specific assurances regarding changes New Hampshire is making to the program and stating the State's intent to submit further information to EPA by August 19, 1994. The content of the State's letters is described in detail in this notice. If such information is submitted for inclusion in the SIP on or before that date, EPA proposes to conditionally approve the New Hampshire I/M SIP. If such information is not submitted by August 19, 1994, EPA proposes to disapprove the SIP. Since the August 19, 1994 submittal will not be included in the docket for this notice in time to provide adequate public review and comment during the normal comment period, the comment period will remain open only for comments concerning the August 19, 1994 submittal until August 29, 1994. Conditional approval is based on the state's commitment to satisfy specified conditions by July 29, 1995. If such conditions are not met by July 29, 1995, the conditional approval automatically will convert to a disapproval.

New Hampshire submitted this I/M SIP revision to EPA to satisfy the requirements of sections 182(b)(4), 182(c)(3) and 184(b)(1)(A) of the Clean Air Act, and EPA's I/M rule at 40 CFR Part 51, Subpart S. These SIP revisions will require vehicle owners to comply with the New Hampshire I/M program in four New Hampshire counties that are part of the Northeast Ozone Transport Region namely, Hillsborough, Merrimack, Rockingham and Strafford. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before August 17, 1994. Only public comments on the submittal due on August 19, 1994 by the state of New Hampshire may be received after August 17, 1994 but not later than August 29, 1994. Public comments on these documents are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, New England Region, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, New England Region, One Congress Street, 10th floor, Boston, MA and the New Hampshire Department of Environmental Services, Air Resources Division, 64 North Main Street, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 565–3224.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990 (CAA or Act), requires certain States to revise and improve existing I/M programs or implement new ones. All ozone nonattainment areas classified as moderate or worse must implement a basic or enhanced I/M program depending upon its nonattainment classification, regardless of previous requirements. In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States must then incorporate this guidance into the SIP for all areas required by the Act to have an I/M program. Metropolitan statistical areas with populations of 100,000 or more that are within the Northeast Ozone Transport Region are required to meet EPA guidance for enhanced I/M programs.

II. Background

The EPA has designated three areas as nonattainment for ozone in the State of New Hampshire. The New Hampshire portion of the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area is classified serious for ozone, the

Portsmouth-Dover-Rochester Metropolitan Statistical Area (MSA) also is classified serious for ozone, and the Manchester MSA is classified marginal for ozone. The designations for ozone were published in the Federal Register (FR) on November 6, 1991 (56 FR 56694) and November 30, 1992 (57 FR 56762) and have been codified in the Code of Federal Regulations (CFR) at 40 CFR sections 81.300–81.437. Based on these nonattainment designations, an enhanced I/M program is required in Hillsborough, Rockingham, Strafford. In addition, these MSAs have populations of over 100,000 or more and are included in the Ozone Transport Region. Although parts of Merrimack County are in the Manchester MSA, the county could be exempted since, in New England, MSAs are defined by town, not by county and more than fifty percent of the MSA population would be in the I/M program and the population density is less than 200 persons per square mile. Under EPA's I/M rule 40 CFR 51.350(b)(1) such portions of Merrimack county are not required to implement I/M. However, all of Merrimack County is included to generate emission reductions which may be used as offsets or trading credits.

By this action, EPA is proposing to conditionally approve and in the alternative, disapprove the New Hampshire I/M SIP revision. EPA has reviewed the State submittals against the statutory requirements under the Act and for consistency with EPA regulations. In letters dated May 19, 1994 and June 28, 1994, New Hampshire indicated its intent to address a number of outstanding issues discussed further in this notice and to submit necessary revisions to EPA by August 19, 1994. If such revisions are submitted in a timely manner, are consistent with this notice and fully meet the requirements of the I/M rule, EPA will conditionally approve the SIP. Three parts of the program, on-road testing, compliance via diagnostic inspection, and enforcement against inspectors require more time to resolve and provide the basis for today's proposed conditional approval. As requested by New Hampshire, the state will have until July 29, 1995 to submit these revisions to address these three areas. If such revisions are submitted by that date, fulfill the conditions set forth in this notice, and fully meet the requirements of the I/M rule, the state will have met the specified conditions and the I/M SIP will be fully approved. A summary of EPA's analysis is provided below. In addition, more detailed support for conditionally approving the State submittal is contained in the technical support document (TSD), dated June 28, 1994, which is available from the New England Regional Office, listed above.

On November 5, 1992 (57 FR 52950), EPA published a final regulation establishing the I/M requirements, pursuant to sections 182 and 187 of the Act. The I/M regulation was codified at 40 CFR Part 51, Subpart S, and requires States to submit, by November 15, 1993, an I/M SIP revision including all necessary legal authority and the items specified in 40 CFR 51.350 (a)(1) through 51.373.

III. State Submittal

On March 1, 1994, April 20, 1994, and April 28, 1994, the State of New Hampshire submitted an I/M SIP for its three nonattainment areas. Public hearings for the submittals were held on January 5 and 6, 1994, for the March 1, 1994 SIP submittal, and on March 8, 1994 for the April 20, 1994 SIP submittal. The April 28, 1994 submittal contained only administrative materials to supplement the April 20 submission. EPA submitted written comments to the state on March 18, 1994. EPA's primary comments concerned the State's modeling analysis demonstrating achievement of the performance standard, and the motorist compliance enforcement program. In letters dated May 19, 1994 and June 28, 1994, the state agreed to submit by August 19, 1994 additional information to address these and other areas identified in this notice and discussed further below.

The submittals provide for the implementation of an enhanced I/M program in four counties in New Hampshire beginning on January 1, 1995. New Hampshire will be implementing a biennial, test-only I/M program meeting the requirements of the I/M performance standard and other requirements contained in EPA's I/M rule. Testing will be overseen by the New Hampshire Department of Safety (NHDOS) and the New Hampshire Department of Environmental Services (NHDES), with actual testing done by a contractor. Other aspects of the New Hampshire I/M program include: testing of 1968 and later light duty vehicles and trucks, and heavy duty trucks, evaporative emission testing for 1975 and later model year vehicles, a test fee to ensure the State has adequate resources to implement the program, enforcement by registration suspension, a repair effectiveness program, contractual requirements for testing convenience, quality assurance, data collection, minimum expenditure, time extension and hardship waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, and penalties against inspector incompetence. In addition, the enhanced I/M program will include: IM240 testing for 1981 and newer vehicles, an on-road testing program, and emission recall enforcement. A section-by-section analysis of how the New Hampshire I/M program meets the SIP requirements of the federal I/M rule is provided below.

A. Applicability

Under EPA's I/M rule, the SIP must describe the applicable areas in detail and, consistent with 40 CFR Section 51.372, must include legal authority necessary to establish program boundaries and implement the program.

The New Hampshire I/M legislation in Chapter 353 of the Laws of 1993 specifies that vehicles registered in Hillsborough, Merrimack, Rockingham, and Strafford counties be subject to an enhanced I/M program.

EPA's I/M regulation requires that the state program shall not terminate prior to the attainment deadline for each applicable area. The New Hampshire program has no sunset date.

B. Enhanced I/M Performance Standard

Under EPA's I/M rule, an I/M SIP must meet the enhanced I/M performance standard for pollutants that cause the affected area to come under I/M requirements. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP also must provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

New Hampshire has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the enhanced performance standard will be met. This demonstration will need to be revised since the assumptions for gasoline Reid Vapor Pressure (RVP) and vehicle refueling emissions used in the model program were not the same as those used in the New Hampshire proposed program. In addition, the State used national average vehicle age data because the existing registration data is believed to be unreliable, and the State assumed a 99% compliance rate and waiver rate of 1%. EPA agreed to allow the use of national vehicle age data but questioned the use of the 99% compliance and 1% waiver rates given the unreliable registration model year data and the lack of an

adequate description of the motorist enforcement system. EPA believes that a 96% compliance rate and 3% waiver rate are achievable for a well operated program, but rates in excess of these require measures which go beyond normal enforcement and quality control measures. EPA has evaluated these matters and determined that the program will meet the performance standard with the correct RVP and vehicle refueling emissions assumptions and with either a 99% compliance rate and 1% waiver rate or with the rates provided in EPA's I/M rule, namely, a 96% compliance rate and a 3% waiver rate. In a letter dated May 19, 1994, the State agreed to reconsider the compliance and waiver rates and submit additional information by August 19, 1994 justifying these rates, or revising them to lower rates. At a minimum, the state intends to meet a 96% compliance rate and 3% waiver rate as required by the EPA rule.

New Hampshire has submitted a separate SIP submittal for the 15% rate of progress demonstration required by the Act. That SIP is being evaluated by EPA and will be discussed in a separate **Federal Register** notice. Any implications of New Hampshire's decision on compliance and waiver rates on their 15% rate of progress SIP will be discussed in that notice.

C. Network Type and Program Evaluation

Under EPA's I/M rule, the SIP must include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for enhanced I/M areas, the SIP must include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, and the legal authority enabling the evaluation program.

New Hampshire has chosen to implement a test-only I/M network program design utilizing a contractor to implement the inspection portion of the program. Legal authority contained in Chapter 353 of the Laws of 1993 authorizes the NHDOS to implement this contractor operated test-only program and conduct the program evaluation. The contractor will be required to use a computer program to randomly select 0.1% of the vehicles for evaluation testing. The state has indicated in the May 19, 1994 letter that these tests will be monitored by either a NHDOS referee at the station, the station manager, or a representative of the NHDES. The required data will be collected by the contractor. NHDES will analyze this data with the resources assigned to the program.

The May 19, 1994 letter also indicates that the August 19, 1994 submittal will include provisions with appropriate penalties in the contract to bar employees of the contractor from referring motorists to particular repair shops.

D. Adequate Tools and Resources

Under EPA's I/M rule, the SIP must include a description of the resources that will be used for program operation and must discuss how the performance standard will be met including: (1) a detailed budget plan describing the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and other requirements discussed throughout, for the period prior to the next biennial self-evaluation required by the Federal I/M rule, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

Within the New Hampshire I/M SIP revision, Chapter 353 of the New Hampshire Laws of 1993 authorizes the collection of $2.75 in addition to the cost of each inspection to cover the administration, oversight, and enforcement of the I/M program. The SIP narrative describes the budget, staffing support, and equipment needed to implement the program. The State expects to dedicate a staff of 12.5 full-time equivalent employees to support the program. EPA is concerned that the resources identified may not be sufficient to administer and oversee the program properly. The resources identified are significantly lower than resources other states have planned which will be implementing programs of approximately the same size. EPA will monitor the program closely during the first year to determine if administration, enforcement and oversight are adequate. The submittal also calls for audit gases (gases used to calibrate emission analyzers) for state audits to be supplied by the contractor. These gases should be independently named. In its letter dated June 28, 1994 the state has agreed to have audit gases independently named by sending them to EPA. EPA will also ensure that this requirement is met during audits of the New Hampshire program.

E. Test Frequency and Convenience

Under EPA's I/M rule, the SIP must describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP must include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, the SIP must demonstrate that the network of stations providing test services is sufficient to insure consumer convenience including short waiting times to get a test and short driving distances to get to a test center.

The New Hampshire SIP requires biennial inspections for all subject motor vehicles that are at least one year old. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process explained in the SIP. The authority for the enforcement of the testing frequency is contained in the Chapter 353 of the Laws of 1993. Short waiting times and short driving distances relating to network design are required by Chapter 353 and are addressed in the RFP and will be required of the chosen contractor under the contract. The State is requiring, by contract, a 15 minute average waiting time and short driving distances such that 80% of the vehicle population is located within five miles of an inspection facility, and 95% of the vehicle population is located within twelve miles of an inspection facility.

F. Vehicle Coverage

Under EPA's I/M rule, the SIP must include a detailed discription of the number and types of vehicles to be covered by the program, and a plan for identifying vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions authorized by the program, along with an estimate of the percentage and number of affected vehicles. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP must include the legal authority necessary to implement and enforce the vehicle coverage requirement.

The New Hampshire program includes coverage of all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered, or required to be registered, within the above-mentioned four county area, and of fleets primarily operated within an I/M program area. Vehicles will be identified by the

NHDOS vehicle registration database. The NHDOS computer system and registration data base needs to be updated. In its letter dated May 19, 1994 New Hampshire stated it's intention to update this information with a table of subject vehicles by model year by August 19, 1994. Diesels, motorcycles and vehicles over 26,000 lbs Gross Vehicle Weight Rating GVWR are exempt from the emission testing program. Legal authority for the vehicle coverage is contained in the New Hampshire Chapter 353 of the Laws of 1993.

G. Test Procedures and Standards

Under EPA's I/M rule, the SIP must include a description of each test procedure. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

The New Hampshire I/M SIP requires IM240 (transient) testing in accordance with EPA's guidance document entitled, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" dated April 1994 (Technical Guidance). New Hampshire referenced an older version of this document but in its May 19, 1994 letter to EPA confirmed that the state already has notified potential vendors of this change through the April 25, 1994 communication the state advised all potential contractors that the most recent version of EPA specifications and guidelines should be used. The State requires IM240 and evaporative purge tests on 1981 and later model year vehicles up to and including 10,000 lbs gross vehicle weight rating (GVWR). All 1968 thru 1980 vehicles up to, and including, 10,000 lbs GVWR and all 1968 and newer vehicles 10,001–26,000 lbs will be tested with a two-speed test. All 1979 and newer vehicles will receive a pressure test. A visual tampering inspection will be conducted on all 1975 and newer vehicles.

The test procedures are authorized by Chapter 353 of NH Laws of 1993 and further defined in the NHDOS Enhanced Emissions Inspection and Maintenance Program Rules (NH Enhanced I/M Rules). The May 19, 1994 letter stated that the State will establish the cutpoints necessary to achieve a 20% stringency rate for vehicles being idle tested in 1999. The need to revise the final cutpoints will be assessed once actual test data is available from the New Hampshire program. The results of such assessment could require revision of the State's regulations prior to the 1999 testing cycle.

H. Test Equipment

Under EPA's I/M rule, the SIP must include written technical specifications for all test equipment used in the program and must address each of the requirements in 40 CFR 51.358. The specifications must describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The New Hampshire I/M SIP requires the use of the equipment specifications in EPA's Technical Guidance. As previously stated, New Hampshire referenced an older version of this document but updated the reference in the State's May 19, 1994 letter to EPA. The New Hampshire SIP and RFP address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are mandated by contract through the RFP.

I. Quality Control

Under EPA's I/M rule, the SIP must include a description of quality control and recordkeeping procedures. The SIP must include the procedures manual, rule, and ordinance or law describing and establishing quality control procedures and requirements.

The New Hampshire I/M SIP narrative and RFP contain descriptions and requirements establishing the quality control procedures in accordance with the Federal I/M rule. These requirements will help ensure that equipment calibrations are properly performed and recorded and that compliance document security is maintained. The quality control procedures manual will be developed as part of the contract and is required by New Hampshire in the RFP. New Hampshire's May 19, 1994 letter to EPA states its intent to follow specifications for quality control per EPA's Technical Guidance. The August 19, 1994 submittal will address this.

J. Waivers and Compliance via Diagnostic Inspection

Under EPA's I/M rule, the SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate is used for estimating emission reduction benefits in the modeling analysis. Also, the State must take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP accordingly and the emission reductions claimed. In addition, the SIP must describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP must include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions. Cost limits for the minimum expenditure waivers must be in accordance with the CAA and EPA's I/M rule.

In the New Hampshire I/M SIP revision, legal authority for waivers is set forth in Chapter 353 of the Laws of 1993. Consistent with EPA's I/M rule, waiver cost limits are established at $450 and adjusted annually in the New Hampshire enhanced I/M the program. The SIP revision also includes a 1% waiver rate expressed as a percentage of initially failed vehicles. This 1% waiver rate was used in the New Hampshire modeling demonstration. The state is reconsidering this rate as discussed in section B. above, and will provide additional justification to support it or revise it in the August 19, 1994 submittal. The SIP provides that, if the waiver rates are higher than estimated, NHDES will take corrective action to address the deficiency.

The SIP describes three types of waivers the State may allow. Such waivers include a minimum expenditure waiver, a time extension waiver, and a one-time hardship waiver. These waivers are consistent with EPA's I/M rule. The proper criteria, procedures, quality assurance and administration for issuing waivers is ensured by the NHDOS and its managing contractor and are described in the SIP narrative, Section 6 of the New Hampshire Enhanced I/M rules and the RFP.

Compliance via diagnostic inspections were allowed for all model years in the original submission, but in a letter dated May 19, 1994, the state indicated that it will establish procedures and a policy which will allow compliance by this mechanism only on 1981 and newer vehicles subject to IM240 tests at final cutpoints or lower. The state commits to submitting this revision by July 29, 1995. This part of the New Hampshire SIP provides one basis for EPA's proposal of a conditional approval of this SIP revision.

K. Motorist Compliance Enforcement

Under EPA's I/M rule, the SIP must provide information concerning the motorist compliance enforcement process, including: (1) A description of the existing compliance mechanism if it

is to be used in the future, and the demonstration that it is as effective, or more effective, than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, for example, those operated in (but not necessarily registered in) the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The State has chosen to use registration suspension as its primary enforcement mechanism. Motorists will have 45 days from the registration date to comply with the I/M program requirements or their vehicle registration will be suspended. The motorist compliance enforcement program will be implemented by the NHDOS. The SIP does not describe the computer matching system necessary to implement this system. Motorcycles and diesel vehicles are exempt from this program as permitted by the I/M rule. Fleet vehicles, rental car fleets, and leased vehicles are required to meet the same program requirements as all other subject vehicles. The State has not yet developed a plan for fleet vehicles, but requires this as part of the contract. The State has not addressed tracking out-of-state exemptions. The State has estimated a 99% compliance rate without a detailed description of how this will be accomplished. The legal authority to implement and enforce the program is included in Chapter 353 of the Laws of 1993. In its letters of May 19, 1994 and June 28, 1994, the State submitted a detailed description of the enforcement process and committed to justifying the compliance rate, or revising the compliance rate in the SIP and to address the other deficiencies described in this section by August 19, 1994.

L. Motorist Compliance Enforcement Program Oversight

Under EPA's I/M rule, the SIP must include a description of enforcement program oversight and information management activities.

The New Hampshire I/M SIP did not address this area specifically. However, in its letter dated June 28, 1994, New Hampshire committed to comply with 40 CFR 51.362, motorist compliance enforcement oversight and explained that the SIP committed to achieving the highest quality assurance and quality control to meet this requirement.

M. Quality Assurance

Under EPA's I/M rule, the SIP must include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The New Hampshire I/M SIP revision includes a description of its quality assurance program. The program includes overt and covert audits of all emission inspectors and emission inspection lanes and will be conducted by the NHDOS. Procedures and techniques for overt and covert performance, record, and equipment audits will be developed by the state or a contractor, given to auditors and updated as needed. The SIP does not indicate whether audit results will be recorded and retained in station and inspector files, whether records are of sufficient detail to support civil and administrative hearings, whether stations and inspectors suspected of violating program regulations will be audited more frequently, or whether covert auditors will be rotated. By its letter dated May 19, 1994, the state commits to addressing these points by August 19, 1994. The state has assured EPA that all required training elements are included in the auditor training program and that this will be detailed in the SIP submission of August 19, 1994.

N. Enforcement Against Contractors, Stations and Inspectors

Under EPA's I/M rule, the SIP must include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General must furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases, and other aspects of the enforcement program. In addition, the SIP must describe the resources to be allocated to this enforcement function and the source of funding for such resources. In states without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

The New Hampshire I/M SIP includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with EPA's I/M rule. The SIP includes the State's enforcement procedures which can be pursued through either contract provisions or Section 16 of the NH Enhanced I/M Rules. The NHDOS has the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. Legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations are contained in the New Hampshire Chapter 353 of the Laws of 1993, and Enhanced Emissions Inspection and Maintenance Program Rules (NHDOS). In addition, contractual enforcement mechanisms are contained in the RFP. As discussed in the I/M SIP in Section M. NHDOS referees will spend 20 hours per week in each inspection station.

NH Enhanced I/M Rule, Section 16 does not require imposition of substantial penalties as required by EPA's I/M rule (six month suspension) or equivalent retainage on the first offense by inspectors for violations that directly affect emission reduction benefits. Section M. of the New Hampshire narrative indicates that mandatory retraining will be required of inspectors for violations, however, this is not stated in the regulation. In its letter to EPA dated June 28, 1994 New Hampshire stated that mandatory retraining will be a requirement of the contract, and that Section 16 will be revised to be consistent with the penalty required by the EPA rule. The state commits to submitting the revision to Section 16 by July 29, 1995. This part of the New Hampshire SIP provides another basis for EPA's proposal of a conditional approval of this SIP revision.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The New Hampshire I/M SIP narrative, Section O, and Section 18 of the NH Enhanced I/M Rule provides for collecting data required by EPA regulation and submitting required reports.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The New Hampshire I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes this program and curriculum, including written and hands-on testing required at least every two years. All inspectors will be required to be certified to inspect vehicles in the New Hampshire I/M program. In the letter of May 19, 1994, New Hampshire describes the written and hands-on tests, how they will be developed, and how the State will audit contractor administered tests.

Q. Improving Repair Effectiveness

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

The New Hampshire SIP includes a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The State did not specify a mechanism to regularly inform repair facilities regarding changes to the inspection program, training course schedules, common problems, potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. In a letter dated May 19, 1994 the state agreed to provide a plan to EPA by August 19, 1994 that will provide the means to transmit the above-referenced information to the repair community. The NHDOS, as described in the SIP, will also ensure that a repair technician hotline will be available for repair technicians. Performance monitoring statistics of certified repair facilities will be provided to motorists whose vehicles fail the I/M tests in enhanced I/M areas. The State will also ensure that adequate repair technician training exists through the establishment of an advisory workgroup.

R. Compliance With Recall Notices

Under EPA's I/M rule, the SIP must describe, for enhanced I/M programs, the procedures used to incorporate vehicle recall lists provided by EPA into the inspection or registration database, the quality control methods used to ensure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The NH RFP Section 6.9 requires the contractor to notify vehicle owners of recalls in accordance with EPA requirements, NH Enhanced I/M Rules Section 4.F.1.h., requires that vehicle owners whose vehicle is included in an emission recall, comply with the recall requirement in order to be inspected. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. In the May 19, 1994 submission, New Hampshire explains that the RFP requires tracking and verification of recall repairs. Such data will include reference to the recall campaign number.

S. On-Road Testing

Under EPA's I/M rule, the SIP must include a detailed description of the on-road testing program required in enhanced I/M areas, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs can only be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP must include technical support for the claimed additional emission reductions.

The New Hampshire I/M SIP includes a description of its on-road testing program. The testing program will include no less than 0.5% of the subject vehicles as required by Section 9 of the NH Enhanced I/M Rules. The program will be included as part of the testing contract and the contractor will provide data collection analysis and utilize this data to identify high emitting vehicles. The state has not established standards for this program or identified the type of testing that will be conducted. The legal authority for this program is contained in the New Hampshire I/M Chapter 353 of the Laws of 1993. In a letter dated May 19, 1994, the state commits to develop and submit standards to EPA. The state commits to submitting this revision by July 29, 1995. This part of the New Hampshire SIP provides the third basis for EPA's proposal of a conditional approval of this SIP revision.

T. Concluding Statement

A more detailed analysis of the State's I/M SIP submittal and how it meets the Federal requirements is contained in the EPA's technical support document dated June 28, 1994, which is available from the EPA-New England Regional office listed above. The criteria used to review the SIP revision submitted are based on the requirements of Section 182 of the CAA and EPA's I/M regulations. Based on these requirements, EPA developed a detailed I/M approvability checklist to be used nationally to assist in determining whether I/M programs meet the requirements of the CAA and the federal I/M rule. The checklist is formatted by stating the Federal requirement by each section, and followed by information indicating whether or not the New Hampshire program meets the criteria and where in the New Hampshire SIP submittal the requirements are addressed. This checklist, the CAA and EPA's I/M regulations formed the basis for EPA's technical review. EPA has reviewed the I/M SIP revision submitted by New Hampshire. Using the criteria stated above, the New Hampshire regulations and accompanying materials contained in the SIP represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for conditional approval of such SIP revision.

IV. New Hampshire I/M Committal SIP

On September 27, 1993, EPA proposed conditional approval of the New Hampshire I/M committal SIP submitted on January 12, 1993, including a schedule for implementation of the program. At that time, EPA believed that conditional approvals were appropriate for I/M committal SIPs because the States could not be expected to begin developing an I/M program meeting the requirements of the CAA and the I/M regulations until

the I/M regulations were adopted as a final rule which occurred on November 5, 1992. In a letter dated October 21, 1993, the Natural Resource Defense Council (NRDC) commented on the proposed approval of the committal SIP arguing that States should have submitted full I/M SIPs by November 15, 1992. In addition, in a Court order dated May 6, 1994, the United States Circuit Court of Appeals for the District of Columbia concluded, in the context of an NRDC lawsuit concerning I/M, that EPA's acceptance of I/M committal SIPs was contrary to law and improperly delayed SIP submissions beyond the statutory deadlines. Further, the Court directed EPA to review and either approve or disapprove by no later that September 15, 1994 all I/M SIPs already received. As a result of that court order, EPA is taking this action on the New Hampshire SIP submitted on March 1, 1994, April 20, 1994, April 28, 1994, May 19, 1994, and June 28, 1994 and will not be taking further action on the "committal" I/M SIP submitted by the State of New Hampshire on January 12, 1993.

The conditional approval proposed today is based upon New Hampshire's commitment to develop and submit on-road testing standards, compliance via diagnostic procedures, and revised inspector penalties by July 29, 1995. If this commitment is not met, the conditional approval will convert to a disapproval. In the alternative, EPA proposes to disapprove the New Hampshire I/M SIP revision if the submittals described in this package are not revised by August 19, 1994 or are incomplete.

Proposed Action

EPA is proposing to conditionally approve or in the alternative disapprove New Hampshire's enhanced inspection and maintenance SIP.

Pursuant to Section 110(k)(4) of the Act, the conditional approval is based on the commitment articulated by New Hampshire in its May 19, 1994 and June 28, 1994 letters to submit a revised SIP revision by July 29, 1995, that complies with the requirements for on-road testing, compliance via diagnostic inspection, and inspector penalties. Section 110(k)(4) of the CAA provides that, if a state fails to comply with its commitment, such conditional approval will convert to a disapproval.

In the alternative, this action proposes to disapprove the New Hampshire I/M SIP revision if New Hampshire does not adequately address the issues articulated in this notice by on or before August 19, 1994.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The EPA requests comments on this proposal including the EPA's proposal to conditionally approve or, in the alternative, disapprove the I/M SIP for New Hampshire as meeting the requirements of the CAA and EPA's Federal I/M rule. As indicated at the outset of this notice, the EPA will consider any comments received by August 17, 1994 and will make the TSD available upon request. EPA will also consider any comments received by on or before August 29, 1994 regarding the information specified herein that is due by August 19, 1994 from New Hampshire.

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

Under 5 U.S.C. Section 605(b), the Administrator certifies that SIP approvals under Sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already state law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA.*, 427 U.S. 246, 96 S. Ct. 2518 (1976); 42 U.S.C. Section 7410(a)(2).

If EPA issues a final disapproval or if the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that in the event EPA disapproves the state submittal, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor does it substitute a new federal requirement.

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: June 27, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–17375 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–105–P]

RIN 0938

Medicare Program; Part B Advance Payments to Suppliers Furnishing Items or Services under Medicare Part B

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule would establish requirements and procedures for advance payments to suppliers of Medicare Part B services. An advance payment would be made only if the carrier is unable to process a claim timely, the supplier requests advance payment, and we determine that payment of interest is insufficient to compensate the supplier for loss of the use of the funds and approve the advance payment.

These rules are necessary to correct deficiencies noted by the General Accounting Office in its report of a review of current procedures for making advance payments.

The intent of this proposal is to ensure more efficient and effective administration of this aspect of the Medicare program.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 16, 1994.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–105–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or, Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO–105–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jim O'Shea, (410) 966–7521.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Medicare Supplementary Medical Insurance (SMI or Part B) program is a voluntary program that pays all or part of the costs for physicians' services; outpatient hospital services; certain home health services; services furnished by rural health clinics, ambulatory surgical centers and comprehensive outpatient rehabilitation facilities; and certain other items or medical and hospital health services not covered by the Medicare Hospital Insurance program.

B. Use of Carriers

Statutory Basis—Under section 1842(a) of the Social Security Act (the Act), public and private organizations and agencies may participate in the administration of the Medicare program under contracts entered into with the Secretary. These Medicare contractors, known as "carriers," process and pay Part B claims.

Usually, these payments are made on a claim-by-claim basis. Regulations at 42 CFR Part 421, Subpart C—Carriers, set forth the functions performed by Medicare carriers, which include:

- Determining the eligibility status of a beneficiary.
- Determining whether the services for which payment is claimed is covered under Medicare, and if so, the correct payment amounts.
- Making correct payment to the beneficiary or the supplier of the items or services, as appropriate.

Carriers must also observe the "prompt payment" requirements set forth in section 1842(c) of the Act. As amended by section 13568 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, enacted on August 10, 1993, this provision currently requires interest to be paid on all "clean" claims for which payment is not issued within 30 calendar days.

Advance Payments to Suppliers—Under Part B, a carrier makes an advance partial payment to a supplier if the carrier is not able to process a claim. (For purposes of the Medicare program, § 400.202 of the HCFA rules defines "supplier" as a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare, and "services" as medical care or services and items, such as medical diagnosis and treatment, drugs and biologicals, supplies, appliances, and equipment, medical social services, and use of hospital or SNF facilities.) An advance payment is made to a supplier eligible to receive Medicare payments.

In rare instances, such as when major administrative changes are made in processing Part B claims, a backlog of pending claims may occur. To avoid or reduce payment of interest on claims that are not processed timely, we sometimes authorize advance payments for pending backlogged claims, subject to later recoupment, once the claims are processed. However, since generally, Medicare Part B payments are made after a claim is processed, there are no regulations or guidelines for making advance payments.

II. General Accounting Office Report Finding—"HCFA Should Improve Internal Controls Over Part B Advance Payments"

As a result of administrative changes made in processing Part B claims at two carriers in two States during 1988, a large backlog of pending claims occurred. In order to minimize the effects of these disruptions on suppliers, in 1989 we authorized the two carriers to make advance payments for pending backlogged claims, subject to later recoupment, once the claims were actually processed. The difficulties experienced by the suppliers resulted in the General Accounting Office (GAO) investigating these two carriers and their claims processing systems. This investigation led the GAO to question whether we had sufficient guidelines and safeguards in place to ensure that advance payments were promptly recouped.

The GAO found that inconsistencies in handling occurred and administrative problems resulted from the lack of specific regulations and guidelines. The criteria for approving advance payments by these two carriers differed, as did progress in recouping these payments. One carrier made advance payments only to medical equipment suppliers. It based these advances on the level of payments the suppliers had received in the previous year. Another carrier, in contrast, made advance payments to all suppliers. It based the advance payment on the value of claims that had been on

hand at the carrier for more than 14 days.

In August 1989, one carrier began to recoup advance payments either through repayments from suppliers or by withholding a portion of subsequent payments to them. By February 1990, the carrier had recouped about 94 percent of the $1.3 million it had advanced to the suppliers; by September 1990, $17,071 was outstanding, including $14,592 owed by one supplier that the carrier was unable to contact.

The second carrier recouped advance payments by withholding 25 percent of subsequent payments to medical equipment suppliers and 50 percent of payments to other suppliers. In February 1990, when the carrier began more aggressive efforts to recoup advance payments, about $34 million of the $80 million it had advanced to the suppliers was still outstanding. By September 1990, $14 million (about 18 percent of the amount advanced) had not yet been recouped. Suppliers who had not repaid their advances had, in effect, received an interest-free loan from the Medicare Trust Fund.

The carrier encountered particular difficulty in recouping advances made to suppliers that used more than one Medicare billing number. Some of these suppliers had obtained an advance under one number and later billed Medicare exclusively under the other number, frustrating efforts to offset new payments to collect the advance payment. The carrier noted this problem in January 1990 and began to identify suppliers who had used multiple billing numbers to obtain payments. The carrier then identified other related numbers the suppliers used for billing Medicare and withheld payments from these claims.

As a result of its review of these cases, the GAO recommended that we determine whether it is appropriate for carriers to make advance payments to suppliers and that we be in compliance with the Federal Manager's Financial Integrity Act (31 U.S.C. 3512) when making these determinations.

The Federal Managers' Financial Integrity Act requires Federal agencies to establish internal control systems that provide reasonable assurance that agency expenditures are consistent with laws and regulations. The Comptroller General, in implementing this Act, has prescribed internal control standards for agency use. These standards require that significant transactions must be "authorized and executed only by persons acting within the scope of their authority." In applying this standard to Part B advance payments, the GAO expressed the opinion that HCFA, rather than the carriers, should authorize advance payments, to be executed by the carriers. In addition, the GAO asserted that we should clearly communicate our approval to make advance payments to carriers and include the terms under which these payments must be made. Therefore, the GAO recommended that we develop regulations and instructions for carriers regarding Part B advance payments to suppliers. (GAO report, GAO/HRD–91–81 (April 1991), entitled: "Medicare: HCFA Should Improve Internal Controls Over Part B Advance Payments")

III. Provisions of the Proposed Regulations

In response to the GAO report and recommendation, we are adding § 421.214 ("Advance payments to suppliers of Part B services") to part 421, subpart C of this chapter.

New § 421.214 would ensure the smooth and uniform issuance and recoupment of Part B advance payments that may be authorized from time to time to counter the negative consequences of disruptions in Medicare Part B claims processing. The regulation would be entirely self-contained. Advance payments would be made when a carrier is unable to process a claim timely, not when delay is the result of late or incomplete submittal of a claim by a supplier. Processing delays would be highlighted to us to ensure that payment disruptions and risks to the Medicare Trust Fund would be minimized.

There are some entities with provider agreements under section 1866 of the Act that are paid for certain Part B services from the Part B Trust Fund through intermediaries (performing as a carrier when making Part B payments). These providers generally have access to the existing accelerated payment provisions under § 413.64(g). The purpose of this proposed regulation is to create a Part B advance payment procedure for suppliers, not to supplant the existing Part A advance payment procedure for some providers. Therefore, this section does not apply to claims for Part B items or services that are furnished by entities with provider agreements under section 1866 of the Act that receive payments from intermediaries.

In new § 421.214(b), we would define the term "advance payment" to mean a carrier's conditional partial payment to a supplier on a Part B claim that the carrier is unable to process within the prescribed time limits.

Section 421.214(c) would specify that an advance payment may be made if the carrier is unable to process claims timely, we determine that the prompt payment interest provision in section 1842(c) of the Act is insufficient to make claimants whole, and if expressly approved by us in writing. The prompt payment interest provision currently requires us to pay interest on clean claims when the carrier is unable to make payment within 30 calendar days. The determination to issue advance payments must take into consideration elements that are, or may be, subject to changes such as legislation related to prompt payment; system enhancements; severity of system malfunctions; regulatory changes; change in contractors; and any number of other factors that may necessitate the issuance of advance payments. Our ability to respond appropriately and timely would be restricted if we were required to publish criteria regarding a threshold through the rulemaking procedure. Therefore, we would implement the threshold criterion or criteria through manual instructions to the carriers. This would give us the flexibility to respond promptly to providers without going through the rulemaking process each time a unique situation occurs. We specifically request public comments on this approach. In making changes, we would ensure that advance payments would be made in a way that would ensure budget neutrality.

Section 421.214(d) would specify that no advance payment may be made to any supplier delinquent in repaying a Medicare overpayment, has been advised of being under active medical review or program integrity investigation, has not submitted any claims, or has not accepted claims' assignments within the most recent 180-day period preceding the system malfunction.

In § 421.214, paragraph (e)(1) would specify that a supplier must request, in writing, an advance payment for providing Part B items or services. Paragraph (e)(2) would specify that a supplier must accept an advance payment as a conditional payment subject to adjustment, recoupment, or both based on an eventual determination of the actual amount due on the claim, and subject to the other rules found in § 421.214.

In § 421.214, paragraph (f)(1) would state that a carrier will calculate an advance payment at no more than 80 percent of historical assigned claims payment data paid a supplier. Historical data is defined as a representative 90-day assigned claims payment trend within the most recent 180-day experience before the system malfunction. Based on this amount and the number of claims pending for the

supplier, the carrier will determine and issue advance payments not to exceed 80 percent of the average per claim amount paid during the 90-day trend period, times the number of assigned claims pending. If historical data are not available or if backlogged claims cannot be identified, the carrier will determine and issue advance payments based on some other methodology approved by us. Advance payments would be made no more frequently than once every 2 weeks to a supplier.

In § 421.214, paragraph (f)(2) would specify that generally, a supplier will not receive advance payments for more assigned claims than were paid, on a daily average, for the 90 days before the system malfunction. This is to prevent and discourage suppliers from submitting assigned claims that may lack merit in order to maximize the receipt of advance payments. However, an example of a permissible exception would be when a supplier does not receive payments from a carrier for services during the early months of the year when beneficiary deductibles are being met. In this case, the carrier would use more representative payment months for the suppliers' daily average.

In § 421.214, paragraph (f)(3) would specify that a carrier recovers an advance payment by applying it against the amount due on the claim on which the advance was made. If the advance payment exceeds the Medicare Payment amount, the carrier applies the unadjusted balance of the advance payment against further Medicare payments due the supplier.

It is not our intent to permit repayment of an advance payment by an option that could delay the recovery process or that would create a duplicate payment or an overpayment. A supplier, of Part B services, could not elect to receive full payment for a claim and repay the advance payment separately at some other time.

In § 421.214, paragraph (f)(4) would specify that in accordance with our instructions, a carrier must maintain financial records in accordance with the Statement of Federal Financial Accounting Standards to track advance payments and to recoup them expeditiously.

In § 421.214, paragraph (g)(1) would permit us to waive the requirements of paragraph (e)(1) if we determine it is appropriate to make advance payments to all affected suppliers. Paragraph (g)(2) would specify that if adjusting Medicare payments fails to recover an advance payment, we may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule). Paragraph (g)(2) also allows an unpaid balance from a past advance payment to be converted into an overpayment. In the unlikely event that after the adjustment process is completed more money has been advanced to the supplier than was due, we would consider that amount to be an overpayment. We would attempt to recover the overpayment under the Medicare recovery procedures in part 401, subpart F and part 405, subpart C.

In § 421.214, paragraph (h) would clarify that the advance payment is to be considered a payment that would satisfy the "prompt payment" requirements of section 1842(c) of the Act for the amount of the advance. Therefore, if an advance payment is made before the "prompt payment" time limit and the actual amount of payment for the claim is determined after the time limit, interest would be paid only on the balance due the supplier after the carrier deducts the amount of the advance. (Of course, no interest would accrue if the amount of the advance exceeds the actual payment amount to be made on the claim. If the advance payment is issued after the time limit, interest would accrue on the advance (or on the amount of the claim, which ever is smaller) up to the date that the advance payment is issued, and on the balance due the supplier, if any, up to the date of payment.

In § 421.214, paragraph (i) would explain that the decision to advance payments and the determination of the amount to be advanced on any given claim are committed to agency discretion and are not subject to review or appeal. However, the carrier would notify the supplier receiving the advance payment about the amounts advanced and recouped, and how any Medicare payment amounts have been adjusted. If the supplier believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed, it may request an administrative review from the carrier. If a review is requested, the carrier would provide a written explanation of the adjustments. This review and explanation is separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at 42 CFR part 405, subpart H. The carrier's reconciliation of amounts advanced and recouped is not an initial determination as defined at § 405.803, and any written explanation of such reconciliation is not subject to further administrative review. We expect that this review process will help to eliminate unnecessary appeals that might result from errors in computation.

IV. Regulatory Impact Statement

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all suppliers that provide services under Medicare Part B to be small entities. We do not consider carriers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would amend Medicare regulations to ensure that when carriers make advance payments to suppliers and those payments are greater than the amounts actually due after the claim is processed, the excess payments are recovered promptly. We expect this proposed rule would result in marginal administrative savings to carriers and suppliers. In addition, we do not believe this regulation would have a negative effect on the economy. Therefore, the overall benefits are positive and indeed provide stability during potentially disruptive claims processing delays.

We have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared analyses for either the RFA or small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Collection of Information

Section 421.214(f)(4), (g)(2), and (i)(3) of this document contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These reporting and recordkeeping requirements are not

effective until a notice of OMB's approval is published in the Federal Register. The information collection requirements in § 421.214(f)(4) require that a carrier maintain a financial system of data in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment. We estimate that it would take a carrier 4 minutes for entry of an advance payment into the tracking system and 2 minutes for any update (including recoupment).

The reporting requirements in § 421.214(g)(2) may require a carrier to send a written notice to the supplier converting any unpaid balances of advance payments to overpayments if adjusting Medicare payments fails to recover an advance payment. We estimate that it would take a carrier 5 minutes to issue a computer-generated letter with an attached worksheet detailing adjustments to the advance payment and any resulting overpayment.

Section 421.214(i)(3) would require a carrier to provide a written explanation of the adjustments if the supplier requests an administrative review because it believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed. We estimate this written explanation would require 5 minutes using a computer-generated letter.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are unable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to comments in the preamble to the final rule.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 would be amended as follows:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for Part 421, Subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834(a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395(g), 1395h, 1395l, 1395m(a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

Subpart C—Carriers

2. A new § 421.214 is added to Subpart C to read as follows:

§ 421.214 Advance payments to suppliers furnishing items or services under Part B.

(a) *Scope and applicability.* This section provides for the following:

(1) Sets forth requirements and procedures for the issuance and recovery of advance payments to suppliers of Part B services and the rights and responsibilities of suppliers under the payment and recovery process.

(2) Does not limit HCFA's right to recover unadjusted advance payment balances.

(3) Does not affect suppliers' rights under part 405, subpart H of this chapter relating to substantive determinations on suppliers' claims.

(4) Does not apply to claims for Part B services furnished by suppliers that have in effect provider agreements under section 1866 of the Act and part 489 of this chapter, and are paid by intermediaries.

(b) *Definition.* As used in this section, *advance payment* means a conditional partial payment made by the carrier in response to a claim that it is unable to process within established time limits.

(c) *When advance payments may be made.* An advance payment may be made if all of the following conditions are met:

(1) The carrier is unable to process the claim timely.

(2) HCFA determines that the prompt payment interest provision specified in section 1842(c) of the Act is insufficient to make a claimant whole.

(3) HCFA approves, in writing to the carrier, the making of an advance payment by the carrier.

(d) *When advance payments are not made.* Advance payments are not made to any supplier that meets any of the following conditions:

(1) Is delinquent in repaying a Medicare overpayment.

(2) Has been advised of being under active medical review or program integrity investigation.

(3) Has not submitted any claims.

(4) Has not accepted claims' assignments within the most recent 180-day period preceding the system malfunction.

(e) *Requirements for suppliers.* (1) Except as provided for in paragraph (g)(1) of this section, a supplier must request, in writing to the carrier, an advance payment for providing Part B items or services.

(2) A supplier must accept an advance payment as a conditional payment subject to adjustment, recoupment, or both based on an eventual determination of the actual amount due on the claim, and subject to the other rules found in this section.

(f) *Requirements for carriers.* (1) A carrier must calculate an advance payment at no more than 80 percent of historical assigned claims payment data paid a supplier. *Historical data* is defined as a representative 90-day assigned claims payment trend within the most recent 180-day experience before the system malfunction. Based on this amount and the number of claims pending for the supplier, the carrier must determine and issue advance payments not to exceed 80 percent of the average per claim amount paid during the 90-day trend period times the number of assigned claims pending. If historical data are not available or if backlogged claims cannot be identified, the carrier must determine and issue advance payments based on some other methodology approved by HCFA. Advance payments can be made no more frequently than once every 2 weeks to a supplier.

(2) Generally, a supplier will not receive advance payments for more assigned claims than were paid, on a daily average, for the 90 days before the system malfunction.

(3) A carrier must recover an advance payment by applying it against the amount due on the claim on which the advance was made. If the advance payment exceeds the Medicare payment amount, the carrier must apply the unadjusted balance of the advance payment against future Medicare payments due the supplier.

(4) In accordance with HCFA instructions, a carrier must maintain a financial system of data in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment.

(g) *Requirements for HCFA.* (1) HCFA may determine that circumstances warrant the issuance of advance payments to all affected suppliers furnishing Part B items or services except that no advance payments may be made to any supplier furnishing Part B items or services that meets any of the conditions in paragraph (d) of this section. HCFA may waive the

requirement in paragraph (e)(1) of this section as part of that determination.

(2) If adjusting Medicare payments fails to recover an advance payment, HCFA may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule) including, upon written notice from the carrier to the supplier, converting any unpaid balances of advance payments to overpayments. Overpayments are resolved in accordance with part 401, subpart F of this chapter concerning claims collection and compromise and part 405, subpart C of this chapter concerning recovery of overpayments.

(h) *Prompt payment interest.* An advance payment is a "payment" under section 1842(c)(2)(C) of the Act for purposes of meeting the time limit for the payment of clean claims, to the extent of the advance payment.

(i) *Notice, review, and appeal rights.* (1) The decision to advance payments and the determination of the amount of any advance payment are committed to agency discretion and are not subject to review or appeal.

(2) The carrier must notify the supplier receiving an advance payment, about the amounts advanced and recouped, and how any Medicare payment amounts have been adjusted.

(3) The supplier may request an administrative review from the carrier if it believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed. If a review is requested, the carrier must provide a written explanation of the adjustments.

(4) The review and explanation described in paragraph (i)(3) of this section is separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at part 405, subpart H of this chapter. The carrier's reconciliation of amounts advanced and recouped is not an initial determination as defined at § 405.803 of this chapter, and any written explanation of a reconciliation is not subject to further administrative review.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: October 19, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: April 7, 1994.

Donna Shalala,

Secretary.

[FR Doc. 94–17219 Filed 7–15–94; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 440

[MB–085–P]

RIN 0938–AG73

Medicaid Program: Nurse-Midwife Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would expand coverage of nurse-midwife services under the Medicaid program by including coverage for those services that nurse-midwives perform outside the maternity cycle as allowed by State law and regulation. This proposal would conform Medicaid regulations to provisions of the Omnibus Budget Reconciliation Act of 1993.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 16, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–085–P, P.O. Box 7518, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–085–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Lauren Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Wardwell, (410) 966–5659.

SUPPLEMENTARY INFORMATION:

I. Background

A. Scope of Covered Services

Title XIX of the Social Security Act (the Act) authorizes States to establish Medicaid programs to provide medical assistance to needy individuals. Section 1902(a)(10) of the Act describes the two broad classifications of most individuals to whom medical assistance may be provided: the categorically needy (section 1902(a)(10)(A)) and the medically needy (section 1902(a)(10)(C)). Section 1905 of the Act defines medical assistance as payment of part or all of the costs of specified services to eligible individuals.

Section 1905(a)(17) of the Act includes, as a service for which medical assistance may be available, nurse-midwife services which the nurse-midwife is authorized to practice under State law or regulation. Nurse-midwife services are mandatory for the categorically needy under section 1902(a)(10)(A) of the Act. At the State's option, a State may also provide these services to the medically needy.

Prior to October 1, 1993, section 1905(a)(17) of the Act (through a cross-reference to section 1861gg of the Act) and implementing regulations at 42 CFR 440.165 required that a nurse-midwife must be a registered nurse who (1) is either certified as a nurse-midwife by an organization recognized by the Secretary or has completed a program of study and clinical experience that has been approved by the Secretary and (2) performs services in the care of mothers and babies throughout the maternity cycle. Section 1905(a)(17) (again, through a cross-reference to section 1861gg of the Act) also specifies that the services that a nurse-midwife is legally authorized to perform under State law and regulations must be covered whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

Section 13605 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, amended section 1905(a)(17) of the Act to remove the limitation that a nurse-midwife can provide services only during the maternity cycle.

B. Current Regulatory Provisions

There are four existing sections of Medicaid regulations in the CFR which are affected by this legislation. Section 440.165 of the existing Medicaid regulations defines nurse-midwife services as a distinct service category and lists the requirements for coverage

of services under that category. Three other existing sections, §§ 440.10, 440.20, and 440.90, contain cross-references to § 440.165 to indicate that nurse-midwife services may be performed in specified settings. Sections 440.10 and 440.20 provide that nurse-midwife services may be performed in inpatient and outpatient hospital settings. Section 440.90 provides that nurse-midwife services may be performed in clinic settings. These Federal regulations allow State laws or regulations governing nurse-midwife services, the policies of hospitals regarding the granting of staff privileges, and the judgments of health professionals to govern the need for supervision of nurse-midwife services in inpatient and outpatient settings.

II. Provisions of the Proposed Regulations

We are proposing the following changes to the Medicaid regulations based on the provisions of OBRA '93 and our reexamination of existing regulations.

- We would amend § 440.165 by removing paragraphs (a)(1) and (c) to delete the definition of, and all other references to, the maternity cycle in accordance with the OBRA '93 amendment that provides for the coverage of nurse-midwife services whether or not the services are performed in the management of care of mothers and babies throughout the maternity cycle. Removal of this limitation will allow nurse-midwives to perform any service that is allowed under State law or regulation.
- We would remove the exception cross-references to § 440.165 contained in §§ 440.10, 440.20, and 440.90. Because nurse-midwife services are defined as a distinct service category under § 440.165, we have determined that the inclusion of cross-references to the description of covered nurse-midwife services within the descriptions of other covered Medicaid services is more confusing than clarifying.

III. Impact Statement

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all providers and suppliers of health care and services for Medicaid recipients to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We have determined, and the Secretary certifies, that these proposed regulations would not have a significant impact on a substantial number of small entities and would not have a significant impact on the operation of a substantial number of small rural hospitals. Therefore we have not prepared a regulatory flexibility analysis or an analysis of the effect on small rural hospitals.

For the most part, cost savings as a result of these proposed regulations will be incurred regardless of the promulgation of these regulations. The provisions of this rule merely conform the regulations to the legislative provisions of OBRA '93.

In accordance with the provisions of Executive Order 12866, this proposed rule has not been reviewed by the Office of Management and Budget.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of the final rule.

List of Subjects

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR part 440 would be amended as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.10 the introductory text of paragraph (a) is republished, paragraph (a)(2) is revised, the text of paragraph (a)(3) introductory text is republished, and paragraph (a)(3)(iii) is revised to read as follows:

§ 440.10 Inpatient hospital services, other than services in an institution for mental diseases.

(a) *Inpatient hospital services* means services that—* * *

(2) Are furnished under the direction of a physician or dentist; and

(3) Are furnished in an institution that—* * *

(iii) Meets the requirements for participation in Medicare as a hospital; and

* * * * *

3. In section 440.20 the introductory text to paragraph (a) is republished, paragraph (a)(2) is revised, the text of paragraph (a)(3) introductory text is republished and paragraph (a)(3)(ii) is revised to read as follows:

§ 440.20 Outpatient hospital services and rural health clinic services.

(a) *Outpatient hospital services* means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—* * *

(2) Are furnished by or under the direction of a physician or dentist; and

* * * * *

(3) Are furnished by an institution that—* * *

(ii) Meets the requirements for participation in Medicare as a hospital; and

* * * * *

4. Section 440.90 is amended by removing paragraph (c).

5. In § 440.165, paragraph (a) is revised and paragraph (c) is removed to read as follows:

§ 440.165 Nurse-midwife service

(a) *Nurse-midwife services* means services that—

(1) Are furnished by a nurse-midwife within the scope of practice authorized by State law or regulation, and in the case of inpatient or outpatient hospital services or clinic services, are furnished by or under the direction of a nurse-midwife to the extent permitted by the facility; and

(2) Unless required by State law or regulation or a facility, are paid without regard to whether the nurse-midwife is

under the supervision of, or associated with a physician or other health care provider. (See § 441.21 of this chapter for provisions on independent provider agreements for nurse-midwives.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 4, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 6, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–17220 Filed 7–15–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7097]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	
Harrisburg (Village), Franklin County	
Big Darby Creek:	
At downstream corporate limits	*788
At upstream corporate limits	*789
Maps available for inspection at the Village Hall, 1092 High Street, Harrisburg, Ohio.	
Send comments to The Honorable Timothy A. Belt, Mayor of the Village of Harrisburg, Franklin County, P.O. Box 17, Harrisburg, Ohio 43126.	
Milford Center (Village), Union County	
Big Darby Creek:	
Approximately .3 mile downstream of U.S. Route 36	*977
At upstream corporate limit	*985
Maps available for inspection at the Town Hall, 12 Railroad Street, Milford Center, Ohio.	
Send comments to The Honorable Robert G. Mitchell, Mayor of the Village of Milford Center, Union County, 12 Railroad Street, Milford Center, Ohio 43045.	
Richwood (Village), Union County	
Ash Run:	
At confluence with Fulton Creek	*941
At Race Road	*943
Fulton Creek:	
At confluence of Ash Road	*941
Approximately 1,050 feet upstream of confluence of Ash Run	*941
Maps available for inspection at Village Hall, 101 South Franklin Street, Richwood, Ohio.	
Send comments to The Honorable Jeff Holtschulte, Mayor of the Village of Richwood, Union County, 101 South Franklin Street, Richwood, Ohio 43344.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Altamonte Springs (City), Seminole County.	Lake Harriet	Entire shoreline within community	None	*57

Maps available for inspection at the Altamonte Springs Public Library, 281 North Maitland, Altamonte Springs, Florida.

Send comments to Mr. Phillip D. Penland, Altamonte Springs City Manager, Seminole County, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.

Florida	Casselberry (City) Seminole County.	Tributary to Howell Lake	Upstream corporate limits	None	*76
			At downstream side of State Route 436	None	*57

Maps available for inspection at City Hall, 95 Triplet Lake Drive, Casselberry, Florida.

Send comments to The Honorable Joseph Hillebrandt, Mayor of the City of Casselberry, Seminole County, 95 Triplet Lake Drive, Casselberry, Florida 32707.

Florida	Lake Mary (City) Seminole County.	Soldier Creek	Backwater area between CSX Transportation.	None	*42
			AH Zone: Shallow flooding area at Lake Emma Road approximately 1.6 miles north of Longwood Markham Road.	None	*49
			AH Zone: Shallow flooding area at Lake Emma Road approximately 2.3 miles north of Longwood Markham Road.	None	*45
		Twin Lakes	Approximately 0.5 mile east of intersection of Interstate Route 4.	None	*52

Maps available for inspection at the City Engineering Department, 100 North Country Club Road, Lake Mary, Florida.

Send comments to Mr. John C. Litton, Lake Mary City Manager, Seminole County, P.O. Box 950700, Lake Mary, Florida 32795–0700.

Florida	Longwood (City) Seminole County.	Soldier Creek	Approximately 1,200 feet downstream of Longwood Mills Raod.	None	*54
			At upstream side of 14th Avenue	None	*60
		Unnamed Ponding Area	South of Longwood Mills Road approximately 1,300 feet west of Longwood Lake Mary Road.	None	*58

Maps available for inspection at the Building and Planning Department, 174 West Church Avenue, Longwood, Florida.

Send comments to Mr. W. Shelton Smith, Longwood City Administrator, Seminole County, 175 West Warren Avenue, Longwood, Florida. 32750

Florida	Oviedo (City) Seminole County.	Little Econlockhatchee River.	Approximately 0.6 mile upstream of Lockwood Road.	None	*32
			Approximately 1.5 mile upstream of Lockwood Road.	None	*33
		Bath Lake	Entire shoreline within community	None	*68

Maps available for inspection at the Engineering Department, 400 Alexandria Boulevard, Oviedo, Florida.

Send comments to Mr. V. Eugene Williford, III, Oviedo City Manager, Seminole County, 400 Alexandria Boulevard, Oviedo, Florida 32765.

Florida	Sanford (City) Seminole County.	Six Mile Creek Tributary	Approximately 0.4 mile upstream of State Route S–427.	None	*31
			At Airport Boulevard	None	*34
		Lake Monroe	Entire shoreline	*10	*9

Maps available for inspection at City Hall, 300 North Park Avenue, Sanford, Florida.

Send comments to Mr. William A. Simmons, Sanford City Manager, Seminole County, P.O. Box 1788, Sanford, Florida 32772–1788.

Florida	Winter Springs (City) Seminole County.	Boat Lake	Entire shoreline within community	None	*55

Maps available for inspection at the City Engineering Department, 1126 East State Route 434, Winter Springs, Florida.

Send comments to Mr. John Govoruhk, Winter Springs City Manager, Seminole County, 1126 East State Route 434, Winter Springs, Florida 32708.

Georgia	Hall County (Unincorporated Areas).	Flat Creek	Upstream side of State Route 13	None	*1,166
			Approximately 100 feet upstream of Southern Railway.	None	*1,179
		Limestone Creek	At the confluence with Chattahoochee River.	None	*1,077
			At upstream side of second crossing of State Route 13.	None	*1,126

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Limestone Creek	At confluence with Limestone Creek	None	*1,089
		Tributary	Approximately 1,000 feet upstream of confluence with Limestone Creek.	None	*1,091

Maps available for inspection at the Hall County Engineering Department, 300 Green Street, Gainesville, Georgia.

Send comments to Ms. Brenda Branch, Chairman of the Hall County Commissioners, Drawer 1435, Gainesville, Georgia 30503.

Georgia	Oconee County (Unincorporated Areas).	Apalachee River	Approximately 3 miles downstream of State Route 186 bridge.	None	*574
			Approximately 250 feet upstream of westbound span of U.S. Highway 78 bridge.	None	*692

Maps available for inspection at the Planning and Inspections Building, 23 Water Street, Watkinsville, Georgia.

Send comments to Mr. Wendell T. Dawson, Chairman of the Oconee County Board of Commissioners, P.O. Box 145, Watkinsville, Georgia 30677.

Georgia	Walton County (Unincorporated Areas).	Apalachee River	At State Route 186 bridge	None	*624
			Approximately 125 feet upstream of the westbound U.S. Highway 78 bridge.	None	*692

Maps available for inspection at the Code Enforcement Building, Courthouse Annex 1, Court Street, Monroe, Georgia.

Send comments to Mr. Rick Holder, Chairman of the Walton County Board of Commissioners, 132 East Spring Street, P.O. Box 585, Monroe, Georgia 30655.

Indiana	Allen County (Unincorporated Areas).	Maumee River	Approximately 3.7 miles downstream of U.S. Route 24.	*751	*750
			Approximately 1.1 miles downstream of U.S. Route 24.	*753	*752
		St. Joseph River	Approximately 1,600 feet upstream of confluence of Becketts Run.	*769	*768
			Approximately 0.7 mile upstream of confluence of Becketts Run.	*769	*768

Maps available for inspection at the City/County Building, Room 200, One East Main Street, Fort Wayne, Indiana.

Send comments to Mr. Jack R. Worthman, President of the Allen County Board of Commissioners, City/County Building, Room 200, One East Main Street, Fort Wayne, Indiana 46802.

Michigan	Bangor Charter (Township), Bay County.	Kawkawlin River	At confluence with Saginaw Bay	*585	*586
			Approximately 125 feet upstream of Euclid Road.	*585	*586
		Saginaw River	At confluence with Saginaw Bay	*585	*586
			At upstream corporate limits	*585	*592
		Saginaw Bay	Shoreline along Donahue Road	*585	*592
			Shoreline along Bay Shore Road	*585	*589
			Remaining shoreline of Bangor Charter Township.	*585	*586

Maps available for inspection at the Bangor Charter Township Hall, 180 State Park Drive, Bay City, Michigan.

Send comments to Mr. C. Joseph Carland, Supervisor of the Bangor Charter Township, Bay County, 180 State Park Drive, Bay City, Michigan 48706.

Michigan	Bay City (City), Bay County.	Saginaw River	Downstream of corporate limits	*585	*586
			Approximately 0.4 mile downstream of the upstream corporate limits.	*585	*586

Maps available for inspection at the Code Enforcement Office, 310 Washington Avenue, Bay City, Michigan.

Send comments to The Honorable Michael Buda, Mayor of the City of Bay City, Bay County, 301 Washington Avenue, City Hall, Bay City, Michigan 48708.

Michigan	Essexville (City), Bay County.	Saginaw River	At the downstream corporate limits	*585	*586
			Approximately 380 feet upstream of Detroit & Mackinaw Railroad.	*585	*586

Maps available for inspection at the Essexville City Hall, 1107 Woodside Avenue, Essexville, Michigan.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to The Honorable John Freel, Mayor of the City of Essexville, Bay County, Essexville City Hall, 1107 Woodside Avenue, Essexville, Michigan 48732.					
Michigan	Frankenlust (Township), Bay County.	Saginaw River	At the downstream corporate limits (Hotchkiss Road).	*585	*586
			At the upstream corporate limits (the Bay/Saginaw County Boundary).	*586	*587
		Dutch Creek	At the confluence with Saginaw River West Channel.	*585	*586
			At Hotchkiss Road	*585	*586
		Squaconning Creek	At confluence with Dutch Creek	*585	*586
			At Northbound Interstate Highway 75	*585	*586
Maps available for inspection at the Frankenlust Township Hall, 2401 Delta Road, Bay City, Michigan.					
Send comments to Ms. Hilda M. Dijak, Supervisor of the Township of Frankenlust, Bay County, Frankenlust Township Hall, 2401 Delta Road, Bay City, Michigan 48706.					
Michigan	Hampton (Township), Bay County.	Saginaw Bay	Entire shoreline within community	*585	*586
Maps available for inspection at the Hampton Township Hall, 801 West Center, Essexville, Michigan.					
Send comments to Ms. Margaret Van Sumeren, Supervisor of the Township of Hampton, Bay County, P.O. Box 178, Bay City, Michigan 48707.					
Michigan	Merritt (Township), Bay County.	Saginaw Bay	Entire shoreline within community	*585	*586
Maps available for inspection at the Merritt Township Hall, 48 East Munger Road, Munger, Michigan.					
Send comments to Mr. Donald A. Meyer, Supervisor of the Township of Merritt, Bay County, 48 East Munger Road, P.O. Box 126, Munger, Michigan 48747.					
Michigan	Portsmouth (Township), Bay County.	Saginaw Bay	Approximately 1.7 miles downstream of the downstream corporate limits (near McGraw Avenue).	*585	*586
			At the upstream corporate limits	*586	*587
Maps available for inspection at the Portsmouth Township Hall, 1711 West Cass Avenue, Bay City, Michigan.					
Send comments to Mr. Robert J. Pawlak, Supervisor of the Township of Portsmouth, Bay County, Portsmouth Township Hall, 1711 West Cass Avenue, Bay City, Michigan 48708.					
Mississippi	Coahoma (County) Unincorporated Areas.	Lake Bayou	At confluence with Oxbow Bayou	None	*159
			Approximately 1 mile upstream of the confluence with Oxbow Bayou.	None	*159
		Oxbow Bayou	Confluence with Cassidy Bayou	None	*158
			Approximately 1–2 miles upstream of Laney Road.	None	*161
Maps available for inspection at the Road Department, 17290 Highway 61 North, Clarksdale, Mississippi.					
Send comments to Mr. Jim Humber, President of the Coahoma County Board of Supervisors, P.O. Box 98, Clarksdale, Mississippi 38614.					
New Jersey	Clinton (Town) Hunterdon County.	Beaver Brook	Upstream of I–78	None	*205
			Upstream corporate limits	None	*207
Maps available for inspection at Town Hall, 43 Leigh Street, Clinton, New Jersey.					
Send comments to The Honorable Allie McGaheran, Mayor of the Town of Clinton, Hunterdon County, P.O. Box 5194, Clinton, New Jersey 08809.					
North Carolina	Bertie (County) Unincorporated Areas.	Roanoke River	At mouth of Roanoke River	*5	*8
			At Washington and Marlin County boundary.	None	*9
Maps available for inspection at the Bertie County Building, Inspectors Department, County Courthouse, Windsor, North Carolina.					
Send comments to Mr. John E. Whitehurst, County Manager, P.O. Box 530, Windsor, North Carolina 27983.					
North Carolina	Craven (County) Unincorporated Areas.	Mills Branch	Approximately 2,500 feet downstream of Wildlife Road–SR 1431.	*10	*9
			Approxmately 1,100 feet upstream of U.S. Highway 17.	None	*17
Maps available for inspection at Craven County Planning Department, 406 Craven Street, New Bern, North Carolina.					
Send comments to Mr. Earl Wright, Chairman of the Craven County Board of Commissioners, 406 Craven Street, New Bern, North Carolina 28560.					

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Dare County Unincorporated Areas.	Atlantic Ocean	Approximately 100 feet east of intersection of Balm Trail on North Balm Trail.	*18	#1
			At Northern terminus of Martin Lane	*7	#1
		Currituck Sound	At intersection of Balm Trail and North Balm Trail.	#1	*7
		Atlantic Ocean	Approximately 400 feet east of intersection of unnamed access road to Station Bay Drive and State Route 1200.	#1	*18

Maps available for inspection at the Dare County Administration Building, 211 Budleigh Street, 3rd Floor, Manteo, North Carolina.
Send comments to Mr. Terry Wheeler, Dare County Manager, P.O. Box 1000, Manteo, North Carolina 27954.

North Carolina	Plymouth (Town) ...	Roanoke River	At downstream extraterritorial corporate limit.	None	*8
	Washington County		At upstream corporate limits	None	*8
		Welch Creek	At downstream corporate limits	None	*9
			At upstream extraterritorial limits	*7	*9

Maps available for inspection at City Hall, 132 East Water, Plymouth, North Carolina.
Send comments to Ms. Wanda Jones, Plymouth Town Manager, Washington County, P.O. Box 806, Plymouth, North Carolina 27962.

Ohio	Bexley (City)	Alum Creek	Approximately 1,000 feet upstream of downstream corporate limits.	*748	*749
	Franklin County		Approximately 1,250 feet downstream of CONRAIL.	*757	*756

Maps available for inspection at City Hall, 2242 East Main Street, Bexley, Ohio.
Send comments to The Honorable David H. Madison, Mayor of the City of Bexley, Franklin County, 2242 East Main Street, Bexley, Ohio 43209.

Ohio	Brice (Village), ...	Powell Ditch	Approximately 600 feet downstream of Refugee Road.	None	*776
	Franklin County		Approximately 800 feet upstream of Refugee Road.	None	*781

Maps available for inspection at Village Municipal Building, 5990 Columbus Street, Brice, Ohio.
Send comments to The Honorable Cathy Compton, Mayor of the Village of Brice, Franklin County, 5990 Columbus Street, Brice, Ohio 43109.

Ohio	Canal Winchester (Village),.	Georges Creek	Approximately 250 feet downstream of U.S. Route 33.	None	*752
	Franklin County		At downstream side of Winchester Pike ...	None	*757

Maps available for inspection at Village Hall, 10 North High Street, Canal Winchester, Ohio.
Send comments to The Honorable Marsha Hall, Mayor of the Village of Canal Winchester, Franklin County, P.O. Box 226, Canal Winchester, Ohio 43110.

Ohio	Dublin (City), Franklin County.	South Fork Indian Run	Approximately 1,400 feet upstream of Avery Road.	None	*914
			At upstream Dublin corporate limits	None	*940
		Cosgray Ditch	Approximately 425 feet upstream of confluence with Scioto River.	None	*775
			Approximately 2,200 feet upstream of Wilcox Road.	None	*921
		Cramer Ditch	At upstream side of Dublin Road	None	*824
			Approximately 2,500 feet upstream of Wilcox Road.	None	*920
		Tri-County Ditch	At confluence with South Ford Indian Run	None	*914
			At county boundary	None	*918

Maps available at the Planning and Zoning Building, 6665 Coffman Road, Dublin, Ohio.
Send comments to Mr. Tim Hansley, Dublin City Manager, Franklin County, 6665 Coffman Road, Dublin, Ohio 43017.

Ohio	Gahanna (City), Franklin County.	Utzinger Ditch	At downstream corporate limits (downstream of CONRAIL).	None	*893

Maps available for inspection at the City Hall, 200 S. Hamilton Road, Gahanna, Ohio.
Send comments to The Honorable James F. McGregor, Mayor of the City of Gahanna, Franklin County, 200 S. Hamilton Road, Gahanna, Ohio 43230.

Ohio	Groveport (Village) Franklin County.	Little Walnut Creek	Approximately 0.47 mile upstream of Hayes Road.	None	*730
			Approximately 250 feet east of Crescent Drive and Delane Road intersection.	None	*734

Maps available for inspection at the Municipal Building, 605 Cherry Street, Groveport, Ohio.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to The Honorable J. Harold Carley, Mayor of the Village of Groveport, Franklin County, 605 Cherry Street, Groveport, Ohio 43124.					
Ohio	Hillard (City) Franklin County.	Hayden Run	At upstream side of Avery Road	*916	*909
			Approximately 900 feet upstream of Avery Road.	*916	*910
		Molcomb Ditch	Approximately 225 feet upstream of confluence with Tudor Ditch.	None	*821
			Approximately 175 feet downstream of Lyman Drive.	*875	*874
		Tudor Ditch	Approximately 675 feet downstream of Fishinger Boulevard.	None	*849
			Approximately 140 feet downstream of Parkway Lane.	*872	*873
		Clover Groff	At downstream corporate limits	*938	*936
			Approximately 0.66 mile downstream of Elliot Road.	*942	*941
Maps available for inspection at the City Hall, 3800 Municipal Way, Hilliard, Ohio. Send comments to The Honorable Roger Reynolds, Mayor of the City of Hilliard, Franklin County, 3800 Municipal Way, Hilliard, Ohio 43026.					
Ohio	Marble Cliff (Village) Franklin County.	Scioto River	Approximately 1,950 feet downstream of Fifth Avenue.	None	*737
			At CONRAIL	None	*740
Maps available for inspection at the Village Hall, 1600 Fernwood Avenue, Columbus, Ohio (please contact Joan Klitch, Village Clerk at (614) 486–6993 to arrange for viewing). Send comments to The Honorable Paul J. Falco, Mayor of the Village of Marble Cliff, Franklin County, 1600 Fernwood Avenue, Columbus, Ohio 43212.					
Ohio	Riverlea (Village), Franklin County.	Olentangy River	At downstream corporate limits	None	*746
			At upstream corporate limits	None	*749
Maps available for inspection at the home of the Clerk/Treasurer, 125 West Riverglen, Worthington, Ohio. Send comments to The Honorable Patricia Anderson, Mayor of the Village of Riverlea, Franklin County, P.O. Box 191, Worthington, Ohio 43085.					
Ohio	Upper Arlington (City), Franklin County.	Turkey Run	At downstream corporate limits of Upper Arlington.	None	*781
			Approximately 1,600 feet upstream of downstream corporate limits for Upper Arlington.	None	*794
Maps available for inspection at the City Hall, 3600 Tremont Road, Upper Arlington, Ohio. Send comments to The Honorable John R. Allen, Mayor of the City of Upper Arlington, Franklin County, 3600 Tremont Road, Upper Arlington, Ohio 43221.					
Ohio	Urbancrest (Village), Franklin County.	Daumgardner Ditch	Approximately 100 feet downstream of CSX Transportation.	None	*824
			At upstream corporate limits	None	*849
Maps available for inspection at the City Hall, 3492 First Avenue, Urbancrest, Ohio. Send comments to The Honorable Vaughn E. Hairston, Mayor of the Village of Urbancrest, Franklin County, 3492 First Avenue, Urbancrest, Ohio 43123.					
Ohio	Valleyview (Village) Franklin County.	Dry Run	At downstream Village of Valleyview corporate limits.	*770	*769
			At upstream Village of Valleyview corporate limits.	*781	*779
		South Fork Dry Run	Approximately 600 feet upstream of confluence with Dry Run.	*771	*772
			At upstream Village of Valleyview corporate limits.	*787	*786
Maps available for inspection at the Village Hall, 432 N. Richardson Avenue, Columbus, Ohio. Send comments to The Honorable Michael Russolillo, Mayor of the Village of Valleyview, Franklin County, 432 N. Richardson Avenue, Columbus, Ohio 43204–3472.					

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Briar Creek (Borough) Columbia County.	Briar Creek	At the upstream side of CONRAIL	*495	*492
			Approximately 1,170 feet upstream of Rittenhouse Road Bridge.	None	*512
		East Branch Briar Creek ...	At the confluence with Briar Creek	*501	*502
			Approximately 0.4 mile upstream of State Route 93.	*510	*511

Maps available for inspection at Borough Hall, RR #3, Berwick, Pennsylvania and at 2606 West Front Street, Berwick, Pennsylvania.

Send comments to The Honorable Oscar Welsh, Mayor of the Borough of Briar Creek, Columbia County, 2606 West Front Street, Berwick, Pennsylvania 18603.

Pennsylvania	Juniata (Township), Huntingdon County.	Juniata River	At downstream corporate limits	*603	*602
			At upstream corporate limits	*614	*608
		Raystown Branch Juniata River.	From the confluence with Juniata River to the T–428.	*609	*606

Maps available for inspection at Ms. Alice Kocik, Secretary/Treasurer's residence, R.D. 1, Box 378, Huntingdon, Pennsylvania.

Send comments to Mr. Dean Parks, Chairman of the Township of Juniata Board of Supervisors, Huntingdon County, P.O. Box 141, R.D. 3, Huntingdon, Pennsylvania 16652.

Pennsylvania	St. Clair (Borough), Schuylkill County.	Mill Creek	Approximately 590 feet downstream of Twing Street.	*700	*691
.....	Schuylkill County ...		At upstream corporate limits	*810	*806

Maps available for inspection at the Borough Hall, 16 South Third Street, St. Clair, Pennsylvania.

Send comments to The Honorable Richard E. Tomko, Mayor of the Borough of St. Clair, Schuylkill County, 16 South Third Street, St. Clair, Pennsylvania 17970.

Pennsylvania	Upper Chichester (Township), Delaware County.	Spring Run	At confluence with Naaman Creek	None	*89
			Approximately 120 feet upstream of West Colonial Drive.	None	*111
		Bezor's Run	At confluence with Marcus Hook Creek ...	None	*84
			Approximately 0.9 mile upstream of Bethel Road.	None	*164

Maps available for inspection at the Town Hall, Furey Road, Boothwyn, Pennsylvania.

Send comments to Mr. Stephen E. Barrar, President of the Township of Upper Chichester Board of Commissioners, Delaware County, P.O. Box 2187, Boothwyn, Pennsylvania 19061.

Pennsylvania	Upper Dublin (Township) Montgomery County.	Pine Run	At the confluence with Sandy Run	None	*172
			Approximately 250 feet upstream of Dresher Town Road Bridge.	None	*232

Maps available for inspection at Code Enforcement Office/Upper Dublin Township Building, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania

Send comments to Mr. Richard Rulon, President of Upper Dublin Township, Montgomery County, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania 19034

Tennessee	Ripley (Town) Lauderdale County.	Cane Creek	Upstream side of State Route 19 Bridge .	*323	*322
			Approximately 260 feet downstream of Illinois Central Gulf Railroad Bridge.	*334	*335

Maps available for inspection at City Hall, 110 South Washington Street, Ripley, Tennessee.

Send comments to The Honorable Richard Douglas, Mayor of the Town of Ripley, Lauderdale County, 110 South Washington Street, Ripley, Tennessee 38063.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 11, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–17341 Filed 7–15–94; 8:45 am]

BILLING CODE 6718–03–P

Notices

Federal Register
Vol. 59, No. 136
Monday, July 18, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-4320-02-24-1A]

Federal Livestock Grazing Fee Incentive Program Advisory Committee; Meeting

AGENCY: Forest Service, USDA; and Bureau of Land Management, USDI.

ACTION: Notice of meeting.

SUMMARY: The Federal Livestock Grazing Fee Incentive Program Advisory Committee will meet at the Silver King, 1485 Empire Avenue, Park City, Utah 84060, in the Silver Room, beginning on Tuesday, August 2, 1994, and ending on Thursday, August 4, 1994. The meeting will convene each day at 8:00 a.m. and dismiss at approximately 5:00 p.m. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Lee Otteni, Strategic Planner, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240–1050, (202) 208–6932; or Jerry McCormick, Range Management Staff, United States Forest Service, Auditors Building, 201 14th Street, SW., Washington, DC 20250, 9202) 205–1746.

SUPPLEMENTARY INFORMATION: The formation of the Federal Livestock Grazing Fee Incentive Program Advisory Committee was announced in the **Federal Register**, July 12, 1994, (59 FR 35680). The committee was formed to provide advice to the Bureau of Land Management and the Forest Service on the types of activities associated with livestock grazing that would provide incentives to encourage the proper stewardship of rangeland resources; the criteria by which eligibility for an incentive-based grazing fee should be determined; and implementation options the agencies might consider.

The committee will consider written statements from the public. Written comments will be accepted at the meeting or may be mailed to the Federal Livestock Grazing Incentive Fee Program Advisory Committee, Bureau of Land Management, Rangeland Resources (220), Room 201–L, 1849 C Street NW., Washington, DC 20240–1050. All comments must be received by August 1, 1994.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Lee Otteni, Bureau of Land Management, at least five days prior to the meeting.

Mike Dombeck,

Acting Director, Bureau of Land Management.

David G. Unger,

Associate Chief, Forest Service.

[FR Doc. 94–17474 Filed 7–15–94; 8:45 am]

BILLING CODE 4310–84–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 9:00 a.m. until 9:00 p.m. on Wednesday, August 3, 1994, at the Holiday Inn South, 6820 South Cedar Street, Lansing, Michigan 48911, and Thursday, August 4, 1994, from 9:00 a.m. to 5:00 p.m. at the Holiday Inn East, 3750 Washtenaw, Ann Arbor, Michigan 48104. The purpose of these meetings are to examine whether there is disparate discipline of minorities in the Michigan secondary schools and the government enforcement of equal education opportunity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Janice G. Frazier, 313–259–8180, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 5, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–17335 Filed 7–15–94; 8:45 am]

BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Notice Extending the Period for Public Comments on the Integration of the Textiles and Clothing Sector into the GATT 1994

July 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Extend Period for Public Comment

FOR FURTHER INFORMATION CONTACT: Keith Daly, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 19, 1994 notice was published in the **Federal Register** (see **Federal Register** notice 59 FR 26212) by the Chairman of the Committee for the Implementation of Textile Agreements requesting public comments on Paragraph 6 of Article 2 of the Agreement on Textiles and Clothing. This Agreement provides for the eventual integration of the textiles and clothing sector in the General Agreement on Tariffs and Trade (GATT) 1994.

The request for interested parties to submit comments was made in anticipation of the passing of the terms of the Agreement by Congress, and even though the final process for determining which products are to be integrated as yet has not been decided upon, **Federal Register** notice 59 FR 26212 stated that

comments must be received on or before July 18, 1994 (60 days from date of publication).

The Chairman is extending the public comment period by 30 days. Comments must be received on or before August 17, 1994 (90 days from the date **Federal Register** notice 59 FR 26212 was published). Comments may be mailed to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC 20230.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17590 Filed 7–15–94; 8:45 am]

BILLING CODE 3510–DR–F

THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review

AGENCY: The Corporation for National and Community Service (CNCS).

SUMMARY: This notice provides information about an information proposal by CNSC, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNCS will consider comments on the proposed collection of information and record keeping requirements received on or before August 2, 1994. Copies of the proposed forms and supporting documents may be obtained by contacting CNCS.

ADDRESSES: Send comments to both:

Gary Kowalczyk, Chief Financial Officer, 1100 Vermont Avenue, NW., Washington, DC 20525

Steve Semenuk, Desk Officer for CNCS, Office of Management and Budget, 3002 New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk (202) 606–5000 Ex. 340.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service issuing proposal

Title of Forms: Education Award Voucher and Payment Request Form.

Need and Use: The National and Community Service Act of 1993 requires the Corporation for National and Community Service to provide education awards to individuals who complete a term of service in an approved national service position. By providing awards to individuals, the Trust assists in expanding educational opportunity and rewards individual responsibility.

Type of Request: Submission of a new collection.

Respondent's Obligation to Reply: Required to obtain a benefit.

Frequency of Collection: One time only.

Estimated Number of Responses: 40,000.

Average Burden Hours Per Response: 2.5.

Estimated Annual Reporting or Disclosure Burden: 1,867 Hours.

Regulatory Authority: 42. U.S.C. 5066 (a).

Dated: July 13, 1994.

G. Gary Kowalczyk,

Acting Chief Financial Officer.

[FR Doc. 94–17361 Filed 7–15–94; 8:45 am]

BILLING CODE 6050–28–M

information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review

AGENCY: The Corporation for National and Community Service (CNCS).

SUMMARY: This notice provides information about an information proposal by CNCS, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNCS will consider comments on the proposed collection of information and record keeping requirements received on or before August 2, 1994. Copies of the proposed forms and supporting documents may be obtained by contacting CNCS.

ADDRESSES: Send comments to both:

David Rymph, Study Coordinator, Corporation for National and Community Service, 1100 Vermont Ave., NW., Washington, DC 20525

Steve Semenuk, Desk Officer for CNCS, Office of Management and Budget, 3002 New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Bill Millsap (703) 642–5561.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service Issuing Proposal: Evaluation and Policy Coordination.

Title of Forms: Participant Exit Form.

Need and Use: The National and Community Service Trust Act of 1993 (PL 103–82) requires the Corporation for National and Community Service to evaluate its programs on a regular basis. This information is required for program management, planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: One time only.

Estimated Number of Responses: 5436.

Average Burden Hours Per Response: 0.15 Hours.

Estimated Annual Reporting or Disclosure Burden: 1359 Hours.

Regulatory Authority: 42 U.S.C. 5056 (a).

Dated: July 1, 1994.

David Rymph,

Director, Evaluation and Policy Coordination Unit.

[FR Doc. 94–17360 Filed 7–15–94; 8: 45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Department of the Army

Closed Meeting—Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of the Committee: Armed Forces Epidemiological Board, Subcommittee on Disease Control.

Date of Meeting: 3 August 1994.

Time: 0900–1600.

Place: Skyline Six, Room 691–C, Falls Church, Virginia.

Proposed Agenda: 3 August 1994—Review of Vaccine Program.

This meeting will be closed to the public in accordance with section 552b(c) of Title 5 U.S. Code, specifically subparagraph (1) thereof and Title 5 U.S. Code, appendix 1, subsection 10(d). Should additional information be desired, please contact the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258, telephone: (703) 756–8012.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–17355 Filed 7–15–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Announcement of Public Scoping Workshops, Storage and Disposition of Weapons-Usable Fissile Materials;Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Announcement of public scoping workshops, programmatic environmental impact statement for long-term storage and disposition of weapons-usable fissile materials.

SUMMARY: The Department of Energy (DOE) will hold twelve public scoping workshops during August and September 1994 to enable the public to provide comments on the proposed scope of the Programmatic Environmental Impact Statement (PEIS) being prepared for the Storage and Disposition of Weapons-Usable Fissile Materials. Comments received by DOE will be considered in determining the issues to be addressed in the Storage and Disposition PEIS. The Notice of Intent to prepare a PEIS for Storage and Disposition of Weapons-Usable Fissile Materials was issued by DOE on June 21, 1994 (59FR31985).

Through this notice, DOE invites comments on the scope of the PEIS, announces the locations, dates and times for the public workshops, and provides the format it will follow for conducting the workshops.

DATES: The dates on which each of the public scoping workshops will be held are given below. Agencies, organizations, and the general public are invited to present oral comments pertinent to preparation of the PEIS at the public scoping workshops. DOE will also accept written material at the workshops. Written and oral comments will be given equal weight in the scoping process. To ensure consideration, written comments, not submitted at the public scoping workshops, must be postmarked by October 17, 1994. Late comments will be considered to the extent practicable.

ADDRESSES: Addresses for the public meeting locations are provided below.

Written comments on the scope of the PEIS should be sent to: U.S. Department of Energy, c/o Oak Ridge Institute for Science & Education, P.O. Box 117, Oak Ridge, TN 37831–0117, Attn: Robert Menard, EESD.

FOR FURTHER INFORMATION: Requests for information on the DOE Storage and Disposition of Weapons-Usable Fissile Materials Project, requests for copies of the NAS Report, the Implementation Plan (when available), and requests for copies of the PEIS or PEIS Executive Summary (when available) may also be requested from the above address.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy,1000 Independence Avenue, SW., Washington, DC 20585,(202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: *Invitation to comment.* DOE invites comments on the scope of this PEIS from all interested parties, including affected Federal, State, and local agencies and American Indian tribes. DOE solicits comments regarding the scope of the PEIS analysis, suggestions on significant environmental issues, alternatives to be included in the PEIS, and other matters of content.

Public scoping workshops. Rather than holding a formal hearing for the PEIS scoping meetings, an interactive workshop forum will be used. This workshop format enables the public to interact directly and exchange information with DOE representatives from the project. The program for each scoping workshop consists of a short plenary session followed by two small group discussions and ends with questions and answers or comments from the public. The two small group discussion sessions will be divided topically and reflect the proposed scope of the PEIS as presented in the Notice of Intent. The small group discussion topics will be storage and disposition. The program will usually be repeated three times during the day: morning, afternoon, and evening. The evening session will also include closing remarks by DOE officials. This approach is intended to provide flexibility for individuals wishing to attend the meetings.

DOE will hold twelve public scoping workshops to provide information and discuss and receive comments on the scope of the PEIS during August, September and the first week of October 1994, both regionally and in the vicinity of the sites which may be affected by potential decisions and their implementation. A national scoping workshop will be held in Washington, D.C. Most workshops will be held from 8:30 a.m. to 9:30 p.m., with breaks from 12:00 p.m. to 1:00 p.m. and 4:30 p.m. to 6:30 p.m. Sessions may be adjusted depending on the number of persons registered to participate.

The resource/comment room will contain information relevant to the project, including fact sheets and exhibits. The room will also have an area and materials available for preparing and submitting written comments on the scope of the PEIS.

Registration. Advance registration to provide oral comments at these public scoping workshops will be facilitated using an "800 number" and on-site registration will be accommodated to the extent possible.

Preregistration for all meetings is encouraged and may be done by telephoning 1–800–448–4235. The operators will gather information on each participant's discussion group selection (storage or disposition) as well as information concerning interest in future mailings and other project related information they would like to receive. Preregistration requests will be taken for each meeting up until 9:00 p.m.(EST) on the Monday prior to the specific meeting. Written requests for preregistration may be mailed to: Mr. Robert Menard,Oak Ridge Associated Universities/EESD,P.O. Box 117,Oak Ridge, TN 37831–0117,ATTN: Storage and Disposition PEIS.

Preregistered participants are requested to sign in at the meeting registration desk. Elected officials wishing to participate for their constituencies are asked to identify their office when registering. People who wish to participate on behalf of an organization are asked to identify the organization when registering. Written and oral comments will be accepted at the scoping workshops and are given equal weight in the development of the PEIS. Participants registering at the meeting location are asked to sign in at the registration desk.

Schedule of Public Scoping Workshops

Wednesday, August 17, 1994

Savannah River Site

North Augusta Community Center, 495 Brookside Avenue, N. Augusta, South Carolina 29841

Wednesday, August 24, 1994

Chicago Regional Meeting

University of Illinois at Chicago, Chicago Circle Center, Illinois Room, 750 S. Halsted Street, Chicago, Illinois 60607 and

Rocky Flats Plant

Ramada Hotel, 8773 Yates Drive, Westminster, Colorado 80030

Wednesday, August 31, 1994

Hanford Site

Red Lion Inn/Hanford House, 802 George Washington Way, Richland, Washington 99352

Wednesday, September 7, 1994

Pantex Plant

Amarillo Civic Center, 401 S Buchanan, Amarillo, Texas 79101

Wednesday, September 14, 1994

Boston Regional Meeting

John B. Hynes Veterans Memorial Convention Center, 900 Boylston Street, Boston, Massachusetts 02115 and

Nevada Test Site

Cashman Field Center, 850 Las Vegas Boulevard North, Las Vegas, Nevada 89101

Wednesday, September 21, 1994

Idaho National Engineering Laboratory

Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402

Wednesday, September 28, 1994

Oak Ridge Reservation

Pollard Auditorium, 210 Badger Avenue, Oak Ridge, Tennessee 37830–0117 and

Lawrence Livermore National Laboratory

Holiday Inn Livermore, 720 Las Flores Road, Livermore, California 94550

Wednesday, October 5, 1994

Los Alamos National Laboratory

Hilltop House Hotel, 400 Trinity at Central, Los Alamos, New Mexico 87544

Wednesday, October 12, 1994

Washington, D.C.

Radisson Plaza Hotel-Mark Center, 5000 Seminary Road, Alexandria, VA 22311

SUPPORTING DOCUMENTS: DOE will prepare summary reports of the scoping workshops and make these available for public review. DOE will issue a PEIS Implementation Plan to provide information on how the PEIS will be prepared in light of the scoping comments. DOE will announce the availability of the draft PEIS, when completed, in the **Federal Register**, and will solicit public review and comment. Comments on the draft will be considered in preparing the final PEIS.

Copies of all summary reports, and copies of other material related to the preparation of the PEIS, will be made available for public review at the DOE reading rooms listed in this notice for the reader's convenience.

California

U.S. Department of Energy, Oakland Operations Office, Public Reading Room, 1301 Clay Street, Room 700N, Oakland, California 94612–5208, (510) 637–1762

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, Colorado 80030, (303) 469–4435

Idaho

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–1144

Illinois

Government Document Department, University Library, University of Illinios at Chicago, 801 South Morgan Street, 3rd Floor Center, Chicago, Illinois 60680, (312) 413–2594 or (312) 996–2738

Massachusetts

U.S. Department of Energy, Boston Operations Office, Public Reading Room, 1 Congress Street, Boston, Massachusetts 02114, (617) 565–9707

Nevada

U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89193, (702) 295–1274

New Mexico-Albuquerque

U.S. Department of Energy, Public Reading Room, National Atomic Museum, Kirtland Air Force Base, 20358 Wyoming Boulevard, SE, Kirtland AFB, New Mexico 87117, (505) 845–4378

New Mexico-Los Alamos

U.S. Department of Energy, Community Reading Room, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87544, (505) 665–2127

South Carolina

U.S. Department of Energy, Public Reading Room, Gregg-Graniteville Library, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801, (803) 725–2889

Tennessee

U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Reading Room, 55 Jefferson Circle, Room 112, Oak Ridge, Tennessee 37830, (615) 576–1216

Texas

U.S. Department of Energy Reading Room, Lynn Library/Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109, (806) 371–5400

Washington

U.S. Department of Energy, Public Reading Room, Washington State University, Tri-Cities Branch Campus, P.O. Box 999, Richland, Washington 99352, (509) 376–8583

District of Columbia

U.S. Department of Energy, Freedom of Information Reading Room,Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Issued in Washington, DC this 11th day of July, 1994.

Robert W. DeGrasse, Jr.,

Director, Surplus Fissile Materials Control and Disposition Project.

[FR Doc. 94–17260 Filed 7–15–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance: Precision Irrigation and Control Systems, Inc.

AGENCY: Department of Energy, Idaho Field Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.14(e) it plans a non-competitive award of a Cooperative Agreement No. DE–FC07–94ID13314 to Precision Irrigation and Control Systems, Inc. (PICS).

FOR FURTHER INFORMATION CONTACT: Marshall C. Garr, Contract Specialist, (208) 526–1536; U.S. Department of Energy, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563.

SUPPLEMENTARY INFORMATION: The objective of the cooperative agreement with PICS is to provide funds to develop and test a sprinkler irrigation system that will place precise amounts of water and agricultural chemicals on a field. Developing and demonstrating this system on a typical farm will reduce the commercialization risk and facilitate industry adoption. The system will use a micro-processor based controller and independently controlled valves to meter out water to specific areas of a field. The system will use digitized maps depicting soil type, topography, and dynamic growing conditions to determine optimal application of water and chemicals. This system has the potential to increase energy efficiency, enhance environmental quality, and improve farm profitability. The proposed project is a 12-month effort at a total estimated cost of $200.000 of which approximately 62% will be cost-shared by industry through PICS. The technology was developed under a USDA research grant to the University of Idaho to evaluate opportunities to improve water quality affected by agriculture. Statutory authority for this award is provided by Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The proposed activity supports activities of the Department of Energy's Office of Industrial Programs to pursue R&D and commercialization applications consistent with provisions of Sections 2101 and 2107 of the Energy Policy Act of 1992.

PROCUREMENT REQUEST NUMBER: 07–94Id13314.000.

Dated: June 3, 1994.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94–17350 Filed 7–15–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Application Filed With the Commission

July 12, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Action:* Intent to Prepare Environmental Impact Statement and Conduct Scoping Meeting.

b. *Project No:* 2114–024.

c. *Date Filed:* N/A.

d. *Applicant:* Grant County Public Utility District No. 2.

e. *Name of Project:* Priest Rapids.

f. *Location:* Grant and Chelan Counties, Washington.

g. *Filed Pursuant to:* N/A.

h. *Applicant Contact:* Mr. Don Godard, Grant County PUD, P.O. Box 878, Ephrata, WA 98823, (509) 759–3541.

i. *FERC Contact:* Timothy Welch, (202) 219–2666.

j. *Comment Date:* August 30, 1994.

k. *Description of Proceeding:* In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has evaluated four downstream fish passage alternatives addressed in the Mid-Columbia Proceeding (Docket No. E–9569–003) for the Priest Rapids Project. Staff's initial evaluation of the proposed modifications was issued on May 25, 1994, in an environmental assessment (EA). The June 3, 1994 transmittal letter for the EA stated our intent to prepare an environmental impact statement (EIS).

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by staff and considered in the final EIS. Staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final decision.

Scoping Meetings

To obtain information from the public regarding relevant environmental issues that should be analyzed in the EIS, the Commission will conduct two public scoping meetings. The first scoping meeting will be held on Monday July 25, 1994 in Portland Oregon, at the Portland Building, 2nd Floor Auditorium, 1120 SW 5th Avenue, from 1 pm to 5 pm. The second scoping meeting will be held on Wednesday July 27, 1994 in Ephrata, Washington, at the City of Ephrata Recreation Center, 112 Basin Street SW, from 7 pm to 11 pm. All interested individuals, organizations, and agencies are invited to attend.

The EA will be considered the initial scoping document. Copies of the EA have been mailed to all entities who have expressed interest in this proceeding. The EA is also available in the Commission's Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426 and will be available at the scoping meeting. We encourage all interested parties to read the EA prior to the scoping meeting.

Objectives

At the meeting the staff will: (1) Describe the range of issues being considered in this post-licensing proceeding (2) review the conclusions and recommendations in the EA; (3) receive input from meeting participants on the alternatives considered in the EA; (4) identify any additional issues that should be included in the EIS; and (5) obtain any additional information that any entity feels should be considered during the preparation of the EIS.

Procedures

The scoping meeting will be recorded by a stenographer and all statements (oral and written) will become part of the Commission's public record for this proceeding. Interested persons who are unable to attend, or do not choose to speak at the scoping meeting, may submit written statements for inclusion in the public record. All written comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before August 30, 1994.

All written correspondence should clearly show on the first page of each document the following caption: Priest Rapids Project, FERC Project No. 2114–024.

Further, please note the Commission's Rules of Practice and Procedure, requires all entities to file an original and eight copies of any filing with the Commission. Parties filing documents must also serve the documents on each person whose name is on the official service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17321 Filed 7–15–94; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

July 12, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Intent to Prepare Environmental Impact Statement and Conduct Scoping Meeting.

b. Project No.: 2145–021.

c. Date Filed: September 19, 1991.

d. Applicant: Public Utility District No. 1 of Chelan County.

e. Name of Project: Rocky Reach Project.

f. Location: Chelan County, Washington.

g. Filed Pursuant to: N/A.

h. Applicant Contact: Roger L. Purdom, Public Utility District No. 1 of Chelan County, Washington, P.O. Box 1231, Wenatchee, WA 98807, (509) 663–8121.

i. FERC Contact: Him Hastreiter, (503) 326–5846.

j. Comment Date: September 8, 1994.

k. Description of Proceeding: In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has reviewed the licensee's amendment application that proposes modifications to the Rocky Reach Project facilities and operation. Staff's initial evaluation of the proposed modifications was issued on October 15, 1993, in a draft environmental assessment.

A draft Environmental Impact Statement (EIS) will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be anlyzed by staff and considered in the final EIS. Staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final decision.

Scoping Meeting

A public scoping meeting will be held Thursday, July 28, 1994, beginning at 7:00 p.m. at the Grant County Auditorium, 400 Douglas Street, Wenatchee, Washington. An agency

scoping meeting will be held on Monday, July 25, 1994, from 8:00 a.m. until noon at the Portland Building, 2nd Floor Auditorium, 1120 S.W. 5th Avenue, Portland, Oregon. All interested individuals and organizations are invited to attend and assist staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The environmental assessment will be considered the intitial scoping document. Copies of the environmental assessment will be mailed to all entities who have expressed interest in this proceeding. The environmental assessment is also available in the Commission's Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426 and will be available at the scoping meeting. We encourage all interested parties to read the environmental assessment prior to the scoping meeting.

Objectives

At the scoping meeting the staff will: (1) Describe the range of issues being considered in this amendment application proceeding; (2) review the conclusions and recommendations in the environmental assessment; (4) identify any additional issues that should be included in the EIS; and (5) obtain any additional information that any entity feels should be considered during preparation of the EIS.

Procedures

The scoping meeting will be recorded by a stenographer and all statements (oral and written) will become part of the Commission's public record for this proceeding that was noticed on October 22, 1991. Interested persons who are unable to attend, or do not choose to speak at the scoping meeting, may submit written statements for inclusion in the public record. All written comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before September 8, 1994.

All written correspondence should clearly show on the first page of each document the following caption: Rocky Reach Project, FERC Project No. 2145–021.

Further, please note the Commission's Rules of Practice and Procedures, requiring all entities to file an original and eight copies of any filing with the Commission. Parties filing documents must also serve the documents on each person whose name is on the official service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17322 Filed 7–15–94; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. CP94–634–000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

July 12, 1994.

Take notice that on June 30, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–634–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point so that El Paso can deliver gas to Transok, Inc.'s (Transok) Canute Plant in Washita County, Oklahoma, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that Transok has agreed to modify one of its meter runs so that El Paso can deliver gas into Transok at its Canute Plant. It is stated that the establishment of this point is not prohibited by El Paso's tariff, and there would be no detriments to El Paso's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17320 Filed 7–15–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5013–7]

Chesapeake Bay Program; 1987 Chesapeake Bay Agreement; Proposals for Review

The following draft documents, prepared pursuant to the 1987 Chesapeake Bay Agreement by the Living Resources Subcommittee of the Chesapeake Bay Program, are now available for public review:

- Revised Chesapeake Bay Oyster Management Plan,
- Revised Chesapeake Bay Blue Crab Management Plan,
- Aquatic Reef Habitat Plan.

Public comments will be accepted through July 31, 1994. Comments should be sent to Jennifer Gavin, Chesapeake Bay Program Office, Suite 410, Annapolis, Maryland 21403. To obtain copies of the draft plans, call Jennifer Gavin at (800) 968–7229.

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 94–17377 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5014–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 17, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

TITLE: FIFRA Reregistration Fees (EPA ICR No.: 1495.03; OMB #2070–0101). This is a request for extension of the expiration date of a currently approved collection with no changes.

ABSTRACT: Under the 1988 amendments to the Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA), pesticide registrants must pay a one-time fee to cover the costs of reregistering the active ingredients in their products. To determine the amount of this fee, EPA will ask registrants to indicate the source of the active ingredient in their products and the quantity marketed. The Agency uses this information to apportion fees based on market share and, in some cases, to decide whether a pesticide producer is exempt from the fee requirement. Small businesses may apply for a waiver of fees by completing a certification form.

BURDEN STATEMENT: The public reporting burden for this collection of information is estimated to average less than 4 hours per response annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Pesticide Producers.

Estimated No. of Respondents: 50.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 185 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW, Washington, DC 20460.

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: July 8, 1994.

Jane Stewart,

Acting Director,

[FR Doc. 94–17380 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5014–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost an burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 17, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (EPA ICR #1702.01). This ICR requests approval of a new collection.

Abstract: On April 21, 1993, (58 FR 21359) EPA promulgated regulations establishing provisions for an urban bus rebuild/retrofit program but did not request OMB approval under the Paperwork Reduction Act (PRA) for the information requirements. The Agency is now seeking PRA clearance for these information activities.

The program affects model year 1993 and earlier buses rebuilt or replaced after January 1, 1995 and is limited to urban buses operating in metropolitan areas with 1980 populations of 750,000 or more. Urban bus operators in these areas may chose between two options. Option 1 sets particulate matter (PM) emissions requirements for each urban bus in an operator's fleet whose engine is replaced or rebuilt. Option 2 is a fleet averaging program that requires an operator to meet a specified annual target level for the average PM emissions level from the 1993 and earlier MY urban buses in the operator's fleet. The target levels for an individual operator's fleet are based on age and engine model distribution of the urban buses in the operator's fleet. The rebuild/retrofit program is intended to reduce the ambient levels of particulate matter in urban areas.

Retrofit equipment manufacturers may apply to the EPA to have their retrofit equipment certified. The request for certification includes identifying the engine family(s) for which the equipment will be sold, results and documentation of tests and testing procedures, a copy of the written instructions for proper maintenance, and a copy of the warranty language to be provided to the urban bus operator. EPA will use this certification information to assess compliance with option 1. Retrofit equipment manufacturers may also include information in their application for certification on the maximum price charged to an urban bus operator for equipment, a detailed breakout of the time required to install the equipment including the number of hours that are incremental to a standard rebuild, the percent change in fuel economy when using the retrofit equipment, the required quantity of any necessary fuel additives and the price per gallon, and a list of scheduled maintenance including the cost for parts. This additional information will qualify the rebuild equipment for use in option 2. Retrofit equipment manufacturers are also required to maintain records for 5 years including detailed production drawings, all testing data, a quality control plan and all in-service data. Urban bus operators are required to maintain records which EPA believes are already kept as part of their normal course of business. The required records include rebuild/retrofit equipment purchased, engine rebuilds and replacements, records of clean diesel fuel purchases, and evidence that the urban buses are in compliance with either the first or second option of the rebuild/retrofit program. Urban bus operators may also voluntarily provide EPA with information on the composition of the pre-1994 urban bus fleet, a listing of buses that have been rebuilt or retired, and for operators using option 2, a demonstration that the average annual fleet target level for PM has been met.

Burden Statement: Public reporting burden for this collection of information is estimated to average a minimum of 115 hours per certifier for option 1 and a maximum of 184 hours per certifier for option 2, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information. Public reporting burden for urban bus operators is estimated to average 24 hours per response including time for reviewing instructions, searching existing data sources, gathering the data needed and completing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 40 hours per certifier.

Respondents: Rebuild equipment manufacturers and urban bus operators.

Estimated Number of Respondents: 160.

Estimated Total Annual Burden on Respondents: 7,200 hours.

Frequency of Collection: one-time and annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street SW., Washington, DC 20460; and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: July 8, 1994.

Jane Stewart,

Director, (Acting) Regulatory Management Division.

[FR Doc. 94–17381 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5013–9]

Meeting of the Local Government Advisory Committee

On August 8–10, 1994, the Local Government Advisory Committee will conduct its second meeting. The purpose of the meeting is to provide members with updated information on several EPA activities since the last meeting, share information on subcommittee activities, and provide time for subcommittee meetings.

The Committee is charged with identifying and recommending a series of activities to improve the implementation of environmental programs by local governments. These activities should be developed to address unmet local government needs caused by a lack of coordination and communication among various governmental agencies and programs; an inability to develop priorities as to the problems to be addressed; the need for data and information on the costs and benefits of regulation and on technical, legal, and scientific aspects of regulation; limited financing; and, inflexible requirements resulting from the nature of regulations.

The meeting will be held at the Crystal Gateway Marriott located at 1700 Jefferson Davis Highway in Arlington, VA. The meeting will begin at 1 p.m. on August 8th and conclude at noon on August 10th.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419 or by writing to 401 M Street, SW. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

Shelley H. Metzenbaum,

Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 94–17376 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5013–4]

National Environmental Justice Advisory Council; Notification of Public Advisory Committee Meeting(s); Open Meeting(s)

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, notice is hereby given that the National Environmental Justice Advisory Council (NEJAC) and four subcommittees will meet on the dates and times described below. All times noted are Mountain Standard Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC.

The full NEJAC will meet to discuss the role of the FACA, Environmental Impacts, EPA's Environmental Justice Draft Strategic Action Document, and the NEJAC Bylaws from Wednesday to Friday, August 3–5, 1994 from 8 a.m. to 9 p.m. Mountain Standard Time at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234.

Members of the public who wish to make a brief oral presentation at the meeting(s) should contact Linda K. Smith no later than July 27, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments received by July 25, 1994 may be mailed to the NEJAC prior to the meeting; comments received after that date will be provided to the Council as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than July 27, 1994. They should be sent to Office of Environmental Justice (3103), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone number is (202) 260–6357 or 1–800–962–6215 or FAX (202) 260–0852.

1. Waste and Facility Siting Subcommittee Meeting—August 4–5, 1994

The Waste and Facility Siting Subcommittee (WFSS) of the National Environmental Justice Advisory Council (NEJAC) will hold its first meeting on Thursday and Friday, August 4–5, 1994, from 8 a.m. to 5:30 p.m. on Thursday, and from 8 a.m. to Noon on Friday. Location of this meeting will be the Albuquerque Hyatt Regency, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the WFSS intends to initiate discussion and solicit input on environmental justice definitions and guidelines, the Office of Solid Waste and Emergency Response (OSWER) Environmental Justice Task Force recommendations, options developed by OSWER's siting workgroup, OSWER's proposed rule on public participation and future field hearings on specific topics. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Ms. Jan Young, Designated Federal Official, OSWER, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–1691, Fax at (202) 260–6606.

2. Enforcement Subcommittee (ES) Meeting—August 4–5, 1994

The Enforcement Subcommittee (ES) of the National Environmental Justice Advisory Council (NEJAC) will conduct a meeting on Thursday and Friday, August 4–5, from 8 a.m. to 5:30 p.m. on Thursday and from 8 a.m. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the ES intends to develop a mission statement for the Subcommittee and review the Office of Enforcement and Compliance Assurance's draft strategy on Environmental Justice and recommend actions for EPA to address. At this meeting, the ES will discuss future issues and a mechanism to review enforcement activities. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Ms. Sherry Milan, Designated Federal Official, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 by telephone at (202) 260–9807, FAX at (202) 260–9437.

3. Health and Research Subcommittee Meeting—August 4–5, 1994

The Health and Research Subcommittee (HRS) of the National Environmental Justice Advisory Council (NEJAC) will conduct a meeting on Thursday and Friday, August 4–5 1994, from 8 a.m. to 5:30 p.m. on Thursday and from 8 a.m. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the HRS intends to review the Office of Research and Development's (ORD) draft process description for development of the Agency's Environmental Justice research strategy HRS will also evaluate and recommend options on the U.S. Environmental Protection Agency's overall research priorities and science policy setting as it relates to environmental justice. The subcommittee will review ORD's research strategy and definitions. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Mr. Lawrence Martin, Designated Federal Official, Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone (202) 260–0673, Fax at (202) 260–0507.

4. Public Participation and Accountability Subcommittee Meeting—August 4–5, 1994

The Public Participation and Accountability Subcommittee (PPAS) of the National Environmental Justice Advisory Council (NEJAC) will hold its first meeting on Thursday and Friday, August 4–5, 1994, from 8 a.m. to 5:30 p.m. on Thursday and from Thursday and from 8 am. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the PPAS intends to find ways to improve communications, develop trust and involve affected communities. To this end, the Subcommittee will explore the creation of business and industry, stakeholder and other types of public/private partnerships to address environmental justice concerns. Finally, PPAS will evaluate the Agency's strategy to use the Geographic Information System (GIS) program to identify potential geographic areas of environmental justice concern, i.e., define potential patterns of inequity and insure environmental justice accountability. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Mr. Bob Knox, Designated Federal Official, Office of Environmental Justice, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–6357 or 1–800–962–6215 or by Fax at (202) 260–0852.

FOR FURTHER INFORMATION CONTACT: Copies of the NEJAC Charter are available upon request. Please contact the Office of Environmental Justice (3103), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 1–800–962–6215. For hearing impaired individuals or non-English speaking attendees wishing to make arrangements for a sign language or foreign language interpreter, please call or fax Kathy Ackley at (703) 934–3293 or (703) 934–9740 (fax).

Dated: July 13, 1994.

Clarice E. Gaylord,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 94–17382 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5014–7]

Approval of Maryland's Submission of a Substantial Program Revision to its Authorized National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval of Maryland's revisions to its NPDES program; publication of EPA's response to public comments on Maryland's regulation revisions.

SUMMARY: The State of Maryland submitted amendments to its Code of Maryland Regulations (COMAR) (adopted by the Secretary of the Environment on May 6, 1993) to EPA for review as a revision to the State's authorized NPDES program. The submitted revisions to Maryland's regulations are considered to be substantial revisions to Maryland's NPDES program and can be found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1. EPA requested comments from the public on the regulation revisions in **Federal Register** notices dated November 10, 1993 and January 3, 1994 at 58 FR 59724 and 59 FR 87, respectively. EPA considered all public comments in review of Maryland's regulation revisions. A summary of the comments and EPA's response can be found below.

After careful consideration of the regulation revisions and all public comments, EPA has determined that the revisions satisfy the Clean Water Act (CWA) and minimum federal requirements. Therefore, EPA has approved the revisions found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1. These permit regulation revisions may now be considered effective and may be implemented.

DATES: Maryland's regulation revisions, COMAR 26.08.03.07 and COMAR 26.08.04.02–1, were approved by EPA on May 6, 1994. The regulation revisions are effective on May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Helene Drago, (215) 597–8242, U.S. EPA, Region III, 3WM55, 841 Chestnut Building, Philadelphia, PA 19107

SUPPLEMENTARY INFORMATION: On May 6, 1993, the State of Maryland, adopted changes to its NPDES permit program regulations found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1. Pursuant to 40 CFR 123.62 and CWA 304 and 402, EPA reviewed the NPDES permit program regulation for compliance with federal regulation. The revisions to Maryland's regulations were described in **Federal Register** notices dated November 10, 1993 and January 3, 1994 at 58 FR 59724 and 59 FR 87, respectively. A public notice of the regulation revisions was also published in the Baltimore Sun on November 12, 1993. Copies of Maryland's regulation revisions were available for review at the EPA Region III office in Philadelphia, PA. Copies were also available for purchase. As part of the public comment period, EPA provided the opportunity for a public hearing. However, there were no requests for a public hearing. All comments or objections received by EPA Region III were considered by EPA in its review of the NPDES regulation revisions. A list of persons who provided comment are provided below. A summary of the comments and EPA's response can be found below.

After careful consideration of the regulation revisions, all public comment, and supplemental information submitted by Maryland Department of the Environment (MDE) in letters dated June 1, 1993, February 15, 1994 and March 23, 1994, EPA has determined that the substantial revisions to the Maryland's NPDES regulations found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1 meet the requirements of the CWA and federal regulations. Therefore, EPA has approved the regulation revisions on

May 6, 1994. EPA's approval letter, dated May 6, 1994, to David A. C. Carroll, Secretary of MDE, provides a full explanation of EPA's grounds for approval. These permit regulation revisions may now be considered effective and may be implemented.

Response Summary to Public Comments

Comment: EPA should not disapprove any part of the NPDES regulations since disapproval will jeopardize the agreement reached by a group of plaintiffs, MDE and the Chesapeake Bay Foundation.

EPA's response: EPA understands that MDE, the Chesapeake Bay Foundation and a large group of litigants underwent a lengthy and complex negotiation to reach the agreement that is reflected in the revisions to Maryland's NPDES program.

However, EPA is obligated under the CWA and federal regulations to review any substantial revisions to a State's NPDES regulations to ensure that the revisions meet minimum federal requirements. It is not reasonable for any party to request that EPA forgo its legal duty to carefully review the regulation revisions. EPA must have the freedom to review, and if necessary disapprove, any part of the regulations regardless of whether that disapproval will impact a lawsuit settlement.

Comment: Maryland's intake credit regulation is similar if not more restrictive than that proposed in the Great Lakes Water Quality Initiative (GLWQI) and therefore should be approved.

EPA's response: EPA agrees with the commentor that Maryland's intake credit regulation appears to be similar to EPA's preferred option found in the proposed GLWQI. The implementation of the intake credit regulation should assure that any discharger that meets the requirements of the regulation has no reasonable potential to cause or contribute to an exceedance of an applicable numeric or narrative water quality standard. EPA finds the intake credit provisions in Maryland's regulations acceptable at this time with the understanding that changes may be appropriate once the GLWQI is finalized.

Comment: Maryland's regulations provide adequate provisions for whole effluent toxicity (WET) and are consistent with federal law and regulations.

EPA's response: Under 40 CFR 122.44(d)(1), permitting authorities must establish whole effluent toxicity or chemical-specific effluent limitations in NPDES permits where a discharge causes, has the reasonable potential to cause, or contributes to an exceedance of a numeric or narrative water quality standard. Because Maryland's regulation does not require WET limits where standards violations are possible, Maryland's regulation is not consistent with federal regulations. However, EPA understands that Maryland is committed to working toward providing WET regulatory provisions that adequately address federal regulations. EPA has agreed to approve the regulation revisions under the following conditions:

(1) MDE has provided an Attorney General's Certification, dated May 10, 1993, that defines MDE's legal authority to impose WET limits.

(2) MDE has agreed to continue to discuss its WET program and the issue of WET limits outside the context of the this regulation revision. MDE will work with EPA to finalize, within three months of this approval, mutually acceptable permitting procedures that will be used to place WET limits in permits where appropriate.

(3) MDE has agreed to revise the regulations to embody the concepts of 40 CFR 122.44(d)(1) within two years of March 23, 1994.

Comment: 40 CFR 122.44(d)(1) allows an NPDES authorized State to exercise discretion in establishing whether pollutants are discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard. Maryland's regulation 26.08.04.02–1C implements this discretion by allowing the State to determine that no "reasonable potential" exists if a facility meets certain specific criteria.

EPA's response: EPA agrees that the State determines whether a discharge will cause, contribute or have the reasonable potential to cause or contribute to an excursion of a water quality standard. However, in making this determination a State must consider, at a minimum, the criteria found at 40 CFR 122.44(d)(1)(ii). "When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water". Maryland must consider these minimum criteria in determining "reasonable potential".

Comment: There is no provision in EPA's regulations stating that a State cannot exercise its discretion in NPDES permitting on the basis of generally applicable criteria. If EPA's position is that any decision under 40 CFR 122.44(d)(1)(i) must be made in the context of an individual permit, EPA's position is legally incorrect. Maryland's regulation at 26.08.04.02–1C is a valid determination that any discharges meeting the listed criteria will not cause, have the reasonable potential to cause, or contribute to an excursion of water quality standard.

EPA's response: EPA agrees that reasonable potential determinations need not be made only in the context of individual permits. EPA does not have an objection to the concept of using a categorical provision, as opposed to a permit-by-permit decision, to determine reasonable potential. However, when EPA approves the use of any general criteria, it is important that that general criteria is rigorously examined to ensure that its use will adequately satisfy all federal requirements.

As it is written, it is difficult to determine whether Maryland's regulation at 26.08.04.02–1C would prevent a discharge from causing, contributing or having the reasonable potential to cause or contribute to an excursion of a water quality standard. However, the State of Maryland has determined that the criteria listed in the regulation is so narrowly defined that the regulation applies only to dry weather copper discharges to Colgate Creek from the General Motors facility, outfalls 001–003 and 010, located in Baltimore, MD. EPA and Maryland have examined the discharge in question and have determined that it does not cause, contribute or have the reasonable potential to cause or contribute to a water quality standard violation. All the criteria listed in 26.08.04.02–1C ensure no other facility or discharger can use the regulation in the State of Maryland and it is uniquely applicable to only the General Motors facility. Due to dilution and tidal flow found at Colgate Creek, the specific outfalls in question do not discharge concentrations that cause, contribute or have the reasonable potential to cause or contribute to an excursion of a water quality standard.

Should another discharger attempt to use this regulation, or another State wish to adopt similar provisions in their NPDES permit regulations, EPA would require specific site information, the State's exact rationale for a finding of "no reasonable potential" and definitive language which would limit use of such

an exemption to an appropriate discharge. EPA has worked closely with Maryland regarding this regulation and we have determined that this regulation is acceptable based on the specific data obtained from MDE in letters dated June 1, 1993; February 15, 1994; and March 23, 1994.

Written Comments Received

1. Frances Dubrowski, Attorney, Chesapeake Bay Foundation
2. George Van Cleve, Attorney, General Motors Corporation
3. Alan Bahl, Environmental Engineer, Red Star Yeast & Products, Baltimore, MD
4. Deborah Jennings, Potomac Electric Power Company
5. Colleen Lamont, Baltimore Gas and Electric, Baltimore, MD
6. The Plaintiffs including: Baltimore Gas and Electric Company, Delmarva Power & Light Company, General Motors Corporation, Bethlehem Steel Corporation, Potomac Electric Power Company, Maryland Chamber of Commerce
7. William Riley, Bethlehem Steel Corporation, Bethlehem, PA
8. David Carroll, Secretary, Maryland Department of the Environment

Dated: June 27, 1994.

Peter H. Kostmayer,

Regional Administrator, Environmental Protection Agency, Region III.

[FR Doc. 94–17379 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

1995 World Radiocommunication Conference Industry Committee

AGENCY: Federal Communications Commission.

ACTION: FCC announcement of second WRC–95 Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice also advises interested persons of the second meeting of the WRC–95 Advisory Committee.

DATES: July 20, 1994; 9:00–11:30 a.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554

SUPPLEMENTARY INFORMATION: The WRC–95 Advisory Committee was established by the Federal Communications Commission to provide to the agency advice, technical support and recommendations relating to preparation of U.S. proposals and positions for the 1995 World Radiocommunication Conference.

The proposed agenda for the second meeting is as follows:

Agenda

Second meeting of the WRC–95 Industry Advisory Committee, FCC, 1919 M Street, NW., Room 856, Washington, DC, July 20, 1994, 9:00–11:30 a.m.

1. Introduction of Attendees
2. Approval of Agenda
3. Introductory Remarks by Chairman
4. Formation of Interim Working Group on Future WRC Agendas (IWG–6)
5. Reports and Discussion of Informal Working Group Activities:
   - IWG–1: Regulatory Coordination Group
   - IWG–2: Mobile-Satellite Service Below 1 GHz
   - IWG–3: Mobile-Satellite Service Above 1 GHz
   - IWG–4: Mobile-Satellite Service Feeder Links
   - IWG–5: Space Services
6. Brief by NTIA Representative on Government-sector Preparatory Activities
7. Discussion of Model Under Development for MSS Spectrum Requirements
8. Future Meeting Schedule
9. Other Business.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17385 Filed 7–15–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1031–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1301–DR), dated June 21, 1994, and related determinations.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 21, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms and flooding beginning on March 1, 1994, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency management Agency under Executive Order 12148, I hereby appoint David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Brookings, Brown, Clark, Codington, Day, Edmunds, Grant, Hand, Hanson, Kingsbury, McPherson, Marshall, Roberts, Sanborn, and Spink for Public Assistance.

(Catalog of Federal Domestic Assistance No, 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17340 Filed 7–15–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0842]

Proposed Policy Statement on Privately Operated Large-Dollar Multilateral Netting Systems

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board of Governors is requesting comment on a proposal to

update its policies on "Privately Operated Large-Dollar Funds Transfer Networks" and "Offshore Dollar-Clearing and Netting Systems" and integrate those policies into a single policy statement on "Privately Operated Large-Dollar Multilateral Netting Systems." In general, the policy statement would apply to such arrangements as domestic, privately operated, large-dollar multilateral payment netting systems; offshore large-dollar multilateral payment netting systems; multilateral foreign exchange clearinghouses involving settlements in U.S. dollars; and multicurrency payment netting systems involving settlements in U.S. dollars. The Board is proposing to incorporate into the new policy statement minimum standards for the design and operation of privately operated large-dollar multilateral netting systems. These minimum standards are based on those set out in the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* ("Lamfalussy Report"), which was published in November 1990 by the Bank for International Settlements. The Board is also requesting comment on the need for, and possible specifications of, a higher standard with respect to assuring settlement that might be applied to large-dollar multilateral netting systems that present a high degree of systemic risk.

DATES: Comments must be received on or before October 17, 1994.

ADDRESSES: Comments should refer to Docket No. R–0842, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the security control room anytime. Both Room B–2222 and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Manager (202/452–3174), Kelly Shaw, Project Leader (202/452–3054), Division of Reserve Bank Operations and Payment Systems; or Oliver Ireland, Associate General Counsel (202/452–3625), Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System; for the hearing impaired *only*, Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board's current Policy Statement on Payments System Risk incorporates two policies directed specifically at large-dollar funds transfer systems: "Private Large-Dollar Funds Transfer Networks" and "Offshore Dollar-Clearing and Netting Systems." Neither of these policies addresses multicurrency clearing and settlement arrangements involving settlements in U.S. dollars, such as the multilateral foreign exchange clearinghouses that are under development in North America and Europe. Further, the Board intended its existing policy statement on "Offshore Dollar-Clearing and Netting Systems" to be an interim measure until an international consensus was reached among central banks on the minimum standards for the development and operation of multilateral cross-border netting systems.

That consensus was reached with the 1990 publication of the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* ("Lamfalussy Report"). The Lamfalussy Report recognized that multilateral netting arrangements for interbank payment orders and forward-value contractual commitments, such as foreign exchange contracts, have the potential to improve the efficiency and the stability of interbank settlements through the reduction of settlement costs, along with credit and liquidity risks, provided that certain conditions are met. In this regard, the report developed and discussed, in some detail, "Minimum Standards for Netting Schemes" ("Lamfalussy Minimum Standards") and "Principles for Co-operative Central Bank Oversight" of such arrangements.

Central banks have now had a period of time to analyze the practical implications of the Lamfalussy Minimum Standards, and the Board believes that it would be appropriate to revise its "Policy Statement on Payments System Risk" to incorporate the Lamfalussy Minimum Standards and to address explicitly privately operated, large-dollar multicurrency netting arrangements involving settlements in U.S. dollars.[1] The Board is proposing to integrate its policies on "Private Large-Dollar Funds Transfer Networks" and "Offshore Dollar-Clearing and Netting Systems" into a single comprehensive policy on "Privately Operated Large-Dollar Multilateral Netting Systems" that would include the Lamfalussy Minimum Standards. Large-dollar multilateral, multicurrency netting systems would be covered by the same policy.

[1] The Lamfalussy Minimum Standards have been endorsed by the European Union central banks as minimum standards for domestic large-value netting systems within the European Union.

Scope and Application of the Policy

Specifically, the Board's proposed policy statement would apply to such arrangements as domestic, privately operated, large-dollar multilateral payment netting systems; offshore large-dollar multilateral payment netting systems; multilateral foreign exchange clearinghouses involving settlements in U.S. dollars; and multicurrency payment netting systems involving settlements in U.S. dollars. The inclusion of multilateral foreign exchange clearinghouses and multicurrency payment netting systems involving a settlement in U.S. dollars represents an expansion of existing policy, as neither of these arrangements are covered explicitly by the Board's current policy statement on payment system risk. The Board is proposing to apply the policy statement to such systems if they meet certain size criteria, in order to cover more completely the range of multilateral netting systems involving settlements in U.S. dollars that have the potential to increase systemic risk in the financial markets. These arrangements have the potential to generate the same types of risks as single currency systems. Moreover, the Lamfalussy Minimum Standards were developed explicitly to address, among other things, risks in multilateral foreign exchange netting arrangements.

The Board's proposed policy statement contains criteria that delimit the scope and application of the policy. Specifically, the policy will apply to systems that: (1) have three or more participants that net payments or foreign exchange contracts involving the U.S. dollar, whether or not netted amounts are legally binding; and either (2) have, or are likely to have, on any day, settlements with a system-wide aggregate value of net settlement credits (or debits) larger than $500 million (in U.S. dollars and any foreign currencies combined); or (3) routinely process individual payments or foreign exchange contracts, with a stated dollar value larger than $500,000. A multilateral netting system that meets the above criteria will be subject to the policy if (1) it is a state-chartered member of the Federal Reserve System,

(2) any of its agent(s) or participants are state-chartered members of the Federal Reserve System, (3) its participants' net positions are settled through a Federal Reserve settlement account, (4) its participants settle their net positions in the multilateral netting system through their individual Federal Reserve accounts or the Federal Reserve account of the settlement agent(s), or (5) one or more bank holding companies have an investment in the multilateral netting system. The Board believes that these relatively simple criteria will enable the operators of multilateral netting systems to determine when they are subject to the policy and will provide that only systems which present systemic risk will be covered.

The Board believes that the Lamfalussy Minimum Standards may apply, for example, to all large-dollar multilateral payment netting systems irrespective of the type of financial instrument or contractual obligation netted by the system. However, the Board recognizes that in the case of privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments, including privately operated Automated Clearing House ("ACH") systems, certain electronic controls that would be required to implement the Lamfalussy Minimum Standards may not be feasible. Further, the rights and responsibilities of parties within such systems as well as the characteristics of the instruments to be cleared or netted require further analysis. Consequently, the Board intends to study further the implications of the Lamfalussy Minimum Standards, and the arrangements to implement the Lamfalussy Minimum Standards, for privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments. The Board expects that it may issue, in due course, a proposal for minimum standards for the design and operation of such systems.

Implementation of the Lamfalussy Minimum Standards

The Board believes that large-dollar multilateral netting systems, whether on-shore or off-shore, should meet in full the Lamfalussy Minimum Standards, as set forth in the proposed policy statement. The Board has developed five risk management measures that a large-dollar multilateral netting system would be expected to implement in order to satisfy Lamfalussy Minimum Standards III and IV, which deal with risk management and settlement completion. Risk management devices that lead to a substantially equivalent degree of risk management and control could also be adopted, as approved by the Board on a case-by-case basis. The proposed measures are: (1) a requirement that each participant establish bilateral net credit limits vis-a-vis each other participant in the system; (2) establish and monitor in real time system-specific net debit limits; (3) establish a system to reject or hold any payment or foreign exchange contract that would exceed the relevant bilateral and net debit limits; (4) establish liquidity resources, such as cash, committed lines of credit secured by collateral, or a combination thereof, at least equal to the largest single net debit position;[2] and (5) establish rules and procedures for the sharing of credit losses among the participants in a netting system.

The first two measures are contained in the Board's existing policy statement on Private Large-Dollar Funds Transfer Networks. The third measure is also contained in the existing policy statement but it applies only to bilateral net credit limits. In the proposed policy statement, the Board has expanded the third measure to apply also to system-specific net debit limits. Requirements (4) and (5) are new and would help ensure that the funds needed for settlement are available to multilateral clearing organizations at the proper moment and clarify how any losses will affect participants.

Timeframe for Implementation of the Lamfalussy Minimum Standards

The Board recognizes that not all existing large-dollar multilateral netting systems may meet the Lamfalussy Minimum Standards, and the associated requirements for implementation of those standards, contained in the proposed policy statement. The Board also recognizes that existing large-dollar multilateral netting systems will need a period of time in which to make any needed changes to their organization or operations. Consequently, the Board believes that an eighteen-month transition period would be appropriate for large-dollar multilateral netting systems that are operating on the date of any final action by the Board on the proposed policy. Such systems will be expected to comply fully with the policy statement within the eighteen-month transition period. Large-dollar multilateral netting systems established subsequent to the date of final adoption of the policy by the Board will be expected to comply fully with the policy statement, without benefit of a transition period.

Specific Issues on Which the Board Seeks Comment

The Board seeks comment on all aspects of the proposed policy statement. In addition, the Board is seeking comment on the following specific issues:

1. The proposed criteria for identifying large-dollar multilateral netting systems subject to the policy statement.

- Are the thresholds for system-wide aggregate daily net settlement debits or credits, as well as for the size of individual transactions, set at appropriate levels such that the policy will apply to those systems that pose systemic risk?
- Are there other criteria the Board should consider in the determination of whether to apply the policy to a particular system?

2. The five risk management measures for implementation of the Lamfalussy Minimum Standards.

- Do the requirements provide operators of large-dollar multilateral netting systems with appropriate and adequate mechanisms to control the credit, liquidity, and settlement risks inherent in such systems?
- What additional risk management measures would be useful?
- What alternative mechanisms would provide substantially equivalent degrees of risk management and control?

3. The timeframe for implementation of the Lamfalussy Minimum Standards.

- Does the proposed eighteen-month transition period provide existing large-dollar multilateral netting systems with sufficient time to make any organizational or operational changes needed to meet the Lamfalussy Minimum Standards?

The Board also seeks comment on whether large-dollar multilateral netting systems that present a high degree of systemic risk should be expected to meet a standard for ensuring settlement that is higher than Lamfalussy Minimum Standard IV. Standard IV requires that a netting system be capable of ensuring the completion of daily settlement in the event that the participant with the *largest* net debit position is unable to settle its obligation to the system. For example, the Board could require that certain large-dollar multilateral netting systems would be expected to ensure timely completion of daily settlement in the event of an

[2] The term "largest single net debit position" means the largest intraday net debit position of any individual participant at any time during the daily operating hours of the netting system.

inability to settle by the participant with the largest net debit position, as well as the participants with the second or third largest net debit positions.

In multilateral netting systems that extend credit among participants, the failure of a participant could trigger a chain of defaults and liquidity problems at other participants or in the financial markets more generally. This concern is the basis for Lamfalussy Minimum Standard IV, which ensures that a default by a single net debtor, including the largest, will not, by itself, initiate a chain of defaults within the netting arrangement. A requirement that a netting system be able to ensure daily settlement in the event of settlement defaults by participants in addition to the largest net-debtor would be based on the risk of a simultaneous default by two or more participants. Such an event could be precipitated by financial market difficulties in the country of origin of the defaulting participants, or some other market disturbance that could cause financial institutions with similar or interlinked assets and liabilities simultaneously to experience liquidity or credit problems. Such simultaneous defaults, however, may be much less likely than a single default, and the incremental expected costs and benefits of requiring multilateral netting systems to meet a higher standard than Lamfalussy Minimum Standard IV must be carefully weighed.[3]

An additional consideration is which multilateral netting systems should be expected to meet a higher standard. The Board anticipates that any higher standard would be applied only to multilateral netting systems that present a high degree of systemic risk. In determining this degree of systemic risk, the Board could, as an example, utilize a threshold approach in which systems that exceed a particular measure would be expected to meet the higher standard. Such measures might include: (1) a specific dollar amount of the aggregate system-wide net debit positions; (2) the ratio of the net debit positions of selected members of a particular multilateral netting system relative to their capital; or (3) the ratio of an aggregate measure of net debit positions to the capital of a central counterparty (if one is used).

The Board is seeking specific comments on:

4. Application of a higher standard for individual large-dollar multilateral netting systems that may present a high degree of systemic risk.

- What factors should be considered in analyzing the incremental expected costs and benefits of requiring multilateral netting systems to meet a higher standard than Lamfalussy Minimum Standard IV?
- Should a quantitative threshold level be established? What indicator or indicators should be employed in setting a threshold?

Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[4] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

The Board does not believe that the Lamfalussy Minimum Standards will have a direct and material impact on the ability of other service providers to compete effectively with the Reserve Banks' payments services. The Board notes that in several cases the payment services potentially covered by the policy statement are not offered by the Federal Reserve Banks. For example, the Federal Reserve Banks do not offer services relating to the electronic clearing and settlement of payments or contracts in foreign currencies.

In the case of domestic large-dollar multilateral netting systems, a number of the risk control measures proposed to meet the Lamfalussy Minimum Standards as well as certain of the standards themselves have grown out of the experience of the private sector in developing robust netting arrangements and are currently employed in multilateral netting systems. To the extent an incremental burden might be imposed on large-dollar systems, the need to reduce and control the large potential systemic risks of such systems would justify the adoption of prudent standards and measures to control risk. The Board does not expect at this time, however, that the adoption of the Lamfalussy Minimum Standards would have a direct and material impact on the ability of other service providers to compete with the Federal Reserve Banks.

Federal Reserve System Policy Statement on Payments System Risk

The Board proposes to amend its "Federal Reserve System Policy Statement on Payments System Risk" under the heading "II. Policies for Private-Sector Networks" by replacing in the heading the word "Networks" with the word "Systems;" deleting "A. Private Large-Dollar Funds Transfer Networks" in its entirety and replacing that part with "A. Privately Operated Large-Dollar Multilateral Netting Systems;" and deleting "C. Offshore Dollar Clearing and Settlement Systems" and redesignating "D. Private Small-Dollar Clearing and Settlement Systems" as "C. Private Small-Dollar Clearing and Settlement Systems."

II. Policies For Private-Sector Systems

A. Privately Operated Large-Dollar Multilateral Netting Systems

Large-dollar multilateral netting systems can create a significant degree of credit and liquidity risk for their participants and also expose the U.S. payments system and financial markets to systemic risk. In the context of large-dollar multilateral netting systems, systemic risk is the risk that the inability of one institution within such a system, including a central counterparty if one exists, to meet its obligations when due will lead to the illiquidity or failure of other institutions, either within the particular system or in the financial markets as a whole.

Large-dollar multilateral netting systems may produce efficiencies in the clearance and settlement of payments and financial contracts. At the same time, multilateral netting may obscure, concentrate, and redistribute the credit and liquidity risks associated with clearance and settlement. As the size of netted positions increases, for example, so do the potential liquidity effects on such systems and their participants, as well as third parties, in the event of a settlement failure. In addition, if the high volumes of interrelated large-value financial contracts and payments, which

[3] For example, costs would presumably include the opportunity cost of pledging collateral to ensure settlement and of taking any other steps to ensure that funds will be available for settlement, while benefits would include avoidance of potential credit losses, liquidity effects, or both, through the greater protection afforded by a higher standard. The expected benefits, in particular, may be difficult to quantify. In addition, there may well be other measures of costs and benefits that would be appropriate to apply in the analysis of a higher standard.

[4] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990. (55 FR 11648, March 29, 1990).

reflect money and capital market activity, are not settled in a timely manner, there is a significant potential for widespread financial market disruption.

Certain types of netting system rules may also create sizable systemic liquidity risks, if employed by systems that process large-value payments that are central to the operation of financial markets. For example, privately operated payment systems that permit a system operator to unwind, recast, or otherwise reverse same-day funds transfers made by system participants, whether for reasons of general financial market stress or because of the inability of a system participant to settle its obligations on time, can obscure and greatly increase the level of systemic liquidity risk associated with the system. As a general matter, the Board does not view a same-day recast, unwind, or reversal of payments as a satisfactory mechanism for managing liquidity and settlement risks in large-dollar multilateral netting arrangements.

The Board also recognizes that the development of offshore multilateral netting systems for large-dollar payments and foreign exchange contracts may raise concerns about systemic risk that extend beyond the potential for disturbances to payment and settlement systems, or financial markets, in the United States. For example, the offshore clearing of U.S. dollar payments, for subsequent net settlement in the United States, may create transactional and other efficiencies for participants in such offshore systems. At the same time, these arrangements have the potential to concentrate settlement risks at clearing organizations and their associated settlement agents either in the United States or abroad. If the allocation of credit and liquidity risks associated with the netting is not clearly defined, understood, and managed, offshore dollar-clearing arrangements may also obscure, or even increase, the level of systemic risk in U.S. and offshore large-dollar payments systems, as well as in the international dollar settlement process. Poorly designed and managed systems may, therefore, increase risks to the international banking and financial system. In addition, offshore arrangements have the potential to operate without sufficient official oversight.

As the Federal Reserve implements fees for daylight overdrafts, along with other risk management measures, it also is important that risks not simply be shifted from the Federal Reserve's payment services to private, inadequately structured multilateral netting arrangements, either domestically or in other countries. For example, the Board has been concerned that the steps being taken to reduce systemic risk in U.S. large-dollar payments systems may themselves induce the further development of "offshore" large-dollar multilateral netting systems. These offshore systems can settle directly through payments on Fedwire or indirectly through a private large-dollar clearing system, which in turn settles on a net basis using Fedwire.

In response to potential systemic risks and the possibility that efforts to avoid risk controls will lead to inadequately structured and managed systems, the Board is adopting minimum standards within which privately operated large-dollar multilateral netting systems should operate. The minimum standards apply whether or not these systems operate domestically or in other countries. These minimum standards are identical to those set out in the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* (Lamfalussy Report).[5] The Board recognizes that from time to time, in specific cases, questions of interpretation of these standards, as they apply to large-dollar multilateral netting systems, may have to be resolved by the Board.

It is important to note that the Board's adoption of the Lamfalussy Minimum Standards in no way diminishes the primary responsibilities of participants in, and operators of, large-dollar netting systems for ensuring that these systems have adequate credit, liquidity, and operational safeguards. It is the Board's intent to heighten awareness of the risks associated with multilateral netting arrangements and of the need for their prudent management. The Board also seeks to provide the financial system with a set of minimum criteria, which have been discussed by the G–10 central banks, against which structural and risk management features of large-dollar multilateral netting systems can be evaluated.

[5] In November 1990, the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries produced a report on multilateral netting schemes. The Committee was chaired by Mr. Alexandre Lamfalussy, General Manager of the Bank for International Settlements. That report recognized that netting arrangements for interbank payment orders and forward-value contractual commitments, such as foreign exchange contracts, have the potential to improve the efficiency and the stability of interbank settlements through the reduction of costs along with credit and liquidity risks, provided certain conditions are met. In this regard, the Lamfalussy Report developed and discussed, in some detail, both "Minimum Standards for Netting Schemes" and "Principles for Co-operative Central Bank Oversight" of such arrangements.

Scope and Application of the Policy

This policy statement is directed toward any privately operated, multilateral netting system that settles, or seeks to settle, U.S. dollar obligations through payments affecting one or more accounts at Federal Reserve Banks, either directly or indirectly ("multilateral netting systems"). Multilateral netting systems include clearing house organizations, with or without a central counterparty, for netting payments or foreign exchange contracts among financial institutions.

The scope of the policy statement is limited to multilateral netting systems that involve large-dollar settlements or payments. In particular, such systems that: (1) have three or more participants that net payments or foreign exchange contracts involving the U.S. dollar, whether or not netted amounts are legally binding; and either (2) have, or are likely to have, on any day, settlements with a system-wide aggregate value of net settlement credits (or debits) larger than $500 million (in U.S. dollars and any foreign currencies combined); or (3) routinely process individual payments or foreign exchange contracts, with a stated dollar value larger than $500,000.

A multilateral netting system that meets the above criteria is subject to the policy if (1) it is a state-chartered member of the Federal Reserve System, (2) any of its agent(s) or participants are state-chartered members of the Federal Reserve System, (3) its participants' net positions are settled through a Federal Reserve settlement account, (4) its participants settle their net positions in the multilateral netting system through their individual Federal Reserve accounts or the Federal Reserve account of the settlement agent(s), or (5) one or more bank holding companies have an investment in the multilateral netting system. The Board also reserves the right to apply the elements of this policy to any non-dollar system based, or operated, in the United States that engages in the multilateral clearing or netting of non-dollar payments among financial institutions and that would otherwise be subject to this policy. This policy does not apply to systems dealing with exchange-traded futures and options. Systems in the United States that undertake only the clearance and settlement of debt and equity securities are subject to the Board's policy statement on "Private Delivery-Against-Payment Securities Systems."

In applying the policy, the Board seeks to distinguish between routine

banking relationships and arrangements that create a multilateral "system" for clearing and settling U.S. dollar payment and other obligations. This policy statement is not intended to apply to routine bilateral relationships between financial institutions, such as those involved in correspondent banking. In certain borderline cases, for example involving netting systems operated by a single financial institution and that combine elements of bilateral and multilateral netting, a case-by-case determination that an arrangement is a large-dollar multilateral netting system may be necessary for the purpose of applying this policy statement.

In general, the participation in, and operation of, a multilateral netting system is governed by rules and procedures designed to facilitate multilateral clearance and settlement. Settlement risks are typically shared by the participants in some fashion, either implicitly or through employment of explicit loss-sharing and liquidity arrangements. In contrast, correspondent banking relationships generally focus on bilateral relationships and risks; the risk of a settlement failure typically falls, at least initially and sometimes primarily, on the service provider's or settlement agent's liquidity and capital.

The Board believes that the Lamfalussy Minimum Standards may apply, for example, to all large-dollar multilateral payment netting systems irrespective of the type of financial instrument or contractual obligation netted by the system. However, the Board recognizes that in the case of privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments, including privately operated Automated Clearing House (ACH) systems, certain electronic controls that would be required to implement the Lamfalussy Minimum Standards may not be feasible. Further, the rights and responsibilities of parties within such systems may require further analysis. Consequently, the Board intends to study further the implications of the Lamfalussy Minimum Standards, and the arrangements to implement the Lamfalussy Minimum Standards, for privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments. As such, the Board does not intend to apply the Lamfalussy Minimum Standards to these systems at this time.

Lamfalussy Minimum Standards for the Design and Operation of Privately Operated Large-Dollar Multilateral Netting Systems.

The Federal Reserve's policy on privately operated large-dollar multilateral netting systems is designed to strike an appropriate balance between the requirements of market efficiency and payments system stability. A direct means of achieving this balance is to ensure that large-dollar multilateral netting systems are designed and operated so that the participants and service providers have both the incentives and the ability to manage the associated credit and liquidity risks. The Board's approach to privately operated large-dollar multilateral netting systems will be guided by the following minimum standards for such systems:[6]

1. Netting systems should have a well-founded legal basis under all relevant jurisdictions.

2. Netting system participants should have a clear understanding of the impact of the particular system on each of the financial risks affected by the netting process.

3. Multilateral netting systems should have clearly-defined procedures for the management of credit risks and liquidity risks which specify the respective responsibilities of the netting provider and the participants. These procedures should also ensure that all parties have both the incentives and the capabilities to manage and contain each of the risks they bear and that limits are placed on the maximum level of credit exposure that can be produced by each participant.

4. Multilateral netting systems should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single net debit position.

5. Multilateral netting systems should have objective and publicly-disclosed criteria for admission which permit fair and open access.

6. All netting systems should ensure the operational reliability of technical systems and the availability of backup facilities capable of completing daily processing requirements.

The Federal Reserve reserves the right to prohibit the use of Federal Reserve payment services to support funds transfers that are used to settle, directly or indirectly, obligations on large-dollar multilateral netting systems that do not meet the Lamfalussy Minimum Standards. The Federal Reserve will also take appropriate supervisory steps, or refer matters to the appropriate supervisory or regulatory authority, in cases of systems not in compliance with the aforementioned Lamfalussy Minimum Standards, or their equivalent. Moreover, in order for Federal Reserve Banks to monitor properly the use of intraday credit, no future or existing privately operated large-dollar multilateral netting system will be permitted to settle on the books of a Federal Reserve Bank unless its participants authorize the system to provide position data to the Reserve Bank on request.

Implementation of the Lamfalussy Minimum Standards

The Board believes that large-dollar multilateral netting systems, whether onshore or offshore, should meet in full the Lamfalussy Minimum Standards, as set forth in this policy statement. In order to satisfy the Lamfalussy Minimum Standards, the Board expects that individual large-dollar multilateral netting systems will meet the following risk management standards, or their equivalent: (1) a requirement that each participant establish bilateral net credit limits vis-a-vis each other participant in the system; (2) establish and monitor in real-time system-specific net debit limits for each participant; (3) establish real-time controls to reject or hold any payment or foreign exchange contract that would exceed the relevant bilateral and net debit limits; (4) establish liquidity resources, such as cash, committed lines of credit secured by collateral, or a combination thereof, at least equal to the largest single net debit position;[7] and (5) establish rules and procedures for the sharing of credit losses among the participants in the netting system. The Board will consider, on a case-by-case basis, alternative risk management measures that provide for risk management systems and controls that are equivalent to the five measures listed above. The Board notes that the Lamfalussy Minimum Standards and the arrangements to implement the Lamfalussy Minimum Standards, as discussed above, in no way diminish the responsibilities of the participants in, and the operator of, a large-dollar multilateral netting system to determine

[6] These standards are identical to the minimum standards for netting systems in the Lamfalussy Report, with the exception that the words "netting system" have been substituted for "netting scheme" in minimum standards one, two, and six, and the words "particular system" have been substituted for "particular scheme" in standard two

[7] The term "largest single net debit position" means the largest intraday net debit position of any individual participant at any time during the daily operating hours of the netting system.

if additional safeguards would be appropriate.

Timeframe for Implementation of the Lamfalussy Minimum Standards

The Board recognizes that not all existing large-dollar multilateral netting systems may meet the Lamfalussy Minimum Standards, and the associated requirements for implementation of those standards, set forth in this policy statement. The Board also recognizes that existing large-dollar multilateral netting systems will need a period of time in which to make any needed changes to their organization and operations. Consequently, the Board believes that an eighteen-month transition period would be appropriate for large-dollar multilateral netting systems that are operating on [insert date of final adoption by the Board]. Such systems will be expected to comply fully with the policy statement by [insert date eighteen months after the date of final adoption by the Board]. Large-dollar multilateral netting systems established subsequent to [insert date of final adoption by the Board] will be expected to comply fully with the policy statement, without benefit of a transition period.

The Board intends to review periodically the scale and nature of the credit, liquidity, and settlement risks in privately operated large-dollar multilateral netting systems. Operators of such systems should ensure that as the scale of risks in their systems increase, risk management systems are designed and operated to control the increased scale of risk. The Board expects that over time, whenever systems are changed or redesigned, significant attention will be given to the issue of risk management in order to ensure that high standards of risk control are achieved.

In addition, offshore, large-dollar multilateral netting systems and multicurrency netting systems should at a minimum be subject to oversight or supervision, as a system, by the Federal Reserve, or by another relevant central bank or supervisory authority. The Board recognizes that central banks have common policy objectives with respect to large-value netting arrangements. Accordingly, the Board expects that it will cooperate, as necessary, with other central banks and foreign banking supervisors in the application of the aforementioned Lamfalussy Minimum Standards to offshore and multicurrency systems. In this regard, the Principles for Co-operative Central Bank Oversight outlined in the Lamfalussy Report provide an important international framework for cooperation.

By order of the Board of Governors of the Federal Reserve System, July 12, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–17330 Filed 7–15–94; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0038, Uniform Tender of Rates and/or Charges for Transportation Services, OF 280.

The OF 280 standardizes the language and methodology for the mutual benefit of the carriers and the Government when copies of rate tenders are submitted under the provisions of 49 U.S.C. 10721.

AGENCY: Federal Supply Service, GSA.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets, NW, Washington, DC 20405.

ANNUAL REPORTING BURDEN: 13,500 responses per year; 1 hour per response; annual burden hours 13,500.

FOR FURTHER INFORMATION CONTACT: Edward Kelliher (703–305–7389).

COPY OF PROPOSAL: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Street, NW, Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: July 8, 1994.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 93–17310 Filed 7–15–93; 8:45 am]

BILLING CODE 6820–24–M

New Border Station, Highgate Springs, VT

On January 13, 1994, the General Services Administration (GSA) published a Notice of Intent in the **Federal Register** to prepare an Environmental Impact Statement (EIS) relating to the planned construction of a new Border Station at Highgate Springs, Vermont. Subsequently, a Scoping Meeting was held on March 8, 1994, in furtherance of this stated intent. For the reasons outlined below, the GSA has determined that an Environmental Assessment (EA) will satisfy National Environmental Protection Act requirements for the level of construction anticipated at this time.

Subsequent to Congressional authorization and funding of this project, it was determined that there was a need to expand the scope of the project to include a facility for the capture and temporary, short term storage of hazardous materials that might be accidentally discharged from trucks being inspected upon entering the United States. Because of the potential environmental impacts associated with the transportation, handling, and storage of hazardous materials, GSA determined that it was in the best interests of the Government and the public to prepare an EIS.

GSA has now determined that the construction of the facilities for handling hazardous materials will not be undertaken at this time. The construction of the Border Station, however, is still scheduled to commence in September of 1994.

If, in the future, GSA determines that the construction of the facilities for handling hazardous materials is necessary, GSA will initiate a second EA to assess the potential impacts of this additional facility. In the event that the second EA does not result in a Finding Of No Significant Impact (FONSI), GSA will proceed with the preparation of an EIS, pursuant to GSA regulations.

For further information please contact Mr. Peter A. Sneed, Director of Planning Staff, Public Buildings Service, General Services Administration, 26 Federal Plaza, Room 1609, New York, New York 10278. Telephone: (212) 264–3581.

Issued in New York, NY on July 8, 1994.

William B. Jenkins,

Acting Regional Administrator, General Services Administration.

[FR Doc. 94–17311 Filed 7–15–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Awards to Current Community Partnership Demonstration Program Grantees

AGENCY: Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of Supplemental Funds for Six Currently Funded Grantees in the Center for Substance Abuse Prevention's Community Partnership Demonstration Grant Program.

SUMMARY: This notice informs the public that CSAP is making available approximately $300,000 in Fiscal Year 1994 for six supplemental awards to existing grantees in its Community Partnership Program (CPP). The supplemental funding is intended to enable these grantees to assume the lead role for substance abuse prevention services and collaborate with six Department of Justice (DOJ) funded Weed and Seed projects selected as sites for a National Performance Review (NPR) Laboratory in support of anti-crime and social service delivery strategies. A criterion for selection of the NPR sites is the existence of a CSAP Community Partnership grant in the community. The total number of NPR applicants will therefore be limited to twelve cities where this criterion is met. The six Partnership grants will be identified as soon as the DOJ completes its reviews and determines the priority scores for selection of the six NPR sites. Only these partnership grantees geographically collocated with the NPR sites will then be eligible to apply for the CSAP supplemental funding. The need for collocation requires this noncompetitive selection by CSAP, to support the competitively selected NPR sites.

This funding will implement HHS' commitment to a Memorandum of Understanding among the U.S. Departments of Justice, Housing and Urban Development, Labor, Agriculture, and Health and Human Services. The Department Heads have expressed support for the Administration's principle that the Federal Government should use its resources in concert to respond more effectively to community needs.

The NPR lab will focus on enhancing Federal support for comprehensive community strategies that utilize Federal, State and local public and private resources. It is designed to: (1) identify obstacles and possible solutions which communities encounter in utilizing Federal resources when designing and implementing neighborhood-based programs. This will involve mapping the flow of Federal resources into the community; (2) assist neighborhoods to refine and enhance their anti-crime and social service delivery strategies, and evaluate their programs; and (3) implement flexible funding approaches which involve the leveraging of Federal, State, local public and private resources in support of a comprehensive strategy.

In order to receive a supplemental award, a grantee must have a minimum of one full project year remaining in the current grant as of September 30, 1994. Awards will be limited to one year and cannot exceed $50,000 in direct costs plus allowable indirect costs. The application receipt and review and the award process will be handled in an expedited manner. Those applications judged by an objective review panel to have sufficient technical merit to warrant funding will receive awards no later than September 30, 1994.

CONTACTS FOR FURTHER INFORMATION: Mr. David Robbins at (301) 443–9438 (Community Prevention and Demonstration Branch, Division of Community Prevention and Training), or Mr. Mel Segal at (301) 443–5266 (Office of Intergovernmental and External Affairs), CSAP, Rockwall II, 5600 Fishers Lane, Rockville, MD 20857.

Authority: Awards will be made under the authority of Section 516 of the Public Health Service Act, as amended.

The Catalog of Federal Domestic Assistance Number for the Community Partnership Demonstration Grant Program is 93.194.

Dated: July 12, 1994.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 94–17332 Filed 7–15–94; 8:45 am]

BILLING CODE 4162–20–P

Food and Drug Administration

[Docket No. 94M–0220]

Wesley-Jessen; Premarket Approval of Wesley-Jessen® Multi-Purpose Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Des Plaines, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Wesley-Jessen® Multi-Purpose Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 1, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 17, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On December 19, 1991, Wesley-Jessen, Des Plaines, IL 60018, submitted to CDRH an application for premarket approval of the Wesley-Jessen® Multi-Purpose Solution. The device is a chemical disinfection solution and is indicated for use in the chemical (NOT HEAT) disinfection, cleaning, rinsing, and storage of soft (hydrophilic) contact lenses.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 1, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request

either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 17, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–17373 Filed 7–15–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0213]

Allergan Medical Optics; Premarket Approval of the Model PC–28LB Ultraviolet-Absorbing Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Medical Optics, Irvine, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Model PC–28LB ultraviolet-absorbing posterior chamber intraocular lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 26, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 17, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna L. Rogers, Center for Devices and Radiological Health (HFZ–463), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION: On February 8, 1990, Allergan Medical Optics, Irvine, CA 92718, submitted to CDRH an application for premarket approval of the Model PC–28LB ultraviolet-absorbing posterior chamber intraocular lens. This device is indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older where a cataractous lens has been removed by extracapsular cataract extraction methods. The lens is intended to be placed in either the ciliary sulcus or capsular bag.

On April 19, 1990, the Ophthalmic Devices Panel, an FDA advisory panel, reviewed and recommended approval of the application. On May 26, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 17, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–17374 Filed 7–15–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3756; FR–3707–N–02]

NOFA for Youth Initiative Under Public and Indian Housing Family Investment Centers: Amendment and Notice of Application Changes

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment of NOFA and notice of application changes.

SUMMARY: This amendment extends the application due date and revises the application procedure for funds made available for the Public and Indian Housing Youth Development Initiative under Family Investment Centers (FIC). The NOFA for this program was published in the Federal Register on May 13, 1994 (59 FR 25262). Direct notice of the application changes also has been provided to persons who have already requested an application kit.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Resident Initiatives, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4112, Washington, D.C. 20410; telephone (202) 708–4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: In order to provide potential applicants with sufficient time to complete their applications and address the revised application procedures, which have been provided directly to persons who have requested applications and are also set out in this notice, the Department is extending the deadline for applications under the NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers. The Department is also increasing the number of points available in the ranking factor that addresses the need for services by eligible residents under both the category for conversion/renovation/supportive services and the category for supportive services (only). Any applicant that has already submitted an application may elect to submit a revised application by July 29, 1994.

In addition, the Department clarifies that although term Service Coordinator is defined in the NOFA (59 FR 25263), the activities referenced in that definition should not be included as supportive services. The Service Coordinator salary should be listed as a separate line item in the grant application budget. This clarification is also indicated in the Youth Development Initiative Application Kit.

The Department is taking these actions based on its authority under 42 U.S.C. 1437t and 3535(d).

Amendment of NOFA

Accordingly, FR Doc. 94–11610, the NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers, published at 59 FR 25262 (May 13, 1994), is amended as follows:

1. On page 25262, column 1, the second sentence in the paragraph following the heading "Dates" is revised to read as follows:

* * * The application deadline will be 4:30 p.m., local time, on July 29, 1994.

2. On page 25265, column 2, in the first paragraph under the heading "G. Ranking Factors" each of the two references to "150 points" is revised to read "170 points", and the last sentence is revised to read as follows:

* * * HUD may fund grants out of rank order based on project size and geographical diversity.

* * * * *

3. On page 25265, column 2, under the section headed "(1) *Conversion/Renovation/Supportive Services Activities*" in Section I.G of the NOFA, the parenthetical phrase immediately after the heading is revised to read "(Maximum 170 points)", and paragraph (a) is revised to read as follows:

(a) Evidence of the need for supportive services by eligible residents [30 points];

4. On page 25265, column 3, under the section headed "(2) *Supportive Services Only*" in Section I.G of the NOFA, the parenthetical phrase immediately after the heading is revised to read "(Maximum 170 points)", and paragraph (a) is revised to read as follows:

(a) Evidence of the need for supportive services by eligible youth [30 points];

Revision of Application Kit

5. In the Youth Development Application Kit, Tab 5 (Applicants for Funds to Provide Renovation/Conversion Activities/New Construction Activities (only)), the following cover sheets should be included with a submission:

G. Need for Supportive Services

Provide a description of the need for supportive services that will be provided in the proposed facility by eligible residents.

H. Description of Public/Private Assistance

Provide a description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including nonprofit organizations).

I. Service Agency Certification

Provide a certification from an appropriate agency that the provision of supportive services is well designed to provide families better access to educational and employment opportunities and there is reasonable likelihood that such services will be provided for the entire period specified.

J. Evidence of Firm Commitment

Provide evidence of a firm commitment of assistance from one or more sources that ensures that the supportive services will be provided for not less than one year following the completion of activities under the NOFA. Evidence shall be in the form of a letter or a resolution.

K. Description of Plan for Continuing Services

Provide a description of the plan for continuing the operation of the Youth FIC and the provision of supportive services to families for at least one year following the completion of the activities funded.

Applicants should submit the above in addition to cover sheets "A" through "F" provided in the application kit under tab 5.

Date: July 12, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–17404 Filed 7–15–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–04–4120–03; WYW132706]

Coal Leases, Exploration Licenses, etc.; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as Subpart 3410, Title 43 Code of Federal Regulations, all interested parties are hereby invited to participate with

Carbon County UCG, Inc., on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Carbon County, Wyoming:

T. 21 N., R. 89 W., 6th P.M., Wyoming
Sec. 2: Lots 1 thru 4, S2N2, S2;
Sec. 12: All;
Sec. 14: All;
T. 22 N., R. 89 W., 6th P.M., Wyoming
Sec. 4: Lots 1 thru 4, S2N2, S2;
Sec. 8: All;
Sec. 22: All;
Sec. 26: All;
Sec. 28: All;
Sec. 34: All;
T. 23 N., R. 89 W., 6th P.M., Wyoming
Sec. 20: All;
Sec. 32: All.

Containing 7,031.87 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal. The purpose of the exploration program is to identify coal resources suitable for underground gasification.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132706): BLM, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Rawlins District Office, 1300 Third Street, Rawlins, WY 82301.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the *Daily Times* of Rawlins, WY, once each week for two consecutive weeks beginning the week of July 18, 1994, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Carbon County UCG, Inc., no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Kent McAllister, One Williams Center, P.O. Box 70, Tulsa, OK 74101–0070, and the BLM, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2–1(c)(1).

Vernon G. Rulli,

Acting Chief, Branch of Mining Law and Solid Minerals.

[FR Doc. 94–17325 Filed 7–15–94; 8:45 am]

BILLING CODE 4310–22–M

[CA–060–65–5101–10–B045, CA–31587]

Intent To Consider an Amendment to the California Desert Conservation Area Plan of 1980 and To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the California Desert District of the Bureau of Land Management (BLM), pursuant to regulatory procedures for land use planning under the Federal Land Policy and Management Act of 1976 (43 CFR 1610.5–5), intends to consider an amendment to the California Desert Conservation Area Plan for the purpose of identifying public land areas which may be suitable for wind energy development and to analyze the impacts of any proposed amendment and alternatives in an environmental impact statement (EIS). The primary purpose of this notice is to seek the public's assistance in identifying planning issues and concerns to be addresses in the plan amendment. This notice also satisfies the requirements of Section 102(2)(c) of the National Environmental Policy Act of 1969 which calls for a 30-day public scoping period for EISs to enable the public to identify environmental and other issues to be addressed in the EIS.

DATES: Written comments on this proposed plan amendment and associated EIS will be accepted on or before August 12, 1994. The public is also invited to make comments at the following public scoping meetings:

Tues., July 26, 1994
Recreation Hall, 6:30 p.m., Junction of "O" and Barstow Streets, Mojave, California
Wed., July 27, 1994
Recreation District Gym, 6:30 p.m., 410 West D St., Tehachapi, California
Thur., July 28, 1994
Weldon School, 6:30 p.m., Hwy 178 and Fay Ranch Rd., Weldon, California
Tues., August 9, 1994
Ed Oakly Hall, 6:30 p.m., Twin Oaks, California

A fourth public scoping meeting will also be held. Date and location is to be announced.

ADDRESSES: Please mail comments, issues and concerns to Ahmed Mohsen, Team Leader, Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555, Attn: Wind Energy PA/EIS.

FOR FURTHER INFORMATION CONTACT: Ahmed Moshen, Environmental Coordinator, at the above address (619) 375–7125.

SUPPLEMENTARY INFORMATION: The CDCA Plan Amendment/Environmental Impact Statement will study approximately 66,200 acres of public lands in the Mojave-Tehachapi Pass area in Kern County to determine the area's suitability for potential wind energy development.

The study was initiated after the BLM was approached by several energy companies interested in future development of public lands for wind energy.

BLM's Ridgecrest Resource Area, California Desert District, agreed to begin the administrative and environmental process contingent on the following: (1) A regional, ecosystem-based approach to defining the area of study, (2) long-term planning decisions rather than case-by-case approach, (3) a preparation of a plan amendment and an environmental impact statement (PA/EIS), (4) development is not guaranteed and will be based on the results of the PA/EIS and (5) the project proponents (Proponents) would fund the entire planning process.

Based on these conditions, BLM and the Proponents signed an agreement, early in 1993, to begin the process. Based on experience with wind energy development in the 1980s, BLM staff drew boundaries that encompassed both BLM and non-BLM administered lands in the general area. BLM held a competitive bid in September 1993, which brought $825,000 to the U.S. Treasury. Five companies successfully bid on approximately 24,000 acres. Successful wind energy bidders receive a preference right to file an application for the parcel(s) within the study area. If after completion of the EIS a parcel(s) is determined suitable, BLM will process the application.

Applications for parcels found unsuitable will be rejected. This preference right provides the necessary site control required by the California Public Utilities Commission.

Last year, BLM sent letters to adjacent landowners and placed notices in three local newspapers and the **Federal Register**. BLM also formed a Technical Review Team (TRT) that included representation of local residents, environmental groups, Heritage, outdoor activities/hunting, ranching/grazing and economic interests to help coordinate the study. The TRT has been meeting since July 1993 on a monthly basis and will be assisting BLM as needed throughout the process. These meetings are held every second Tuesday of each month and are open to the public.

Dated: July 12, 1994.
Lee Delaney,
Resource Area Manager.
[FR Doc. 94–17470 Filed 7–15–94; 8:45 am]
BILLING CODE 4310–84–M

Bureau of Reclamation

Southern Nevada Water Authority Treatment and Transmission Facility, Clark County, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement and notice of scoping meetings.

SUMMARY: The Southern Nevada Water Authority (SNWA) proposes to construct an intake structure, water treatment plant and associated transmission pipelines to treat and convey Colorado River water from Lake Mead to the Las Vegas Valley. Studies and analysis have indicated that there is a need for the additional Treatment and Transmission Facility (TTF). Reclamation proposes to prepare a draft Environmental Impact Statement (EIS) to address the additional impacts associated with the construction of the facilities. A series of public meetings are planned to provide information and receive oral comments from interested parties.

DATES AND ADDRESSES: There will be five public meetings:

- August 22, 1994, 7 p.m., Boulder City Hall, City Council Chambers, 401 California Avenue, Boulder City, NV.
- August 24, 1994, 2 p.m., Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- August 24, 1994, 7 p.m., Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- August 30, 1994, 6:30 p.m., North Las Vegas City Library, Community Room, 2300 Civic Center Drive, North Las Vegas, NV.
- September 1, 1994, 7 p.m., Henderson Convention Center, 200 South Water Street, Henderson, NV.

FOR FURTHER INFORMATION CONTACT: Michael T. Walker, Chief, Environmental Compliance and Technical Services Branch, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8526; or Michael D. Noah, EIS Manager, Southern Nevada Water Authority, 1850 East Flamingo Road, Suite 234, Las Vegas, Nevada 89119, Telephone: (702) 732–7954.

SUPPLEMENTARY INFORMATION: The Las Vegas Valley currently relies on the Southern Nevada Water System (SNWS) to provide 85 percent of the Valley water supply. Because the SNWS is currently the only major water supply system serving southern Nevada's population of nearly 1 million residents and over 20 million visitors each year, planning efforts have been initiated to identify the necessary elements required to develop a back-up water treatment and transmission facility to provide relief capacity. The goal of the planning efforts for a SNWA TTF project is:

> To develop a reliable and demand-responsive municipal water system that will supplement the existing Southern Nevada Water System during periods of curtailed production or system failure, and provide the State of Nevada full access to its Colorado River water entitlement.

The results of supply and demand projections for the SNWA service area suggest that summer shortages due to insufficient facility capacity could occur as soon as the summer of 1996 unless system improvements are made. Improvements to the SNWS, and the groundwater pumping and distribution systems, may prolong the ability of the SNWA purveyors to provide adequate water supplies to the year 2000.

Planning efforts have focused on identifying potential projects that provide reliable, efficient, and environmentally acceptable alternatives to supply water drawn from Lake Mead and delivered to the Las Vegas Valley.

The alternatives contain three major components: a raw water intake structure, a water treatment plant, and a transmission system. Preliminary analyses have been conducted on each of these major project components to identify and evaluate possible configurations of the project. The results of these studies have defined three primary groups, or "families," of project alternatives grouped geographically into Northern, Central, and Southern Families.

The Northern Family includes intake locations in the north shore of Las Vegas Bay to Callville Bay. Studies indicate that the water quality at Callville Bay is adequate, but visual impacts resulting from the construction of an intake and new overhead power lines to service the treatment plant could pose significant environmental constraints. Treatment of water from Las Vegas Bay would be more expensive than water from the mainstream of the Colorado River or Lake Mead, because the Bay is affected by its proximity to existing and proposed wastewater treatment plant outfalls.

The Central Family of alternative alignments includes an intake at or near the existing SNWS intake. Evaluation of this alternative benefits from a vast amount of water quality data collected during ongoing SNWS research. However, proximity to the SNWS would likely expose the SNWA-TTF to any catastrophic event that could impair the SNWS, thus defeating one of the primary goals of developing an independent back-up system.

The Southern Family alternative includes intake sites at either Promontory Point or Hoover Dam. This alternative alignment is benefited by its accessibility to an available power supply, and its distance from wastewater discharge. While the Hoover Dam intake alternative is potentially less environmentally damaging, approvals from Reclamation to alter the design of Hoover Dam must be secured for this option to be viable.

Preliminary analyses have been conducted for project need, water demand, geotechnical and seismic conditions, water quality, intake depth, water treatment facility, water delivery system requirements, and power supply alternatives. Planning analyses will continue throughout the course of the project. To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to the contact provided above.

Dated: July 11, 1994.
Robert W. Johnson,
Acting Regional Director, Lower Colorado Region.
[FR Doc. 94–17329 Filed 7–15–94; 8:45 am]
BILLING CODE 4310–94–P

Bureau of Land Management

[ID–050–406A–02; IDI–29779]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Blaine County, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of Realty Action; R&PP Act Classification; Correction to legal description previously published in the Federal Register on Thursday, June 2, 1994, Vol. 59, No. 105, page 28558.

SUMMARY: Change: Portion of legal description identified as Lot 1 should read Lot 3. (second paragraph, second line, first column).

Dated: July 8, 1994.

Janis L. VanWyhe,

Associate District Manager.

[FR Doc. 94–17312 Filed 7–15–94; 8:45 am]

BILLING CODE 4310–GG–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–103 (Sub-No. 7X)]

The Kansas City Southern Railway Company—Abandonment Exemption—In LeFlore County, OK

The Kansas City Southern Railway Company (KCS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 9.49-mile line of railroad extending between approximately milepost 27.56 F at the connection of the KCS main line in Poteau, OK, and milepost 37.05 F at Wister, OK, in LeFlore County, OK.[1]

KCS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 17, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 28, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 8, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Jay M. Nadlman, 114 West Eleventh St., Kansas City, MO 64105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 22, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17357 Filed 7–15–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of June 10, 1994. Because the verified notice was not filed until June 27, 1994, however, consummation should not have been proposed to take place prior to August 16, 1994. Applicant's representative has been contacted and informed of the correct consummation date.

The Rails to Trails Conservancy (Conservancy) supports and joins in the notice. It also supports issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). KCS and the City of Poteau, OK, also support the issuance of a NITU. The Commission will address the Conservancy's trail use request, and any others that may be filed, in a subsequent decision.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Finance Docket No. 32536]

Norfolk Southern Railway Company and CSX Transportation, Inc.—Joint Relocation Project Exemption—Between Wateree and Foxville, SC

On June 21, 1994, Norfolk Southern Railway Company (NS) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad in a joint project with CSX Transportation, Inc. (CSX). The transaction was to have been consummated on or as soon as possible after July 1, 1994.

NS and CSX have separate tracks between Wateree and Foxville, SC. The joint project involves: (1) CSX's granting, under an agreement with NS, trackage rights to NS between Milepost AKB–351.9 (Wateree) and Milepost AKA–344.1 (Foxville), via Eastover Junction, SC (Milepost AKA–349.3) (the joint track), a distance of approximately 7.8 miles in Sumter and Richland Counties, SC; (2) NS' incidental abandonment of its track extending between NS Milepost SB–5.0 at Wateree and NS Milepost SB–12.2 at Foxville, a distance of 7.2 miles; and (3) NS' construction of a connecting track at Foxville, between CSX Milepost AKA–344.1 and NS Milepost SB–12.2.

The line relocation project will provide an alternate route for NS' operations, thus obviating the need for NS trains to travel through an area between Wateree and Foxville which is both swampy and difficult to maintain. NS states that no shippers are located on the track to be abandoned and that NS overhead traffic will be rerouted over the joint track. NS asserts that the joint project will not generate any new traffic, that there will not be an extension of NS rail service into new territory, and that there will be no change in the competitive structure of the rail carriers in the area.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN*, 4 I.C.C.2d 95 (1987). The Commission has determined

that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.& I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the embraced incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: July 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17356 Filed 7–15–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

July 13, 1994.

The National Credit Union Administration submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, Room 5107, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: New Collection
Form Number: None
Type of Review: Clearance of new collection required by statute and regulation.
Title: Truth-In-Savings—12 CFR Part 707
Description: The Truth In Savings Act of 1991 (TISA) sets forth a comprehensive scheme of written disclosures to be provided under various circumstances by credit unions to their members and potential members. The statute and the regulation require credit unions to provide specific disclosures in the following instances: upon request or when an account is opened (12 CFR Part 707); when a disclosure term changes or when certain term share accounts are close to renewal (12 CFR 707.5); on periodic statements of account activity (12 CFR 707.6); and in advertisements (12 CFR 707.8). The purpose of TISA is to enable consumers to make informed decisions about accounts at credit unions.
Respondents: All credit unions.
Estimated Number of Respondents: 12,967
Estimated Burden Hours per Response: 1 minute.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,467,679 hours.
Clearance Officer: Wilmer A. Theard (703) 518–6410, National Credit Union Administration, Room 5107, 1775 Duke Street, Alexandria, VA 22314–3428.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 94–17369 Filed 7–15–94; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.
Date and Time: August 2, 1994 8:30 A.M. Until 4:00 P.M.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Benjamin B. Snavely, Program Director, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. Telephone: (703) 306–1820.
Purpose of Meeting: To review and evaluate Starfire Optical Range proposals.
Agenda: Review and evaluation of Starfire Optical Range proposals.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–17324 Filed 7–15–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Long Island Power Authority; Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR 140.11(a)(4) to Facility Operating License No. NPF–82, issued to the Long Island Power Authority (LIPA or the licensee), for the Shoreham Nuclear Power Station (SNPS), Unit 1 at Wading River, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and an exemption from participation in the industry retrospective rating plan (secondary level financial protection) for SNPS. The licensee requested the exemption in a letter dated January 20, 1994.

The Need for the Proposed Action

SNPS was permanently shut down on February 28, 1989, and all spent fuel has been shipped offsite to Philadelphia Electric Company. On July 19, 1991, the NRC modified Facility Operating License No. NPF–82 to a Possession-Only License (POL). The SNPS is being dismantled in accordance with the approved SNPS Decommissioning Plan. The requested exemption addresses two areas for relief in financial protection requirements: (1) A reduction in the primary financial protection coverage requirements from $200,000,000 to $100,000,000; and (2) withdrawal from

participation in the industry retrospective rating plan.

Since LIPA no longer contributes as great a risk to the retrospective rating plan participants as does an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The proposed action does not involve any environmental impacts. The proposed exemption is in a subject area, changes in surety, insurance and/or indemnity requirements, for which the NRC in 10 CFR 51.22(c)(10) has determined that a license amendment would meet the criteria for categorical exclusion from the need for either an environmental assessment or an environmental impact statement.

Since the proposed action does not involve a change in plant operation or configuration, there is reasonable assurance that the proposed action would not increase the probability or the consequences of an accident or reduce the margin of safety. No changes would be made in the types or quantities of effluents that may be released offsite. Further, there would be no significant increase in the allowable individual or cumulative radiation exposure.

Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC has concluded that there are no measurable environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Supplement to the Environmental report for the SNPS.

Agencies and Persons Consulted

The license initiated this exemption. The NRC staff reviewed the request. The NRC staff consulted with a representative of the State of New York regarding the environmental impact of the proposed action, and the State did not provide comments.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee application for exemption dated April 29, 1991, and January 20, 1994, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792.

Dated at Rockville, Maryland, this 11th day of July, 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–17333 Filed 7–15–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office: John J. Lane, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions

Rule 489 and Form F–N
File No. 270–361
Rule 3 and Form U–3A3–1
File No. 270–77
Rule 95 and Form U–13E–1
File No. 270–74
Form U–7D
File No. 270–75
Rules 1(a) and 1(b) and Forms U5A and U5B
File No. 270–168
Rule 26
File No. 270–78
Rule 62 and Form U–R–1
File No. 270–166
Rule 44
File No. 270–162
Rule 88 and Form U–13–1
File No. 270–80

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget requests for extension on previously approved collections on the following rules and forms:

Rule 489 requires entities that are excepted from the definition of investment company by virtue of rule 3a–6 under the Investment Company Act of 1940 (1940 Act) to file Form F–N to appoint a United States agent for service of process when making a public offering of securities in the United States. It is estimated that each of the fifty respondents on Form F–N incur an average of one burden hour annually.

Rule 3 permits a bank which is also a public utility holding company to claim exemption from the Public Utility Holding Company Act of 1934 (Act) by filing an annual statement on Form U–3A3–1. The Commission receives five filings from banks annually, each taking about two hours to complete, thus imposing a total annual burden of ten hours.

Rule 95 requires service companies to file reports on Form U–13E–1 with the Commission prior to performing under contracts for registered holding companies or their subsidiaries, for services, construction, or the sale of goods. One company meets this requirement annually, at an estimated average annual burden of two hours.

Form U–7D establishes the filing company's right to the exemption authorized for financing entities holding title to utility assets leased to a utility company. The form imposes a total burden of 126 hours on 42 respondents.

Rule 1(a) and 1(b) and Forms U5A and U5B implement Sections 5(a) and 5(b) of the Act which require any holding company or any person proposing to become a holding company to file with the Commission a notification of registration and registration statement, respectively. The burden of this requirement is approximately 80 hours annually for one respondent.

Rule 26 sets forth the financial statement and recordkeeping requirements for registered holding companies and subsidiaries. The burden of this filing is included in the burden of filing Form U5S, which is submitted separately, thus Rule 26 imposes no annual burden.

Rule 62 prohibits the solicitation of authorization regarding any security of

a regulated company in connection with reorganization subject to Commission approval or regarding any transaction which is the subject of an application or declaration, except pursuant to a declaration regarding the solicitation which has become effective. The rule and Form U–R–1 impose a burden of 50 hours annually on 10 companies.

Rule 44 implements Section 12(d) of the Act by prohibiting sales of utility securities or any utility assets owned by a registered holding company, except pursuant to a declaration which notifies the Commission of the proposed sale and which has become effective. The rule imposes a burden of 72 hours annually on 3 respondents.

Rule 88 requires the filing of Form U–13–1 for a mutual or subsidiary service company performing services for affiliate companies of a holding company system. The rule imposes a burden of 36 hours annually on 18 respondents.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, (Project Numbers 3235–0411, 3235–0160, 3235–0162, 3235–0165, 3235–0170, 3235–0183, 3235–0152, 3235–0147 and 3235–0182), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 5, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17313 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34344; File No. SR–MSE–93–9]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Exchange's Arbitration Rules

July 11, 1994.

I. Introduction

On April 26, 1993, the Chicago Stock Exchange, Inc., formally the Midwest Stock Exchange, ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's arbitration rules. On March 31, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On June 1, 1994, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34141 (June 1, 1994), 59 FR 29454 (June 7, 1994). No comments were received on the proposal. This order approves the proposed rule change as amended.

II. Description of the Proposal

The CHX is amending its arbitration rules as set forth in Rules 23 and 24 of Article VIII to bring them more closely in line with the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration ("SICA").[5] The CHX is amending its arbitration rules concerning, among other things, redesignation of the section references in Rule 24, class action claims, the circumstances under which the CHX will arbitrate a claim, simplified arbitration, peremptory challenges, joinder and consolidation, filing amended pleadings, monetary awards, and the fee schedule for arbitrating at the CHX. The specific amendments are described more fully below.

The CHX is adding a provision (CHX Rule 24, Section 1(c)) to its arbitration rules providing that class actions will not be eligible for submission to arbitration. However, an individual may pursue a claim in arbitration if class certification is denied; the case is decertified; the customer is excluded from the class; or the customer elects not to participate in the putative or certified class action or has complied with other court prescribed conditions for withdrawal. The Exchange is amending Section 33 of Rule 24 (redesignated as Section 31) requiring the addition of a provision to pre-dispute arbitration agreements regarding the ineligibility of class actions for arbitration.[6]

Rule 24, Section 1 adds Interpretation and Policy .01 which addresses an existing Exchange policy regarding the determination whether to accept a claim for arbitration at the Exchange. The Exchange's policy is to accept a claim for arbitration if the Exchange is the Designated Examining Authority ("DEA") of the Respondent member or if the enforcement of the applicable rules has not been ceded to another self-regulatory organization ("SRO") pursuant to its Rule 17d–2 Agreement.[7] In other cases, the Exchange may decline the use of its arbitration facilities if the nexus between the dispute and the Exchange is minimal.

The Exchange considers claims submitted to the arbitration department on a case-by-case basis and examines the policy described above in determining whether a claim will be accepted. Under the Exchange's policy, the only discretion whether the Exchange will accept a claim for arbitration occurs when the Exchange is not the DEA for the Respondent member and the enforcement of a particular rule has not been ceded to another SRO pursuant to Rule 17d–2. In this event, as stated above, the Exchange may reject the claim for arbitration if the nexus between the dispute and the Exchange is minimal.

The Exchange believes that the policy places fair limitations upon the responsibility of the Exchange to make its arbitration facilities available by

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated March 30, 1994.

[4] *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated May 31, 1994. Amendment No. 2 made certain changes to Interpretation and Policy .01 and .02 to Rule 24.

[5] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the New York Stock Exchange, American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, CHX, Pacific Stock Exchange, Philadelphia Stock Exchange, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

[6] Rule 24, Section 31, Paragraph 5 is amended to state that all agreements shall include a statement that "no person shall bring a punitive or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

[7] Pursuant to Rule 17d–2 under the Act, any two or more SROs may file with the Commission a plan for allocating among the SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. *See* 17 CFR 240.17d–2 (1994).

requiring that the underlying dispute have some minimal nexus (or contacts) to the Exchange.

Rule 24, Section 1 also adds interpretation and policy .02 which extends jurisdiction over former members and member organizations for controversies which had their genesis during the period in which the former member was an Exchange member.[8]

Rule 24, Section 2(c) (Simplified Arbitration) amends the fee requirements for simplified arbitrations (cases not exceeding a dollar amount of $10,000).[9]

Rule 24, Section 2(h) provides a mechanism for resolving pre-hearing matters in a simplified proceeding. This amendment codifies the applicability of the discovery procedures set forth in Section 14 (redesignated as Section 20) to simplified arbitrations.

Rule 24, Section 8(a)(2)(v) classifies individuals who are registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators.

Rule 24, Section 10 is amended to clarify the time limitations applicable to a party wishing to utilize a peremptory challenge. Rule 24, Section 13(c)(5) is amended to state that the Director of Arbitration may extend any time period in this section (whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party pleading).

Rule 24, Section 13(d) is amended to clarify the rule with respect to joinder and consolidation. It also authorizes the Director of Arbitration to make preliminary determinations in cases where issues concerning joinder and consolidation are in dispute. However, all further determinations with respect to joinder and consolidation will remain with the arbitration panel.[10]

Rule 24, Section 19 (redesignated as Section 18) requires a party requesting an adjournment to deposit a fee, not to exceed $1,000, upon making the request. If granted, the arbitrators may waive the deposit or, in their award, return the deposit.[11]

Rule 24, Section 24 (redesignated as Section 22) clarifies that arbitrators are empowered to take appropriate action, which can include the assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals in order to obtain compliance with all rulings by the arbitrators.[12]

Rule 24, Section 28 (redesignated as Section 26) requires parties filing amended pleadings to serve such different pleadings on all other parties. This change relieves the Director of Arbitration from the requirement to serve such pleadings.[13]

Rule 24, Section 30 (redesignated as Section 28) sets forth the requirement that all monetary awards be paid within 30 days of receipt unless a motion to vacate has been filed with the court. Additionally, the section mandates that interest accrue from the date of the award, until paid, if the award is not paid within 30 days, or the motion to vacate is unsuccessful, or as specified by the arbitrators. Interest shall be assessed at the prevailing legal rate in the state where the award is rendered or at a rate set by the arbitrator(s). This change will encourage the prompt payment of awards.[14]

Rule 24, Section 32 (redesignated as Section 30) amends the current fee schedule in place at the CHX and conforms its fee schedule to those at the other SROs. The CHX is adopting the following Schedule of Fees:

SCHEDULE OF FEES—PUBLIC CUSTOMER CLAIMANT

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.*	Arb.
$1,000 or less	$15	$15	*$15	.....
$1,001–$2,500	25	25	*25	.....
$2,501–$5,000	50	75	*100	.....
$5,001–$10,000	75	75	*200	.....

[8] Interpretation and Policy .02 to Rule 24, Section 1 states that for purposes of this Rule and Rule 23 under Article VIII, the terms "member," "member organization," "associated person" and an "employee of a member," shall be deemed to encompass those persons and entities who were Exchange members or persons associated with a member at the time the circumstances occurred which gave rise to the controversy.

[9] Rule 24, Section 2(c) is amended to state that the Claimant shall pay a filing fee and remit a hearing deposit as specified in Section 30 of this Rule upon filing the Submission Agreement. The final disposition of the sum shall be determined by the arbitrator. The CHX is also amending Section 2(d) to state that the costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Section 30 of this Rule.

[10] In addition, the Exchange is amending Section 13(d) to state that in arbitrations where there are multiple Claimants, Respondents or Third party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determinations will be considered subsequent to the filing of all responsive pleadings. The Director of Arbitration shall be authorized to determine preliminary whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

Section 13(d)(1) is amended to state that all persons may join in one action as Claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all these Claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A Claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

Rule 24, Section 14 is amended to state that the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight business days prior to the date fixed for the hearing by personal service, registered, or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

[11] Section 18(b) is amended to state that a party requesting an adjournment after arbitrators have been appointed shall, if an adjournment is granted, deposit a fee, equal to the initial deposit of forum fees for the first adjournment and twice the initial deposit of forum fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their awards may direct the return of the adjournment fee.

[12] Section 22 to Rule 24 provides: "the arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Rule and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties."

[13] Amended Rule 24, Section 26 states, in part, that the party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Section 13(b). The other parties may, within ten business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Section 13(b).

[14] Rule 24, Section 28 is amended to include Paragraphs (f) and (g). Rule 24, Section 28(f) states that the awards shall be made publicly available, provided however, that the name of the customer party to the arbitration will not be publicly available if he or she so requests in writing.

SCHEDULE OF FEES—PUBLIC CUSTOMER CLAIMANT—Continued

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.*	Arb.
$10,001–$30,000	100	.....	300	$400
$30,001–$50,000	120	.....	300	400
$50,001–$100,000	150	.....	300	500
$100,001–$500,000	200	.....	300	750
$500,001–$5,000,000	250	.....	300	1,000
Over $5,000,000	300	.....	300	1,500

*The 1 Arbitrator column also sets forth the forum fees for pre-hearing conferences with a single arbitrator.

INDUSTRY CLAIMANT*

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.*	3 Arb.
$1,000 or less	$500	$75	*$300	.....
$1,001–$2,500	500	75	*300	.....
$2,501–$5,000	500	75	*300	.....
$5,001–$10,000	500	75	*300	.....
$10,001–$30,000	500	.....	300	$600
$30,001–$50,000	500	.....	300	600
$50,001–$100,000	500	.....	300	600
$100,001–$500,000	500	.....	300	750
$500,001–$5,000,000	500	.....	300	1,000
Over $5,000,000	500	.....	300	1,500

*This is the fee schedule for claims submitted by members or member organizations, against public customers, registered representatives or non-members other than public customers, and for claims submitted by registered representatives or non-members other than public customers against members or member organizations or non-members. The one arbitrator column also sets forth the forum fee for pre-hearing conferences with a single arbitrator.

MEMBER CONTROVERSIES

Amount in dispute	Filing fee	Pre-hearing	Hearing
$10,000 or less	$100	$150	$200
$10,001 to $100,000	200	300	750
$100,001 or more	300	500	1,000

The Exchange is amending Rule 23 to clarify that members must arbitrate controversies unless the parties agree to bring a matter before the Exchange's Floor Procedure Committee.[15] The rule also provides that the Floor Procedure Committee may appoint an arbitrator if a member party fails to do so after due notice.[16]

The Exchange believes that the rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[17] The Commission believes the amendments to the CHX's arbitration rules are consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest.

The Commission believes that the Exchange's amendments relating to, among other things, class actions, pre-dispute arbitration agreements, simplified arbitration, classification of arbitrators, peremptory challenges, pleadings, joinder and consolidation, monetary awards, and arbitration fees should increase customer confidence in the securities markets and promote the efficient resolution of disputes for both investors and broker-dealers.

More specifically, amending Rule 24, Section 1(c) to provide that class actions will not be eligible for submission to arbitration should ensure that investors

[15] The Committee on Floor Procedure has general supervision of the conduct and dealings on the Floor of the Exchange and recommends for adoption by the Executive Committee such rules and regulations as may be necessary for the convenient and orderly transaction of business of the Floor of the Exchange. The Committee has the power to enforce such rules and regulations by recommending staff investigations for violations thereof, in accordance with the procedure provided in Article XII. *See* CHX Article IV, Rule 3.

[16] CHX Rule 23(a) is amended to state that any controversy between parties who are members, member organizations or their nominees or associated persons which arises out of the Exchange business of such parties shall be submitted to arbitration, through the Director of Arbitration, to an Arbitration Panel composed of members of the Committee on Floor Procedure, unless non-members are also parties to the controversy. If non-members are also parties to such controversies, the arbitrator shall be appointed in accordance with Section 8 of Rule 24 under this Article unless the non-members consent to arbitration before an arbitration panel selected by parties as provided in this Rule. However, controversies shall be resolved by the Committee on Floor Procedure if the parties to such controversy agree to be bound by the decision of that Committee or if Exchange rules otherwise require resolution by the Committee on Floor Procedure. The rules and procedures applicable to arbitrations which are set forth in Rule 24 do not apply to controversies which are to be resolved by the Committee on Floor Procedure.

[17] 15 U.S.C. 78f (1988).

and broker-dealers are not put to the expense of duplicative litigation by assuring that class action Claimants have access to the courts. The amendment relating to simplified arbitration proceedings which, among other things, codifies the applicability of the discovery procedures to simplified arbitrations, should establish clear procedures for discovery requests and document production. This will assist in the fair resolution of arbitration controversies involving small claims. The amendment to Rule 24, Section 8(a)(2)(v), which classifies an individual who is registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators, is reasonable given the similarity between the futures and securities industry.

The Commission believes that amending Rule 24, Section 10 to clarify the time limitations applicable to a party wishing to utilize a peremptory challenge should provide parties with clear guidelines regarding the time limitations applicable to peremptory challenges, and as a result contribute to the prompt resolution of the parties' disputes. In addition, amending Rule 24, Section 30 to require that all monetary awards be paid within 30 days of receipt unless a motion to vacate has been filed should encourage prompt payment of arbitration awards and increase investor confidence in the arbitration process.

The Commission believes that it is appropriate to amend Section 22 of Rule 24 to affirm the arbitrators' authority to take appropriate action to obtain compliance with any of their rulings and to provide that such interpretations and actions to obtain compliance are final and binding on the parties. The Commission believes that the amendment should raise customer confidence in the arbitration process by assuring that those individuals who utilize the CHX's arbitration forum comply with the rulings of an arbitrator.

The Commission also finds that the amendments to Rule 24, Section 30, which lists the Exchange's arbitration fees is consistent with the requirements of Section 6(b)(4) of the Act,[18] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members of the Exchange and others using its facilities. Specifically, the Commission finds that the amended or newly adopted fees in Section 30 are reasonable and should help to reimburse the Exchange for various costs incurred pursuant to the arbitration process.

Finally, the Commission believes that Interpretation and Policy .01 to Rule 24, Section 1, which adopts the CHX's policy for determining whether the Exchange will accept a claim for arbitration, appropriately defines the controversies that may be arbitrated at the Exchange. The Commission believes that the adopted Interpretation and Policy reasonably balances the Exchange's interest in efficiently allocating its arbitration resources with investor's interests in obtaining access to an open forum to arbitrate claims. For example, while the new Interpretation and Policy provides that the CHX may decline the use of its arbitration facilities if the nexus between the dispute and the Exchange is minimal, the Exchange will accept a claim for arbitration if the Exchange is the DEA for the Respondent member, if the enforcement of the applicable rules has not been ceded to another SRO pursuant to its Rule 17d–2 Agreement, or if the nexus between the dispute and the Exchange is more than minimal.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17315 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78f(b)(4) (1988).

[19] 15 U.S.C. 78S(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34353; File No. SR–CHX–94–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to New Organizational Structures.

July 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 7, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to submit the following rule proposal to amend Article II, Section 1 of the Exchange's Constitution, and amend Article I, Rule 1 of the Exchange's rules. The CHX proposes the following changes:[1]

CONSTITUTION

Article II

Membership

Number and Ownership of Members

Sec. 1. The number of equity memberships shall not exceed 465. Memberships may be owned by individuals, partnerships, [and] corporations *and other organizations,* under such conditions and qualifications as shall be prescribed in the Rules of the Exchange (these and all other Rules of the Exchange adopted by the Board of Directors being hereinafter referred to as the "Rules").

RULES

Article I

Rule 1. An applicant for membership shall meet, and a member shall continue to meet, the following basic qualifications:

Citizenship, Age, and Form of Organization

(a) If an individual, an applicant or member shall be of an age so as to be responsible for his or her contracts under the laws of the State or Country in which he or she engages in the securities business. If a partnership, an applicant or member shall have at least two general partners. If a corporation, an applicant or member shall be organized under the laws of one of the states of the United States, under the Canada Corporations Act or the incorporation statute of a Canadian province, or under a comparable statute of such other Country in which the corporation is domiciled. *The Exchange may, in its discretion, and on such terms and conditions as the Exchange may prescribe, approve as a member organization entities that have characteristics essentially similar to corporations, partnerships or both. Such entities, and persons associated therewith, shall, upon approval, be fully, formally and effectively subject to the jurisdiction of, and to the Constitution and Rules of, the Exchange to the same extent and degree as are any*

[1] With respect to the following language, brackets indicates material to be deleted and italicizing indicates new material.

other members organized as a corporation or partnership and persons associated therewith.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed change is to amend the Exchange's Constitution and rules relating to the admission of entities with new organizational structures as members. Specifically, the proposed amendments permit the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve business trusts,[2] limited liability companies[3] or other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships. Currently, memberships on the Exchange can be owned by individuals, partnerships and corporations.[4] Recent changes to state corporate laws, however, have expanded the types of organizational structures available. This change merely permits these new organizational structures to qualify for Exchange membership if the Exchange deems it appropriate.[5]

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and opened market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C,. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–17 and should be submitted by August 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[FR Doc. 94–17349 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[2] The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries. *Black's Law Dictionary* 180 (5th ed. 1979).

[3] A limited liability company ("LLC") combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entities obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. *See* Robert R. Keatinge et al., *The limited Liability Company: A Study of the Emerging Entity*, 47 Bus. Law. 378 (1992).

[4] The Exchange stated that noncorporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act, since this is a prerequisite to becoming an Exchange member organization. Telephone conversation between David Rusoff, Attorney, Foley & Lardner, and Louis A. Randazzo, Attorney, SEC, on July 11, 1994.

[5] The Exchange stated that CHX staff would review each Exchange member organization application on a case-by-case basis, and prior to approving any such organization for membership, the staff would have to be satisfied that: (1) The Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations. Telephone conversation between David Rusoff, Attorney, Foley & Lardner, and Louis A. Randazzo, Attorney, SEC, on July 11, 1994.

[Release No. 34–34337; File No. SR–MBSCC–94–3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by MBS Clearing Corporation Relating to Corporate Governance Changes

July 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchanges Act of 1934 ("Act"),[1] notice is hereby given that on June 21, 1994, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBSCC proposes to amend Article FOURTH of MBSCC's Certificate of Incorporation; Sections 2.2, 2.3, 2.4, 2.10, 3.1, 3.2, 3.9, 4A.1, 4A.2, 5.2, and 10.4 of MBSCC's By-Laws; and Article V, Rule 6, Section 3 of MBSCC's Rules. MBSCC also proposes to enter into a shareholders agreement.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Background

MBSCC is currently a wholly owned subsidiary of the Chicago Stock Exchange, Incorporated ("CHX"). On March 31, 1994, certain participants of MBSCC entered into a letter of intent with the CHX pursuant to which the CHX will sell all of the issued and outstanding capital stock of MBSCC to Acquiror. Acquiror is a corporation that will be formed for the sole purpose of acquiring MBSCC stock. All current participants of MBSCC will be eligible to purchase stock of Acquiror if they agree to sign the shareholders agreement, as discussed more fully below. New participants will be eligible to purchase one share upon admission as a participant. In addition, the National Securities Clearing Corporation ("NSCC"), which also will be a signatory to the shareholders agreement, will purchase approximately 10% of the stock of Acquiror. Immediately after Acquiror's acquisition of the stock of MBSCC, Acquiror will be merged into MBSCC with MBSCC as the surviving corporation. Pursuant to the merger, participant shareholders of Acquiror will own 100% of the Class A common shares of MBSCC and NSCC will own 100% of the Class B common shares of MBSCC, as discussed below.

Description of Amendments

The purpose of the proposed rule change is to adopt appropriate corporate governance changes for MBSCC in light of the proposed acquisition discussed above. It is anticipated that the proposed rule change will become effective concurrent with the closing of the CHX's sale of MBSCC's stock to Acquiror. In furtherance of this objective, MBSCC proposes to amend Article FOURTH of its Certificate of Incorporation, to amend various provisions of its By-Laws and Rules, and to enter into a shareholders agreement.

With respect to its Certificate of Incorporation, MBSCC proposes to amend Article FOURTH both to increase the number of shares of stock that MBSCC is authorized to issue and to divide the common stock into Class A and Class B shares. The increased number of authorized shares will permit MBSCC to sell shares to its participants in proportion to their usage of MBSCC without creating fractional shares. The division of the common stock into Class A and Class B shares will provide a mechanism whereby NSCC, the purchaser of 100% of Class B shares, will be assured one seat on the board of directors of MBSCC.

The proposed amendments to the By-Laws and the proposed shareholders agreement set forth, among other things, the number of directors, their eligibility, and the manner in which directors will be elected. Specifically, the proposed changes to Article 3, Section 3.1 of the By-Laws will increase the size of the MBSCC board to thirteen from its present size of eleven directors and will establish eligibility requirements for directors. Pursuant to the proposed changes to Article 3, Section 3.2 of the By-Laws and pursuant to the proposed shareholders agreement, one of the newly created slots on the MBSCC board will be for NSCC's delegate to the board, and one slot will be for an additional representative of participants. In addition, Article 3, Section 3.1 of the By-Laws and Section 2 of the shareholders agreement will require that all directors, other than the NSCC director and one director that represents the management of MBSCC as designated by the board, be officers or general partners or hold similar management positions of participants of MBSCC ("Participant Directors").

The proposed rule change also will amend provisions of the By-Laws to lower the number of votes required to call a special meeting (Article 2, Section 2.3), to provide for waiver of notice of a stockholders' meeting (Article 2, Section 2.4), and to authorize the board of directors to establish the salaries of MBSCC's officers (Article 5, Section 5.2).

Section 2 of the shareholders agreement specifies how Participant Directors and members of the nominating committee are to be elected. As is currently the practice, the nominating committee will nominate candidates for Participant Directors and members of the following year's nominating committee. Section 2(A)(ii) of the shareholders agreement establishes the eligibility requirements for members of the nominating committee. Participants will be given the opportunity to petition for additional candidates. If no petitions are filed, the participant shareholders must elect the candidates nominated by the nominating committee. If there are competing candidates due to a petition or petitions being filed, a ballot will be mailed to all participants. Pursuant to Section 2(A)(iii) of the shareholders agreement, each participant of MBSCC will be entitled to the number of votes for each class of nominees determined as follows: the number of persons to be elected in each class multiplied by one vote for each $1,000 of average monthly volume-related fees (rounded down to the nearest one thousand dollars) payable or paid by the participant to MBSCC during the preceding year (such amount known as "Voting Entitlement"). Every participant shall have at least one vote. Each participant may cast all of its votes for a single nominee or distribute its votes among several nominees. Participants that own Class A stock must vote their shares as determined by the vote of all of the participants, whether or not they are shareholders. In the event of a tie vote, the nominating committee will select the person who is to be elected director.

The shareholders agreement also contains provisions relating to shareholder votes for other than the election of directors which direct shareholders to vote in a certain manner. For example, Section 2(C) limits removal of directors, Section 7(A) establishes a ⅔ majority voting requirements, and Section 7(B) limits and restricts certain shareholders votes to the manner directed by board resolution.

In addition, the shareholders agreement contains provisions relating to required transfers of MBSCC's stock (*e.g.* upon insolvency or the termination of the shareholders agreement) (Section 8), permitted transfers of MBSCC's Class A and Class B stock (Sections 9 and 10), and MBSCC's option to repurchase the shares (Section 11). The shareholders agreement also provides that the provisions governing the voting of shares shall continue in force for ten years and shall be automatically renewed for a subsequent ten year period. Finally, MBSCC has proposed to amend Article V, Rule 6, Section 3 of its Rules to delete references to the CHX.

The proposed rule change is consistent with Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and helps assure a fair representation of shareholders and

participants in the selection of directors and administration of MBSCC's affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MBSCC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBSCC has received no written comments. MBSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to File No. SR–MBSCC–94–3 and should be submitted by August 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17316 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34352; File No. SR–NASD–94–27]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Storage of Account Information for Options Customers for Supervisory Purposes

July 12, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its options rules governing the manner in which members may store account statements and other information for options customers for supervisory purposes. Specifically, the proposal would permit NASD members to satisfy their record retention requirements for options accounts by storing required options account information in locations other than the respective principal supervisory office for the options accounts, provided such account information is readily accessible and promptly retrievable. Presently, NASD rules require that certain customer account information be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that office. The proposal would not change the record retention requirements with respect to branch offices, only supervisory offices. The text of the proposed rule change is as follows. (Additions are italicized.)

[1] The proposed rule change was originally filed on May 23, 1994, and was amended on June 20, 1994, in order to correct a technical deficiency.

Section 33 of the NASD Rules of Fair Practice

* * * * *

Section 33(b)(17) Maintenance of Records

(A) No change.

(B) Background and financial information of customers who have been approved for options trading shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch office. Copies of account statements of options customers shall also be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. *With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable.* Other records necessary to the proper supervision of accounts shall be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

* * * * *

Section 33(b)(20) Supervision of Accounts

(A)–(C) No change

(D) Headquarters Review of Accounts

Each member shall maintain at the principal supervisory office having jurisdiction over the office servicing customer accounts, *or have readily accessible and promptly retrievable,* information to permit review of each customer's options account on a timely basis to determine (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; (v) undue concentration in any options class or classes, and (vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, NASD rules and the rules of the options exchanges uniformly require that both the branch office servicing an options customer's account and the principal supervisory office having jurisdiction over that branch office retain account statements and other financial and background information for the account for supervisory purposes.[2] With the advances in data storage and retrieval through such means as optical disks, fax machines, computers, and mircofiche, among others, coupled with the increased expenses of storing records on-site in major financial centers such as New York City, however, member firms increasingly are storing their records away from their principal supervisory offices.

In light of the record retention requirements for options accounts, however, these new storage arrangements have necessitated action by the options Self-Regulatory Organizations ("SROs"). Specifically, member firms have obtained no-action positions from the Options Self-Regulatory Council ("OSRC") on a case-by-case basis when moving their operational facilities off-site.[3] In this regard, the OSRC has determined that these arrangements are consistent with the record retention requirement rules so long as the documents are readily accessible and promptly retrievable. Thus, the OSRC has asked each of the options exchanges and the NASD to consider amending their rules to permit these types of off-site document storage arrangements. Given the realities of today's business environment, the NASD agrees with the OSRC and believes its options rules should be amended accordingly.

In addition, the NASD does not believe that the important supervisory obligations imposed on member firms will be compromised by allowing members to store options customer account statements and information off-site. Under the proposal, member firms will continue to have easy access to all customer account information necessary to discharge their supervisory responsibilities. In this connection, in order to ensure that off-site document storage arrangements will not jeopardize or constrain members' supervisory activities with respect to options accounts, the options SROs commit to periodically examine the document retrieval capabilities of members using off-site document storage arrangements.

Therefore, the NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest. Specifically, the NASD believes that the proposal will promote the maintenance of fair and orderly markets because it will afford member firms with the opportunity to discharge their supervisory responsibilities in a more cost-effective manner, thereby improving the efficiency of member firms, and, in turn, benefiting investors in the marketplace. Moreover, as noted above, because the NASD does not believe that the proposal will compromise the ability of member firms to satisfy their supervisory obligations, the NASD believes the proposal is consistent with the principle of investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–27 and should be submitted by August 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17351 Filed 7–15–94; 8:45 am]

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[2] *See* Sections 33(b) (17) and (20) of the NASD Rules of Fair Practice.

[3] The OSRC is a committee comprised of representatives from each of the options exchanges and the NASD that was created pursuant to the plan submitted by the options exchanges and the NASD under Rule 17d–2 of the Act ("17d–2 Plan"). The 17d–2 Plan was adopted to reduce regulatory duplication relative to options-related sales practice matters for a large number of firms which are currently members of two or more SRO's. The purpose of the OSRC is: (1) To administer the 17d–2 Plan; and (2) to address options-related sales practice matters in a common forum.

[4] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34354; File No. SR–NASD–93–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines Regarding the Use of Rankings in Mutual Fund Advertisements and Sales Literature

July 12, 1994.

I. Introduction

On November 22, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal would adopt Guidelines Regarding the Use of Rankings in Investment Company Advertisements and Sales Literature ("Guidelines") following Article III, Section 35 of the NASD's Rules of Fair Practice.[3]

Notice of the proposed rule change, as originally filed, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 33606, February 9, 1994) and by publication in the **Federal Register** (59 FR 7276, February 15, 1994). Six comments were received in response to the Commission release.

On June 7, 1994, the NASD submitted Amendment No. 1 to the proposed rule change. Amendment No. 1 responds to the comment letters received by the Commission, amends the language of the filng to clarify the intent of the NASD, and prohibits members from using rankings other than those developed and produced by an entity meeting the Guidelines' definition of "Ranking Entity."

Amendment No. 2, filed on June 13, 1994, further clarifies the rule change by making certain technical changes to the text of the rule change, and clarifies that rankings based on yield may use only the SEC standardized yield.

By this release, the Commission: (i) solicits comments on Amendment Nos. 1 and 2; and (ii) approves the proposed rule change, as amended, on an accelerated basis.

Below is the text of the rule change, as amended by Amendment Nos. 1 and 2. Language added to the original proposal is italicized; proposed deletions to the language originally filed as SR–NASD–93–69 are in brackets.

Guidelines for the Use of Rankings *In Investment Companies* [Mutual Fund] Advertisements and Sales Literature

I. Definition of "Ranking Entity"

For purposes of these guidelines, the term "Ranking Entity" refers to any entity that provides general information about *investment companies* [mutual funds] to the public, that is independent of the *investment company* [mutual Funds] and its affiliates, and whose services are not procured by the *investment company* [mutual fund] or any of its affiliates to assign the *investment company* [fund] a ranking.

II. General Prohibition

Members shall not use in investment company advertisements, sales literature or general promotional material any investment company rankings other than those developed and produced by entities that meet the definition of "Ranking Entity," and which conform to the requirements of the Guidelines herein.

[II.] *III.* Required Disclosures

A. Headlines/Prominent Statements

1. A headlines or other prominent statement must not state or imply than an *investment company* [mutual fund] is the best performer in a category unless it is actually ranked first in the category.

2. Prominent disclosure of the *investment comany's* [mutual fund's] ranking, the total number of *investment companies* [mutual funds] in the category, the name of the category, and the period on which the ranking is based (i.e., the length of the period and the ending date; or, the first day of the period and the ending date), must appear in close proximity to any headline or other prominent statement that refers to a ranking.

B. All advertisements and sales literature containing a*n investment company* [mutual fund] ranking must disclose, with respect to the ranking:

1. the name of the category (e.g., growth [funds]);

2. the number of *investment companies* [funds] in the category;

3. the names of the Ranking Entity;

4. the length of the period and the ending date, or, the first day of the period and the ending date;

5. criteria on which the ranking is based;

6. for *investment companies* [load funds] *which assess front-end sales loads,* whether the ranking takes into account sales charges;

7. if *the ranking is based on total return or the current SEC standardized yield,* fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the *total return or yield for that period* [ranking], a statement to that effect; and

8. the publisher of the ranking data (e.g., "ABC Magazine, June 1993"). The disclosure required by B1, B2, [and] B3, *and B4* must be set forth prominently in the body of the advertisement or sales literature.

C. If the *investment company* [mutual fund] ranking consists of a symbol (e.g., a star system) rather than a number, the advertisement or sales literature also must disclose the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all *investment companies* [mutual funds]).

D. All advertisements and sales literature containing *an investment company* [mutual fund] ranking must disclose that past performance is no guarantee of future results.

[III.] *IV.* Time Periods

A. Any *investment company* [mutual fund] ranking set forth in an advertisement or sales literature must be, at a minimum, current to the most recent calendar quarter ended, in the case of advertising, prior to the submission for publication, or, in the case of sales literature, prior to use.

B. Except for money market mutual funds:

1. advertisements and sales literature must not use any ranking based on a period of less than one year;

2. a*n investment company* [mutual fund] ranking based on total return must be accompanied by rankings based on total return for the [one, five and ten year periods (or life of the fund)] *one year period for investment companies in existence for at least one year; the one and five year periods for investment companies in existence for at least five years, and the one, five and ten year periods for investment companies in existence for at least ten years* supplied by the same Ranking Entity in the category and based on the same time period; and,

3. *an investment company ranking based on yield may be based only on the current SEC standardized yield. An* [A] *investment company* [mutual fund] ranking based on the current SEC standardized yield must be accompanied by rankings based on total return for the [one, five and ten year periods (or life of the fund)] *one year period for investment companies in*

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[1] 15 U.S.C. 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *NASD Manual,* Rules of Fair Practice, Art. III, Sec. 35(d)(2)(M), (CCH) ¶ 2195.

existence for at least one year; the one and five year periods for investment companies in existence for at least five years, and the one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity in the category and based on the same time period.

[IV.] *V.* Categories

A. The choice of category (including a subcategory of a broader category) on which the *investment company* [mutual fund] ranking is based must be one that provides a sound basis for evaluating the performance of the *investment company* [fund].

B. Subject to the standards below, *an investment company* [mutual fund] ranking must be based only on (1) a published category or subcategory created by a Ranking Entity or (2) a category or subcategory created by *an investment company* [fund] or *an investment company* [fund] affiliate, but based on the performance measurements of a Ranking Entity.

C. When the *investment company* [mutual fund] ranking is based on a subcategory, the advertisement or sales literature must disclose the name of the full category and the *investment company's* [fund's] ranking and the number of *investment companies* [funds] in the full category. This requirement does not apply if the subcategory is (1) based solely on the investment objectives of the *investment companies* [funds] included and (2) created by a Ranking Entity. This disclosure could be included in a footnote.

D. The advertisement or sales literature must not use any category or subcategory that is based upon the *investment company's* [mutual funds'] asset size (whether or not it has been created by a Ranking Entity).

E. If an advertisement uses a category created by the *investment company* [mutual fund] or *an investment company* [fund] affiliate, including a "subcategory" of a category established by a Ranking Entity, the advertisement must prominently disclose:

1. the fact that the *investment company* [fund] or its affiliate has created the ranking category;

2. the number of *investment companies* [funds] in the category;

3. the basis for selecting the category; and

4. the Ranking Entity that developed the research on which the ranking is based.

F. An advertisement or sales literature containing a headline or other prominent statement that proclaims *an investment company* [mutual fund] ranking created by *an investment company* [fund] or its affiliate must indicate, in close proximity to the headline or statement, that the *investment company* [mutual fund] ranking is based upon a category created by the *investment company* [fund] or its affiliate.

[V.] *VI.* Multiple Class/Two-Tier Funds

Investment company [Mutual Fund] rankings for more than one class or *investment company* [fund] with the same portfolio must be accompanied by prominent disclosure of the fact that the *investment companies* [funds] or classes have a common portfolio.

II. Background

The number of investment company ranking entities has increased substantially in recent years. There has been a corresponding increase in references to investment company rankings in investment company advertisements and sales literature. The use of these rankings has proven in many instances to be a source of confusion to investors, because an investment company's ranking may depend upon, among other things, the other investment companies against which its performance is compared, the time period during which the performance of the investment company is measured and whether the performance measurement used to rank the investment company reflects sales charges imposed. In response to the increasing reference by investment company groups to such investment company rankings in investment company advertisements and sales literature, the NASD filed the proposed rule change to provide guidance on the use of investment company rankings.

III. Comment Letters

The Commission received letters from six commenters.[4] All commenters except Blanchard, are explicitly in favor of the Guidelines, with recommended changes. Blanchard does not explicitly support or oppose the proposed rule change, and also recommends changes.

1. Several commenters object to Guidelines IV.B.2. and IV.B.3., which would require an investment company to obtain a ranking from a ranking agency for the life of an investment company if an investment company is less than 10 years old. These commenters state that it is impossible to obtain a rankings from ranking agencies for the life of an investment company.

In response to these comments, the NASD has amended Sections IV.B.2. and IV.B.3. to require that investment company rankings based on total return or the current SEC standardized yield must be accompanied by rankings for one year where the investment company has been in existence for at least one year but fewer than five, one and five years where the investment company has been in existence for at least five years but fewer than ten, and one, five and ten years where the investment company has been in existence for ten years or more. The NASD believes that a meaningful comparison of rankings in excess of one year should include multiple time periods for comparison to avoid the possibility of "cherry picking" only those time periods in which any particular investment company was highly ranked. The requirement in the proposed Guidelines to supply life of investment company rankings has been eliminated.

2. Commenters also object to the requirement that all rankings include rankings over 1, 5, and 10 year periods. The ICI notes that if a Ranking Entity ranks funds over a 3 year period, the member could not use that ranking.

The NASD believes that it is important to require a one-year time period to be included to permit the evaluation of an investment company's immediate performance against its performance over time. The required use of one-year ranking periods reduces the potential for rankings to be deceptive or misleading. The Guidelines do not foreclose the use of a three-year time period, or any other time period, so long as all time periods required to be used by the Guidelines are included.

3. The ICI also objects to Guideline III.B.7., which would require a statement that an investment company's ranking was materially improved by virtue of a fee waiver or expense advancement if that fee waiver or expense advancement had an effect on the rankings. The ICI's suggested alternative is to focus on the waiver or advancement's effect on *total return* or *yield* rather than the investment company's ranking. The ICI states that if the ranking is based upon total return or

[4] *See* letter from Michael E. Freedman, President & CEO, The Blanchard Group of Funds ("Blanchard") to Jonathan Katz, Secretary, SEC, dated February 29, 1994, letter from Paul Schott Stevens, General Counsel, Investment Company Institute ("ICI"), dated March 8, 1994; letter from Richard S. Cortese, Chair, NASAA Investment Company Sales Practices Committee ("NASAA"), dated March 7, 1994; letter from Thomas W. Joseph, Principal, Scudder, Stevens & Clark, Inc. ("Scudder"), dated March 8, 1994; letter from Forrest R. Foss, Vice President and Assistant Legal Counsel, T. Rowe Price Associates, Inc. ("Price"), dated March 14, 1994; and letter from Diane Brock, Vice President, Charles Schwab & Co., Inc. ("Schwab"), dated March 31, 1994.

yield, the investment company has benefited from a fee waiver or expense advancement, and that waiver or advancement has had a material impact upon total return or yield, the advertisement should state that the fee waiver or expense advancement has had a material impact upon total return or yield.

The NASD recognizes that an investment company would most likely not know if fee waivers or expense advancements had a material effect on the investment company's ranking since Ranking Entities, rather than funds, develop the rankings. It would be very difficult to provide data concerning such effects since the data would not have been compiled by either the investment company or the Ranking Entity.

Therefore the NASD has amended Section III.B.7. to require that where the ranking is based on total return or SEC standardized yield, and where fees waived or expenses advanced during the period on which the ranking is based had a material effect on total return or yield for such period, a statement to that effect shall be included. Thus, members are still capable of providing investors disclosure concerning the potential effects of fee waivers and expense advancements on investment company performance and rankings without having to provide data that is not available. The requirement of whether such waived fees or advanced expenses had a material effect on the ranking has been eliminated.

4. Scudder suggests that load funds should be required to disclose their actual load, rather than just disclosing that they have a load if a ranking does not reflect that load.

The NASD believes that it is important for investors to know whether a ranking for a particular investment company has taken into account the investment company's sales load. However, the NASD has determined not to require the disclosure of the actual sales load, which is already required to be disclosed by other provisions of the securities laws.

5. Scudder also suggests that the Guidelines should focus on *total return* over 1, 5, and 10 year periods rather than on rankings.

The NASD believes that a focus on total return would not address the types of harm against which the Guidelines are designed to protect. The Guidelines were developed to address the dissemination to the public of information about investment company rankings as a basis for the purchase and sale of investment company shares.

6. Price raises a specific issue with respect to Morningstar rankings. Morningstar produces a single blended ranking taking into account performance over 3, 5, and 10 year periods, taking into account risk. Price states that if this ranking is used, it should not be required to use component rankings.

The NASD does not believe that a blended ranking is an appropriate substitute for the component rankings of three, five and ten years. First, the NASD's proposed Guidelines require time-frame components of one, five and ten years. Second, a blended rating could significantly obscure that would otherwise be meaningful information to an investor. As noted above, the NASD believes that a meaningful comparison of rankings in excess of one year should include multiple time periods for comparison to avoid the possibility of investor confusion. Also, as noted above, the NASD believes that it is important to require a one-year time period to be included to permit the evaluation of an investment company's immediate performance against its performance over time. The required use of one-year ranking periods reduces the potential for rankings to be deceptive or misleading.

7. NASAA objects to permitting funds to self-select a universe of funds against which they rank themselves. NASAA would prefer to prohibit self-selected rankings, or, alternatively, would require a comparison against a relevant unmanaged index in addition to the comparison against the self-selected universe.

Pursuant to Section 35(c) to Article III of the NASD Rules of Fair Practice, all new advertisements and sales literature concerning registered investment companies that include or incorporate rankings must be filed within 10 days of first use with the NASD's Advertising Regulation Department for review, along with a copy of the data, ranking or comparison on which the ranking is based. If the ranking is not generally published or is the creation of the investment company, its underwriter or affiliate, it must be filed for review and approval at least 10 days prior to first use.[5] In either case, the NASD shall have the opportunity to determine whether rankings based on a self-selected universe of funds comport with the basic requirements of Section 35 that communications to the public be based on fair dealing and good faith.

8. NASAA also suggests that the core elements of the Guidelines be incorporated into Article III, Section 35 of the NASD Rules of Fair Practice.

The Guidelines will be incorporated as guidelines to Article III, Section 35 to the Rules of Fair Practice. Pursuant to Article I, Section (o) to the NASD By-Laws, the rules of the NASD include the Rules of Fair Practice and any interpretations promulgated thereunder. Any guideline, policy or interpretation promulgated under a Rule of Fair Practice is, therefore, enforceable by the NASD as if it were a Rule of Fair Practice.

9. Schwab publishes the *Schwab Mutual Funds Performance Guide ("Schwab Guide")*. The Schwab Guide provides twenty items of information about each investment company available in Schwab's Mutual Fund Marketplace. Schwab states that the Schwab Guide does not resemble typical investment company advertisements or sales literature, but would fall under the Guidelines because Schwab sells each investment company listed in the Schwab Guide. Schwab objects to the application of the Guidelines to the Schwab Guide and similar publications.

The NASD understands that Schwab has requested exemption from application of the proposed Guidelines to the Schwab Guide on the basis that such a requirement would entail significant additional information to the Schwab Guide, making it "too long and complicated and too expensive to produce and distribute." However, the Schwab Guide is distributed by Schwab, a member firm, to the public in connection with the purchase or sale of funds offered through Schwab's Mutual Fund Marketplace" ("MFMP"), and thus qualifies under NASD definitions as "advertisement" or "sales literature." Additionally, the performance rankings in the Schwab Guide will be subject to the proposed Guidelines since Schwab qualifies under the definition of "Ranking Entity" in the proposed Guidelines.

If Schwab, or any other member firm, uses Schwab's investment company rankings, or any other Ranking Entity's investment company rankings, in connection with the purchase or sale of such investment companies, then the use of such rankings is subject to compliance not only with the general requirements of Article III, Section 35 to the NASD Rules of Fair Practice, but also with the specific requirements under the proposed Guidelines, if adopted.

IV. Amendment Nos. 1 and 2

As mentioned above, the NASD filed Amendment No. 1 to the rule filing in order to respond to the six comment

[5] *See* Securities Exchange Act Release No. 33780 (Mar. 17, 1994), 59 FR 14005 (Mar. 24, 1994).

letters received by the NASD and the Commission. Amendment No. 2 was filed to further clarify the proposed rule change and to ensure that the text of the proposed rule change was consistent with the definition of similar terms used in the federal securities laws.[6] Amendment No. 2 adds a new Section II. to the Guidelines to clarify that members only use the rankings of those entities included in the definition of "Ranking Entity," and are precluded from using rankings of any entity that falls outside the definition. Sections II–V. will be redesignated Sections III.–VI. Amendment No. 2 also replaces the phrase "Mutual Fund" in the heading of the Guidelines and throughout the text with the phrase "investment company" to clarify that the Guidelines apply to all registered investment companies, including both open-end and closed-end management companies, as those terms are defined and classified in the Investment Company Act of 1940.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–93–69 and should be submitted by August 8, 1994.

V. Discussion and Findings

The Commission believes that the NASD has addressed the relevant question raised in the comment letters. The Commission believes that the amendments to the proposed rule change adequately respond to the concerns of commenters that certain provisions of the Guidelines as initially proposed imposed undue burdens upon members (*e.g.*, "life of fund" rankings; judgments as to whether a fee waiver or expense advancement materially improved the ranking of an investment company). The Commission believes that the Guidelines, as amended, will assist investment company investors in making informed investment decisions based upon information set forth in a clear and uniform manner.

Certain commenters objected that the Guidelines require the use of rankings over 1, 5 and 10 years periods. They noted that certain Ranking Entities do not produce one-year rankings, and that members would be precluded from using Ranking Entities using other time periods. The NASD has stated that it recognizes that the proposed rule change may prevent members from using certain Ranking Entities.[7] However, the NASD stated that it believes that the protection and benefits to the investing public of a consistent and unitary standard for the use of mutual fund rankings outweigh the competitive disadvantage for certain Ranking Entities that do not currently produce rankings in conformance with the Guidelines. The NASD also noted that it believes that the fiscal burden that Ranking Entities would need to incur to conform their publication to the requirements of the Guidelines would be slight. The Commission agrees with the NASD that any competitive burdens imposed by the Guidelines are outweighed by the investor protection benefits that the Guidelines will provide.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes that rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6), among other things, requires that the rules of the NASD be designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Guidelines will enhance investor protection and the public interest because they promote a clear and uniform manner in which to disseminate to the public information about investment company rankings as a basis for the purchase and sale of investment company shares.

By letter dated July 6, 1994, the NASD requests that the Commission find good cause to approve the proposed rule change as amended by Amendment Nos. 1 and 2, prior to the 30th day following publication of notice of the filing of such Amendments in the Federal Register.[9] The NASD states that the proposed rule change is necessary to address regulatory concerns regarding the disparate information being provided to investors in investment company advertising and sales literature. The NASD notes that there are currently no specific guidelines regulating the use of rankings in investment company advertising and sales literature, and that the proposed rule change will ensure that investors are provided clear information and fair and balanced ranking comparisons.

Pursuant to Section 19(b)(2) of the Act[10], the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication of Amendment Nos. 1 and 2 in the Federal Register. The proposed rule change, which was published in the Federal Register for the full statutory period, would have: (1) Required members to provide "life of fund" rankings for investment companies less than 10 years old; (2) required members to state whether a fee waiver or expense advancement materially improved the ranking of an investment company; and (3) applied only to mutual funds. The proposed amendment simply eliminates the "life of fund" ranking requirement, requires members to state whether fees waived or expenses advanced during the period on which the ranking is based had a material effect on total return or yield for such period, and applies the guidelines to all investment companies. The Commission also believes it is important for ranking information to be provided to investors in a uniform manner and in a format that permits investors to make educated

[6] The NASD proposes to:

1. Reposition Subsection I.A., which was added as a new Subsection in SR–NASD–93–69, Amendment No. 2, to new Section II. entitled "General Prohibition," and renumber the remaining Sections accordingly;

2. Subsection III.B.6.: replace the phrase "sales charges" in the first line (which was added in Amendment No. 2) with the phrase "front-end sales loads" to retain consistency with the definition of "sales load" in Section 2(a)(35) of the Investment Company Act of 1940 and to clarify that the Subsection applies only to front-end sales loads;

3. Subsection IV.A.: insert the phrase "in the case of advertising" between the words "ended" and "prior," and insert the phrase "or, in the case of sales literature, prior to use" after the word "publication," to make the Subsection consistent with SEC Rule 43b–1; and

4. Subsection IV.B.3.: insert the sentence "an investment company ranking based on yield may be based only on the current SEC standardized yield" in the beginning of the Subsection to clarify that rankings based on yield may use only the SEC standardized yield.

[7] *See* letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, SEC, dated July 5, 1994.

[8] 15 U.S.C. 78o–3(b)(6) (1988).

[9] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC, dated July 6, 1994.

[10] 15 U.S.C. 78s(b)(2) (1998).

comparisons of investment company rankings. Because the Commission believes that the Guidelines will improve the ability of investment company investors to make sound judgments based upon clear and uniform information, the Commission believes that the rule filing should be approved, as amended, without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR–NASD–93–69 be, and hereby is, approved effective immediately.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17352 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34355; File No. SR–NASD–93–38]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interim Injunctive Relief in Intra-Industry Disputes and Certain Other Changes in the NASD Code of Arbitration Procedure

July 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its Code of Arbitration Procedure ("Code") to: (1) redesignate Part III, Section 44[2] *et seq.* as new Part IV; (2) amend Sections 22 and 44; and (3) add a new Section to the Code. Below is the text of the proposed rule change. Proposed new language is in italics, proposed deletions are in brackets.

CODE OF ARBITRATION PROCEDURE

* * * * *

PART III

UNIFORM CODE OF ARBITRATION

* * * * *

Peremptory Challenge

Sec. 22. In any arbitration proceeding, *except as provided in Section (XX—Injunctions),* each party shall have the right to one peremptory challenge. In arbitration where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge, and the Third-Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identify of the person(s) named under Section 21 or Section 32(d) or (e), whichever comes first. There shall be unlimited challenges for cause.

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PART IV

MISCELLANEOUS

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Schedule of Fees for Industry and Clearing Controversies

Sec. 44.

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(h) In each industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Section 8, above, [requiring] *where interim injunctive relief is requested or where a court has issued a temporary injunction and a party requests* expedited [hearings] *proceedings,* a *total* non-refundable surcharge of $2,500 shall be paid by [all Claimants, collectively, and a non-refundable surcharge of $2,500 shall be paid by all Respondents, collectively] *the party or parties requesting the expedited proceedings as provided in Section (XX—Injunctions).* These surcharge fees shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required. *The arbitrator may determine that a party shall reimburse another party for any non-refundable surcharge it has paid.*

* * * * *

Injunctions

Sec. XX. In industry or clearing disputes required to be submitted to arbitration pursuant to Section 8, parties to the arbitration may seek injunctive relief either within the arbitration process or from a court of competent jurisdiction. Within the arbitration process, parties may seek either an "interim injunction" from a single arbitrator or a permanent injunction from a full arbitration panel. From a court of competent jurisdiction, parties may seek a temporary injunction. This section (XX—Injunctions) contains procedures for obtaining an interim injunction. Paragraph(g) of this Section relates to the effect of court-imposed injunctions on arbitration proceedings. If any injunction is sought as part of the final award, such request should be made in the remedies portion of the Statement of Claim, pursuant to Section 25(a).

Single Arbitrator

(a) Applicants for interim injunctive relief shall be heard by a single arbitrator.

Showing Required

(b) In order to obtain an interim injunction, the party seeking the injunction must make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor.

Application for Relief

(c) Interim injunctions include both Immediate Injunctive Orders and Regular Injunctive Orders, as described in paragraph (d) below. In either case, the applicator shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly-executed Submission Agreement on the party or parties against whom injunctive relief is sought. The above documents shall simultaneously and in the same manner be filed with the Director of Arbitration, together with an extra copy of each document for the arbitrator, proof of service on all parties, and all fees required under Section 44. Filings and service required under this Section (XX—Injunctions) may be made by United States mail, overnight delivery service or messenger.

(d) The procedures and timetable for handling applications for interim injunctive relief are as follows:

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[11] 17 CFR 200.30–3(a)(12) (1993).

[1] The NASD initially submitted the proposed rule change on July 13, 1993. Amendment No. 1 made technical changes to the text of the rule. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, SEC (available in Commission's Public Reference Room).

[2] *NASD Manual,* Code of Arbitration Procedure, Art. III, Sec. 44 (CCH) ¶ 3744.

(1) Immediate Injunctive Orders.

(A) Upon receipt of an application for an Immediate Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than one and no later than three business days after receipt of the application by the respondent and the Director.

(B) The filing of a response to an application for an Immediate Injunctive Order is optional to the party against whom the immediate order is sought. Any response shall be served on the applicant. If a response is submitted, the responding party shall, prior to the hearing or at the hearing, file with the Director two copies of the response and proof of service on all parties.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Section 21; and any information required to be disclosed by the arbitrator pursuant to Section 23 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for an Immediate Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Immediate Injunctive Order. Unless the parties agree otherwise, however, the order will expire no later than the earlier of the issuance or denial of a Regular Injunctive Order under subparagraph (2) or a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(2) Regular Injunctive Orders.

(A) Upon receipt of an application for a Regular Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than three and no later than five business days after the response is filed or due to be filed, whichever comes first.

(B) The party against which a Regular Injunctive Order is sought shall serve a response on the applicant within three business days of receipt of the application. The responding party shall simultaneously and in the same manner file with the Director two copies of the response and proof of service on all parties. Failure to file a response within the specified time period shall not be grounds for delaying the hearing, nor shall it bar the respondent from presenting evidence at the hearing.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Section 21; and any information required to be disclosed by the arbitrator pursuant to Section 23 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for a Regular Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Regular Injunctive Order. Unless the parties agree otherwise, however, a Regular Injunctive Order shall expire no later than a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

Challenges to Arbitrators

(e) There shall be unlimited challenges for cause to the single arbitrator appointed to hear the application for injunctive relief, but there shall be no peremptory challenges. Parties wishing to object to the arbitrator shall do so by telephone to the Director, and shall confirm such objection immediately in writing or by facsimile transmission, with a copy to all parties. A peremptory challenge may not be made to an arbitrator who heard an application for an injunctive order and who subsequently participates or is to participate on the arbitration panel hearing the same arbitration case on the merits.

Hearing on the Merits

(f) If an Immediate or Regular Injunctive Order is issued by an arbitrator, the arbitration concerning the matter of the injunction shall proceed in an expedited manner, according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

Effect of Court Injunction

(g) If a court has issued an injunction against one of the parties to an arbitration agreement, unless otherwise specified by the court, any requested arbitration concerning the matter of the injunction shall proceed in an expedited manner according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

Security

(h) The arbitrator issuing the Immediate or Regular Injunctive Order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper for the payment of any costs and damages that may be incurred or suffered by the party against whom injunctive relief is sought if it is found to have been wrongfully enjoined.

Effective Date

(i) This Section (XX—Injunctions) shall apply to arbitration claims filed on or after the effective date of this section. Except as otherwise provided in this Section (XX—Injunctions), the remaining provisions of the Code shall apply to proceedings instituted under Section (XX—Injunctions). Section (XX—Injunctions) shall expire one year after its effective date unless extended by the NASD Board of Governors.

* * * * *

Resolution of the Board of Governors

Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice for a member or a person associated with a member to fail to submit a dispute for arbitration under the Code of Arbitration Procedure as required by that Code, *to fail to comply with any injunctive order issued pursuant to Section (XX—Injunctions),* to fail to appear or to produce any documents in his possession or control as directed pursuant to provisions of the Code of Arbitration Procedure, or to fail to honor an award of arbitrators properly rendered pursuant to the Uniform Code of Arbitration under the auspices of the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, Chicago, Pacific, or Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association, where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The NASD is proposing to amend the Code to codify the authority of arbitrators to grant interim injunctive relief in intra-industry disputes under Section 8 of the Code that are subject to NASD arbitration, to provide that peremptory challenges may not later be made to arbitrators who handled requests for interim injunctive relief in the same case, to provide that the $2,500 nonrefundable surcharge for expedited proceedings shall be paid by the party requesting such proceedings, and to provide that failure to comply with any injunctive order issued pursuant to the new injunction section may be deemed to be a violation of Article III, Section 1 of the Rules of Fair Practice.

(1) *Peremptory Challenge to Arbitrator Who Handled Request for Injunction:* The proposed rule change to Section 22 excepts proceedings for injunctive orders under the proposed new section from the provision granting a party one peremptory challenge to an arbitrator. This provision is compatible with the expedited nature of injunctive proceedings. *See* discussion below of subsection (e) of the proposed new section.

(2) *Non-refundable Surcharge for Expedited Proceedings:* Currently, Section 44 imposes a non-refundable surcharge of $2,500 on all parties in an expedited proceeding. Expedited proceedings are provided in connection with a request for injunctive relief under the proposed new section and as a result of a court granting injunctive relief. The proposed rule change would amend Section 44 to provide that the total surcharge of $2,500 is to be paid only by the party or parties requesting expedited proceedings. In addition, the rule change provides that the arbitrator may determine that a party shall reimburse another party for any such surcharge it has paid.

(3) *Procedure for Granting Interim Injunctive Relief:* The introduction to the proposed new section gives arbitrators authority to grant interim injunctive relief in intra-industry disputes and clarifies the ability of parties to seek injunctive relief in court if they wish. The introduction sets out that under the proposed new section, the parties may seek either an "interim injunction" or a "permanent injunction" and that subsection (g) of the proposed new section describes the effect of court-imposed injunctions on an arbitration proceeding. Finally, the introduction clarifies that if any injunction is sought as part of the final award, the request must by made pursuant to Section 25(a).

Paragraph (a) provides that applications for interim injunctions are to be heard by a single arbitrator. Paragraph (b) requires the party seeking interim injunctive relief to make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor. Thus, the proposed standards for granting injunctive relief are similar to those traditionally employed in many courts. Paragraph (c) lists the documents that must be filed to apply for interim injunctive relief. Paragraph (d) sets forth the procedure and timetable for handling applications for interim injunctive relief. Under subparagraph (d)(1), an expedited timetable is provided for handling applications for Immediate Injunctive Orders, which are similar to temporary restraining orders ("TROs") that might be issued by a court, in that a response to such an application is optional. In such cases, that Director is to endeavor to schedule a hearing within one to three business days after receipt of the application. Information required to be given to parties may be sent by facsimile transmission, and the hearing may be held by telephone or in a limited number of cities, at the discretion of the arbitrator or the Director of Arbitration. At present, the NASD contemplates holding such hearings in New York, Chicago and San Francisco. The arbitrator will endeavor to grant or deny the application within one business day after the hearing and record are closed. The duration of an Interim Injunction will be determined by the arbitrator, but in any event it will expire no later than the date of the issuance or denial or a Regular Injunctive Order (if any) or a decision on the merits of the entire controversy.

Subsection (d)(2) of the proposed new section deals with Regular Injunctive Orders, which are similar to preliminary injunctions issued by the courts. Under these provisions, the Director will endeavor to schedule a hearing within three to five business days after the response is filed or due to be filed, whichever comes first. Failure to file a response will not, however, delay the hearing, and the responding party may choose to present evidence at the hearing whether or not it has previously filed a response. As in paragraph (d)(1), hearings may be held by telephone or in selected cities. Regular injunctions expire as determined by the arbitrator, but in no event later than the date of a decision on the merits of the underlying controversy.

Subsection (e) of the proposed new section provides that there can be unlimited challenges for cause to the single arbitrator appointed to hear the application for an interim injunction, but no peremptory challenges are permitted. Moreover, peremptory challenges may not later be made to an arbitrator who heard an application for an injunctive order and who subsequently is appointed to participate on the arbitration panel hearing the same arbitration on the merits. As stated above with regard to Section 22, the elimination of peremptory challenges promotes the expedited nature of injunctive proceedings, while still preserving the parties' rights to challenge an arbitrator for cause.

Subsection (f) of the proposed new section provides that the arbitration of the underlying controversy is to proceed in an expedited manner according to a timetable and procedures specified by the arbitration panel. This continues the expedited treatment of cases in which interim injunctive relief has been granted, to provide a faster resolution of the merits of the dispute. Paragraph (g) provides that if a court has issued an injunction against one of the parties to an arbitration agreement, any arbitration that might be requested will be handled expeditiously, according to a timetable and procedures determined by the arbitration panel. Paragraph (h) permits the arbitrator to require a party to deposit security in an amount that the arbitrator deems proper for the payment of any costs or damages that might be incurred by the adverse party if it were wrongfully enjoined.

Subsection (i) of the proposed new section contains a "sunset" clause, causing the section to expire in one year unless the NASD files a rule change under Rule 19b–4 to amend the proposed rule change to extend its period of effectiveness or eliminate the

expiration date. This will provide for a pilot period during which the feasibility of allowing arbitrators to issue interim injunctions can be assessed.

(4) *Resolution of the Board of Governors:* The proposed rule change would amend the Resolution of the Board of Governors currently found at paragraph 3744 of the Manual to provide that failure to comply with any interim injunctive order issued pursuant to the proposed new section will be added to the types of conduct that may be considered to be violative of Article III, Section 1 of the Rules of Fair Practice.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] in that the proposed rule change will facilitate the arbitration process in the public interest by codifying authority of arbitrators to grant interim injunctive relief in intra-industry disputes under Section 8 of the Code that are subject to NASD arbitration, providing that peremptory challenges may not later be made to arbitrators who handled requests for interim injunctive relief in the same case, providing that the $2,500 non-refundable surcharge for expedited proceedings shall be paid by the party or parties requesting such proceedings, and providing that failure to comply with any injunctive order issued pursuant to the new injunction section may be deemed to be a violation of Article III, Section 1 of the Rules of Fair Practice.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with Section 15A(b)(6) of the Act, commentators address the following:

1. The proposed new section would permit parties to seek injunctive relief from a court of competent jurisdiction. Section 6 of the Code of Arbitration Procedure provides that "no party shall commence any suit, action or proceeding against any other party touching upon any of the matters referred to arbitration pursuant to this Code". Should the relationship between the two sections be clarified?

It is not clear under the proposed amendment whether the new section clarifies the parties' access to existing procedures under certain state statutes allowing for injunctive actions even where parties have entered into arbitration agreements, or whether it establishes a new contractual agreement by the parties excepting injunctive actions in court from the parties' agreements to arbitrate under NASD rules. Should the proposal be amended to clarify that it is limited to existing rights under statute, or to clarify that it is intended to extend to all agreements to arbitrate under NASD rules?

2. The proposed rule change would amend an existing Resolution of the Board of Governors to provide that failure to comply with any injunctive order issued pursuant to the proposed new section may be considered to be violative of Article III, Section 1 of the Rules of Fair Practice. Since the proposed new section authorizes both court-issued injunctions (discussed in question 1 of this solicitation of comments) and interim injunctions issued by an arbitrator, should the proposed change to the resolution be clarified to indicate whether the amendment would extend to both types of injunctions or only to the interim injunctions issued by arbitrators pursuant to the section? Should the resolution be limited to arbitrator-issued interim injunctions?

3. The proposed rule change provides for two different types of interim injunctions, "immediate injunctive orders" and "regular injunctive orders". Should the proposed rule change make it clear whether different standards apply for the granting of the two types of orders, or whether the only difference in the two types of injunctive proceedings consists of the number of days in which decisions under the section are to be made?

Subsection (d)(1) of the proposed new section provides that an immediate injunctive order expires no later than the earlier of the issuance or denial of a regular injunctive order or a decision on the merits of the entire controversy. Should the proposed rule change make it clear how and when proceedings for a regular injunctive proceeding would follow an immediate injunctive proceeding?

4. Subsections (f) and (g) of the proposed new section provide that the arbitration concerning a matter in which either an interim injunction under the section or a court injunction has been issued will be expedited, under a schedule specified by the arbitration panel appointed under the Code. Since it appears under the proposal that the arbitration panel would be appointed after a decision on the application for injunctive relief is made, should there be a time frame in the proposed new section for the Director of Arbitration to appoint the panel? Should it be made clear under the expedited procedures in the proposed new section how the prehearing procedures under section 32 of the Code would operate to assure that parties can obtain access to necessary information prior to the hearing on the merits?

5. Although the introduction to the section provides that if any injunction is sought as part of the final award, the request should be made in the remedies portion of the statement of claim under Section 25(a) of the Code, and although subsection (c) provides that applications for interim injunctions must be accompanied by a statement of claim, it is not clear under the proposal whether applications for interim injunctive relief must be submitted together with the statement of claim for the full case on the merits or merely a statement of claim to support the application for injunctive relief. If the full statement of claim is not required at the time of the application for injunctive relief, should the proposed new section impose a fixed time period for the submission of the statement of claim in order to avoid prejudice to the party against which interim injunctive relief has been awarded? If the full statement of claim for the case on the merits is required at the time of the application for an interim injunction, should the proposed

[3] 15 U.S.C. Sec 78o–3.

new section be amended to clarify that point?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–93–38 and should be submitted by August 8,1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17353 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34349; File No. SR–PHLX–93–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating to the Intra-Day Addition of Strike Prices

July 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules to adopt Floor Procedure Advice ("Advice") F–22, "Intra-Day Addition of Strike Prices," to establish a procedure for the listing of new option series on an intra-day basis, with the approval of the appropriate floor committee chairperson or his designee. Specifically, under proposed Advice F–22, the PHLX may list new strikes under the following circumstances: (1) There is bona fide off-floor customer interest in effecting a sizable transaction at a strike price at or within five points of the price of the underlying instrument; or (2) there has been an operational error in not adding a requested exercise strike price.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the addition of strike prices, which is governed by PHLX Rules 1012, "Series of Options Open for Trading," and 1101A, "Terms of Option Contracts," is determined by the movement of the underlying stock, index, or foreign currency, such that strike prices reasonably close to the value of the underlying security are listed for trading. When the Exchange plans to add a new strike price, a memorandum is distributed to the trading floor as well as over electronic systems notifying the membership and their customers of the new strike. Generally, the new strike price is available for trading on the day following such notification. The PHLX states that, increasingly, it has become necessary, due to market conditions as well as customer and specialist requests, to add new strike prices within the same day with the approval of a floor official and Exchange staff. In such instances, notification is given and the strike can often become available for trading the same day. The PHLX's proposal is intended to codify a written procedure for these instances to facilitate compliance as well as to help to ensure that notification is properly given.

The Exchange proposes to incorporate the proposed procedure into the form of an advice to make it available to the trading floor in the Exchange's Floor Procedure Handbook. Proposed Advice F–22 would apply to the equity option, index option and foreign currency option trading floors.

In order to provide the guidance necessary to determine when and how the same-day addition of a new strike price is effected, the PHLX has incorporated certain standards into proposed Advice F–22. For example, the proposed Advice provides that where the Exchange has erroneously failed to list a strike price, an intra-day addition would be appropriate. In addition, the proposed Advice provides that an off-floor customer request to list a strike at or within five points of the price of the underlying stock, or within a comparable amount of "ticks," in the case of a foreign currency option, in order to effect a sizeable transaction, would warrant an intra-day addition.

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[1] On March 30, 1994, the PHLX submitted a letter deleting a provision which would have allowed the Exchange to add new strike prices under extraordinary circumstances. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 30, 1994 ("Amendment No. 1"). Amendment No. 1 also clarified that new strikes may be added in response to bona fide off-floor customer interest, and defined customer interest to "include institutional (firm), corporate or customer interest expressed directly to the PHLX or through the customer's floor brokerage unit, but not interest expressed by a registered options trader ("ROT") with respect to trading in the ROT's own account. On June 23, 1994, the PHLX submitted a letter deleting a provision which would have allowed the Exchange to list additional strike prices when there is significant volatility in the price of the underlying instrument. *See* Letter from Gerald D. O'Connell, First Vice President, PHLX, to Sharon Lawson, Assistant Director, Division, Commission, dated June 23, 1994 ("Amendment No. 2"). Amendment No. 2 also states that strike prices added under the proposal must be consistent with PHLX Rules 1101A, "Terms of Option Contracts," and 1012, "Series of Options Open for Trading." In addition, the PHLX clarified its proposal by noting that the purpose of the proposal is to allow the Exchange to add strike prices intra-day in order to respond to market changes. The PHLX states that the proposal will not affect the number of strike prices which the Exchange will list, and that the determination of which strike prices will be added will continue to be governed by Exchange Rules 1012 and 1101A. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division, Commission, dated March 1, 1994 ("March 1 Letter"). On July 7, 1994, the PHLX submitted a letter requesting accelerated approval of the proposal. *See* Letter from Gerald D. O'Connell, First Vice President, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division, dated July 7, 1994 ("July 7 Letter").

Moreover, the approval of the chairperson of the appropriate floor committee, or his designee, would be required to list an intra-day strike under the proposed Advice. Proposed Advice F–22 also requires that prior notice of any such intra-day addition be disseminated for the benefit of off-floor firms and customers.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest. Specifically, the Exchange believes that the adoption of proposed Advice F–22 should codify the procedure for adding new strike prices intra-day so that the procedure may be referred to by PHLX member organizations and implemented uniformly.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act because the proposal codifies the Exchange's existing procedures for adding intra-day strikes.[2]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[3] Specifically, the Commission believes that the proposal will protect investors and further the public interest by clarifying the Exchange's procedures for adding intra-day strike prices and by ensuring that notice of a new intra-day strike price is disseminated to the Exchange's options members before the new strike is listed.

The Commission also believes that the PHLX's proposal strikes a reasonable balance between the Exchange's need to accommodate the needs of investors and the need to avoid the excessive proliferation of options series. In this regard the Commission notes that the proposal allows the PHLX to list only intra-day strikes at or within five points of the underlying instrument, (strikes that normally would be added the next day), only if there is bona fide customer interest[4] in the additional strikes or to correct an operational error, in addition to requiring the approval of the appropriate floor committee chairman or his designee. Moreover, the PHLX proposes to list only those additional intra-day strikes which are "reasonably close" to the price of the underlying instrument, consistent with PHLX Rules 1012 and 1101A.[5] The Commission believes that these requirements provide the Exchange with the flexibility to list additional intra-day strike prices in response to genuine customer interest or to correct an operational error while, at the same time, appropriately limiting the number of options series that may be outstanding at any one time. The Commission notes that the proposal, which is a codification of the Exchange's current practice, is designed to affect only the timing of the listing of additional strikes without affecting the number of strike prices the Exchange lists.[6]

The Commission expects the PHLX to monitor the additional intra-day strikes listed under the proposal to ensure that the strikes are added in response to a bona fide customer request or to correct an operational error, and are consistent with Exchange Rules 1012 and 1101A.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because the proposal codifies the Exchange's existing policy for the addition of intra-day strike prices and is a clarification of the PHLX's current rule for adding strikes. The Commission finds good cause for approving Amendment Nos. 1 and 2 because they make the proposal consistent with the Exchange's current policy for listing intra-day strike prices and clarify that intra-day strikes listed under the proposal must be consistent with PHLX Rules 1012 and 1101A. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PHLX–93–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17317 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20392; 812–8716]

MassMutual Institutional Funds, et al.

July 11, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: MassMutual Institutional Funds (the "Trust"), Massachusetts

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[2] *See* July 7 Letter, *supra* note 1.

[3] 15 U.S.C. 78f(6)(5) (1982)

[4] The proposal defines customer interest to include "institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by an ROT with respect to trading for the ROT's own account." *See* Amendment No. 1, *supra* note 1.

[5] *See* Amendment No. 2, *supra* note 1.

[6] *See* March 1 Letter, *supra* note 1.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1993).

Mutual Life Insurance Company (the "Advisor"), and Oppenheimer Funds Distributor, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 18(f), 18(g) and 18(i) and under Section 17(b) for exemption from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to (i) permit MassMutual Institutional Funds to issue and sell multiple classes of securities representing interests in some or all of the Trust's existing and future investment portfolios and (ii) permit the transfer of assets of seven separate accounts of the Adviser to corresponding series of the Trust in exchange for shares of a certain class of each such series.

FILING DATE: The application was filed on December 10, 1993 and amended on June 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1994, and should be accompanied by proof of service on the Applicants, in the form an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1295 State Street, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as a diversified, open-end management investment company. The Advisor is a mutual life insurance company organized under Massachusetts law. The Distributor is a registered broker-dealer which serves as principal underwriter to the Trust. A majority of the outstanding voting stock of the Distributor is indirectly owned by the Adviser. The Trust presently consists of seven separate series (the "Funds"), each of which has separate investment objectives and policies.

2. Applicants request that relief pursuant to Section 6(c) of the 1940 Act be extended to any future series of the Trust and to any other registered open-end investment management company (which is not a separate account) for which (a)(i) the Adivser or a person controlled by the Adviser serves as investment adviser, or (ii) the Distributor or a person controlled by the Distributor serves as principal underwriter and (b) that (i) is within the same "group of investment companies" as that term is defined in Rule 11a–3 under the 1940 Act and (ii) may in the future offer separate classes of shares on a basis identical in all material respects to that set forth in the application. Applicants represent that all representations made herein, as well as any conditions imposed by any order issued by the Commission with respect to this Application, will apply to all investment companies that elect to rely on such order.

3. The Trust intends to offer multiple classes of shares of each Fund (the "Multiple Class System"). Each Fund proposes to have four classes of shares Class 1, Class 2, Class 3 and Class 4.

4. Class 1, Class 2 and Class 3 shares will be marketed primarily to defined contribution plans to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), which include 401(k) plans, profit sharing plans, money purchase plans and target benefit plans. Under defined contribution plans, an individual account is established for each plan participant. Class 1, Class 2 and Class 3 shares will also be available to custodial tax-sheltered accounts described in Code Section 403(b)(7), deferred compensation plans described in Code section 457, individual retirement accounts described in Code section 408, voluntary employees' beneficiary associations described in Code section 501(c)(9), defined benefit plans that qualify under Section 401(a) of the Code, other non-qualified plans, and other institutional or sophisticated investors (collectively, "Institutional Investors").

5. Class 4 shares of each Fund will be available only to the unregistered separate accounts of the Adviser and life insurance company affiliates of the Adviser ("Separate Accounts"). Each of the Separate Accounts is expected from the definition of an investment company pursuant to Section 3(c)(11) of the 1940 Act and interests in the Separate Accounts are exempt securities pursuant to Section 3(a)(2) of the Securities Act of 1933. Interests in the Separate Accounts are offered only to corporate qualified plans, including defined contribution plans (which are generally participant-directed) and defined benefit plans.

6. Class 1 shares will be offered to Institutional Investors. Each Fund will adopt with respect to Class 1 a plan pursuant to Rule 12b–1 under the 1940 Act (a "Rule 12b–1 Plan") which will provide for payment to the Distributor of an amount (currently expected to be .40% of the average daily net asset value of the Class 1 shares) as an "asset-based sales charge" (as such term is defined in section 26 of Article III of the Rules of Fair Practice of The National Association of Securities Dealers, Inc. (the "NASD Rule"). In addition, the Class 1 shares will bear an annual "service fee" (as defined in the NASD Rule) of up to .25%. Class 1 shares will be offered at net asset value without a front-end or contingent deferred sales charge.

7. Class 2 shares will be offered to Institutional Investors who are either a retirement arrangement covering 400 or more lives or who initially invest a minimum of $2,000,000. For purposes of determining whether an initial investor has satisfied the minimum initial investment requirement for Class 2 shares, amounts invested in certain other products of the Adviser by the Institutional Investor will be counted toward the minimum initial investment requirement. In addition, when determining the number of lives covered by a retirement arrangement investing in Class 2 shares of a Fund, the number of lives covered by that retirement arrangement, including lives covered in certain products of the Adviser, will be counted toward the number of lives covered by the retirement arrangement purchasing Fund shares. Each Fund will adopt with respect to Class 2 a Class 2 Rule 12b–1 Plan which will provide for payment to the Distributor of an amount (currently expected to be .15% of the average daily net asset value of the Class 2 shares) as an asset-based sales charge. It is not expected that Class 2 shares will be subject to a service fee. Class 2 shares will be offered at net asset value without a front-end or contingent deferred sales charge.

8. Class 3 shares will be offered to Institutional Investors who are either a retirement arrangement covering 750 or more lives or who initially invest a minimum of $10,000,000. For purposes of determining whether the minimum

number of lives or initial investment requirements have been met, the same approach will be followed as described above for Class 2 shares. It is not expected the Class 3 shares will be subject to any payments pursuant to a Rule 12b–1 Plan or service fee. They will be offered at net asset value without a front-end or contingent deferred sales charge.

9. Class 4 shares of each Fund will be offered only to the Separate Accounts of the Adviser and life insurance company affiliates of the Adviser. Class 4 shares will be offered at net asset value and will not be subject to a sales load or payment pursuant to a Rule 12b–1 Plan or service fee. However, the corporate qualified plans are subject to certain charges as a result of their investment in the Separate Accounts. The amount of these charges depends on the particular provisions and services of the respective plans and the unregistered group annuity contracts purchased to fund such plans and, therefore, vary from plan to plan.

10. The adoption and implementation of a Rule 12b–1 Plan as to one Fund and class thereof will necessarily be made independently of, and will not be conditioned upon, the adoption or implementation of such a Plan as to any other class within that Fund or as to any other Fund of the Trust or class thereof. Similarly, the Distributor will not use the Rule 12b–1 Plan fees charged to one class within a Fund to support the marketing or services of any other class within the Fund or any other Fund or class thereof. The different maximum Rule 12b–1 fees for Class 1 and Class 2 shares generally reflect the different type and amount of marketing and service effort required with respect to these two classes. Class 1 shares will be sold primarily through brokers, whereas Class 2 shares will be marketed primarily by employees of an affiliate of the Adviser. Were these expenses allocated pro rata to all shares without regard to the size of the shareholder's purchase, some shareholders would be subsidizing the expenses incurred by or on account of other shareholders. Class 3 shares will be subject to no 12b–1 fees because it is anticipated that no commissions will be paid upon the sale of such shares and that servicing expenses will be minimal in relation to the size of the accounts; any expenses related to sales and distribution would be borne by the Adviser and not by the Trust. With respect to Class 4 shares, because of the nature of the investors eligible to purchase them, there are not expected to be any distribution or service expenses attributable to that class.

11. Each share of the Trust, regardless of class, will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (a) each class will have a different class designation; (b) each class offered in connection with a Rule 12b–1 Plan will bear the expense of the payments that would be made pursuant to such Rule 12b–1 Plan; (c) each class will also bear certain other expenses ("Identifiable Class Expenses") that are directly attributable only to the class; (d) only the holders of the shares of the appropriate class involved will be entitled to vote on matters pertaining to a Rule 12b–1 Plan relating to such class (for example, the adoption, amendment or termination of a Rule 12b–1 Plan) in accordance with the requirements and procedures set forth in Rule 12b–1; (e) each class will have different exchange privileges; and (f) Class 1 and Class 2 will have the conversion feature described below.

12. All expenses of the Trust that cannot be attributed directly to any one Fund will be allocated to each Fund based on the relative net assets of such Fund. Certain other expenses may be attributable to a Fund, but not to a particular class of the Fund's shares. All such Expenses incurred by a Fund would be borne by the outstanding shares of the Fund regardless of class.

13. The Adviser may choose to reimburse or waive the Identifiable Class Expenses of certain classes on a voluntary, temporary basis. The amount of such expenses waived or reimbursed by the Adviser may vary from class to class. In addition, the Adviser may waive or reimburse expenses attributable to the Trust generally and/or expenses attributable to a Fund (with or without a waiver or reimbursement of Identifiable Class Expenses) but only if the same proportionate amount of such expenses are waived or reimbursed for each class. Thus, any expenses attributable to the Trust generally that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes. Similarly, any expenses attributable to a Fund that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes.

14. Because of the Rule 12b–1 fees and Identifiable Class Expenses that may be borne by each class of shares, the net income of (and dividends payable to) each class may be different from the net income of the other classes of shares of the Trust.

15. Class 1 and Class 2 shares of the Funds will have the following conversion feature: Once the aggregate net asset value of a shareholder's Class 1 or Class 2 shares equal the minimum investment or the investing retirement arrangement reaches the minimum number of lives requirement for Class 2 or Class 3 shares, semi-annually, as of predetermined dates, the shareholder's Class 1 or Class 2 shares will be converted into Class 2 or Class 3 shares of equal aggregate net asset value in the same Fund. Such shares will thereafter be subject to the lower Rule 12b–1 Plan fee applicable to Class 2 shares or to no Rule 12b–1 Plan fee in the case of Class 3 shares.

16. The Adviser serves as investment adviser to seven Separate Accounts through which are invested the assets of underlying contracts between the Adviser and certain retirement plans or other arrangements. Each of the Separate Accounts has a distinct portfolio of assets and its own investment objectives that correspond to those of a Fund. The Adviser has determined that, as part of a plan of reorganization to be carried out prior to commencement of the public offering of shares of the Funds, it would be desirable to transfer assets of each of the seven Separate Account to the Fund having corresponding investment objectives in exchange for Class 4 shares of that Fund (the "Exchange").

17. The Exchange has been or will be reviewed and approved both by the Board of Trustees of the Trust and by the Adviser in the exercise of its investment discretion over the Separate Accounts. The number of shares of a Fund to be issued to a Separate Account will be determined by dividing the value of a Separate Account's net assets on the date set for the Exchange by the net asset value of one share of the corresponding Fund on the same date. The value of a Separate Account's assets to be exchanged will be determined by the same method used to value the assets of the Funds. Each Fund will assume liability for any settlement costs of securities transactions of the corresponding Separate Account outstanding at the time of transfer, however, in no event will a Fund bear the expenses, if any, associated with the transfer of assets. The value of the assets transferred, taking account of the liabilities transferred therewith, will equal the value of the Class 4 shares received in return.

Applicants' Legal Analysis

1. Applicants request an order exempting them from the provisions of Sections 18(f)(1), 18(g) and 18(i) to the

extent that the proposed issuance and sale of various classes of shares representing interests in the same Fund might be deemed: (a) to result in a "senior security" within the meaning of Section 18(g) of the 1940 Act; (b) prohibited by Section 18(f)(1) of the 1940 Act; and (c) to violate the equal voting provisions of Section 18(i) of the 1940 Act.

2. Applicants believe that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Applicants assert that the proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of the Trust since all shares will participate based on relative net asset value in all of the Trust's income and expenses, with the exception of the Rule 12b–1 Plan payments and Identifiable Class Expenses.

3. The Applicants believe that by creating and offering shares in connection with Rule 12b–1 Plans as described above, and by also creating and offering shares independently of the Rule 12b–1 Plans, the Trust will be able to achieve added flexibility in meeting the service and investment needs of its shareholders and future investors. The Applicants believe further that, to the extent shares are created and Rule 12b–1 Plans adopted as described above, the Trust will be able to address more precisely the needs of the particular investors and to cause the associated expenses to be borne by such investors. The Trust believes that it would be inefficient, and probably economically or operationally unfeasible, to organize a separate series for each class of shares. Not only would the Trust incur unnecessary accounting and bookkeeping costs in organizing and operating such new series, but the Trust's management of the new series, as well as its existing Funds, might be hampered.

4. Because the proposed Exchange might be deemed to be a transaction between the Trust and an affiliated person of an affiliated person of the Trust and, therefore, prohibited by Section 17(a) of the 1940 Act, Applicants also request an order pursuant to Section 17(b) exempting the Exchange transaction from the provisions of Section 17(a).

5. According to the Applicants, the exchange will avoid unnecessary brokerage expenses which would otherwise be borne by the Funds and the Separate Accounts if the Separate Accounts were required to liquidate their portfolios in order to purchase shares of the Funds and the Funds, in turn, were to use such purchase proceeds for investment in their respective portfolio securities. Moreover, the Separate Accounts might be forced to sustain losses caused by the untimely sale of one or more of their portfolio securities. Applicants argue that there appears to be no persuasive reason for requiring the Separate Accounts' reorganizations to be accomplished in a manner subjecting both the Separate Accounts and the Funds to unnecessary disadvantages in view of the safeguards which will assure fairness in the terms of the Exchange if effected in the manner described.

6. Applicants submit that, because the value of shares of the Funds and the value of the assets of the Separate Accounts will be determined as described above, the terms of the Exchange are reasonable and fair, and that there is no inadequacy of consideration to be received by any party to the transaction. The parties further submit that the Exchange is consistent with the recited policies of the Separate Accounts and the Funds, since the investment objectives of the Separate Accounts and the corresponding Funds are the same. Finally, the Applicants submit that the Exchange is consistent with the general purposes of the Act by avoiding the possibility that the Separate Accounts or the Funds will incur unnecessary expenses of losses in connection with the reorganization of the Separate Accounts.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will related solely to: (a) the impact of the respective Rule 12b–1 Plan payments made by each class of shares (or the absence of any such distribution or service fees), and any Identifiable Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agency fees attributable to a specific class of shares, (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class, (iii) Blue Sky registration fees incurred by a class of shares, (iv) SEC registration fees incurred by a class of shares, (v) shareholder and administrative service fees payable under each class's respective administrative service agreement, if any, and (vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) voting rights on matters which pertain to Rule 12b–1 Plans; (c) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statement of additional information) of the Funds; (d) the conversion feature applicable to the Class 1 and Class 2 shares as described in the prospectus; and (e) the designation of each class of shares of a Fund.

2. If a Fund implements any amendments to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-Rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares under the plan into which another class will convert (the "Target Class"), shares of the class that will convert (the "Purchase Class") will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve such a proposal. If (i) holders of Purchase Class shares do not approve such a proposal; (ii) such proposal is approved by the holders of Target Class shares; and (iii) such material increase occurs, than the Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase shares will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with Condition 6, any additional cost associated with the creation, exchange, or conversion of the

New Target Class or the New Purchase Class shall be borne solely by the Adviser and the Distributor. The Purchase Class shares sold after implementation of the proposal may convert into the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

3. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in the NASD Rule), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they are subject prior to the conversion.

The Trustees of the Trust, including a majority of the Trustees who are not interested persons of the Trust, shall have approved the multiple class system prior to the implementation of the multiple class system by a particular Fund and will approve the creation and issuance of any new class of shares. The minutes of the meetings of the Trustees regarding their deliberations with respect to the approvals necessary to implement the multiple class system or to create new classes will reflect in detail the reasons for determining that such action is in the best interests of both the Funds and their respective shareholders.

5. The initial determination of the Identifiable Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by a Fund to meet Identifiable Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

6. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

7. The Trustees of the Trust will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only distribution and/or service expenditures properly attributable to the sale or servicing of a class of shares will be used to support the Rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale or servicing of the relevant class of shares will not be presented to the Trustees to support Rule 12b–1 fees charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their Fiduciary duties.

8. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that fee payments made under the Rule 12b–1 Plans relating to a particular class of shares, will be borne exclusively by such class and except that any Identifiable Class Expenses may be borne by the applicable class of shares.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of income expenses among such classes have been reviewed by an expert (the "Expert"), and the Expert has rendered a report to the Applicants, as set forth in Exhibit B as filed December 10, 1993. The Expert has demonstrated that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The Reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to Section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, any Assistant Director, and any Regional Administrator or Associate and Assistant Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in the Statement of Accounting Standards No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. The Applicants agree to take immediate corrective action if the Expert, or an appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectus or prospectuses of the Funds relating to Class 1, Class 2, Class 3 and Class 4 shares will include a statement to the effect that a dealer or other organization selling shares of those classes may receive different levels of compensation for selling one particular class of shares over another in the Funds.

12. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the multiple class system will be set forth in guidelines which will be furnished to the Trustees as part of the

materials setting forth the duties and responsibilities of the Trustees.

14. Each Fund will disclose the expenses, performance data, distribution arrangements, services, fees, sales loads, conversion features, and exchange privileges applicable to each class of shares of the Fund in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to a Fund as a whole generally and not on a per class basis. A Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class 1, Class 2, and Class 3 shares, it will also disclose (i) the expenses and/or performance data applicable to each of Class 1, Class 2 and Class 3 shares and (ii) the existence of Class 4 shares. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class 4 shares, it will also disclose (i) that Class 4 shares are only available to the Separate Accounts and are not offered to the public, (ii) the fact that the investors purchasing Class 4 shares though a Separate Account are subject to additional charges, and (iii) the existence of Class 1, Class 2 and Class 3 shares. Any such performance information applicable to Class 4 shares will be provided net of Separate Account and Fund expenses. The information provided by Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each outstanding class of shares separately.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply Commission approval or authorization of are acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 Plans in reliance on the order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17318 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20393; 812–9038]

Presidential Associates I Limited Partnership, et al.; Application

July 11, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Presidential Associates I Limited Partnership (the "Partnership") and Winthrop Financial Co., Inc. (the "Managing General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to amend a prior order (the "Prior Order") issued under section 6(c) of the Investment Company Act of 1940.[1] The Prior Order exempts the Partnership from all provisions of the Act and permits the Partnership to invest in another partnership, Presidential Towers, Ltd. (the "Operating Partnership"), which owns and operates residential apartments for moderate income persons. Applicants seek to amend the Prior Order to permit a new investor to invest in the Operating Partnership.

FILING DATES: The application was filed on May 11, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Because of the Partnership's investment in the Operating Partnership, the Partnership may be an investment company under sections 3(a)(1) or 3(a)(3) of the Act. The Prior Order granted applicants an exemption under section 6(c) of the Act from all provisions of the Act permitting the Partnership to invest in the Operating Partnership, which in turn would own and operate a residential project (the "Project") for moderate income persons in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release 8456"). Release 8456 states that an exemption for a two-tier partnership, such as the Partnership, is appropriate if two criteria are met: (a) The interests in the partnership must be sold only to persons for whom investment in limited profit, essentially tax shelter, investments would not be unsuitable and (b) requirements for fair dealing by the general partner of the partnership with the limited partners should be included in the basic organizational documents of the partnership.

2. Applicants propose to effect two changes that would change the structure of the Project's ownership from that represented in the application for the Prior Order. These changes would dilute the Partnership's interest in the Operating Partnership to less than 50% of the total interests in the Operating Partnership and effectively transfer to a new investor in the Operating Partnership, as the new majority partner, certain rights concerning the Operating Partnership currently held by the Partnership. Applicants seek to amend the Prior Order to permit these changes.

3. The Partnership was formed in 1983 for the sole purpose of acquiring and holding a limited partner interest in the Operating Partnership. The Operating Partnership's sole asset is 100% of the beneficial interest in an Illinois land trust that holds title to the Project.

4. The Partnership offered 590 units of limited partnership interest in the Partnership (the "Units") at $100,000 per Unit to "Accredited Investors" as defined in Regulation D under the Securities Act of 1933 and to not more than 30 other "Non-Accredited

[1] *Presidential Associates I Limited Partnership*, Investment Company Act Release Nos. 13483 (Sept. 2, 1983) (notice) and 13538 (Sept. 27, 1983) (order).

Investors" who met certain suitability requirements. Each prospective limited partner also was required to provide certain certifications in his subscription agreement to insure that the investment was suitable for such prospective limited partner.

5. The Partnership currently has approximately 573 limited partners (the "Limited Partners") holding 590 Units. The Limited Partners collectively hold a 99% interest in the Partnership. The Managing General Partner and an affiliate of the Managing General Partner each hold a 0.5% general partner interest in the Partnership. The Partnership holds a 94.99% limited partner interest in the Operating Partnership. WFC Realty Co., Inc. ("WFC Realty"), an affiliate of the Managing General Partner, holds a 0.01% limited partner interest in the Operating Partnership, and McHugh Levin Associates Venture, the managing general partner of the Operating Partnership, and Madison-Canal Company collectively hold a 5% general partner interest in the Operating Partnership.

6. Due to lower than projected occupancy and rental rates and higher than projected real estate taxes, the Project has been unable to generate sufficient income to meet debt service on the approximately $185 million mortgage (the "Mortgage") upon the Project currently held by the United States Department of Housing and Urban Development ("HUD"). To prevent foreclosure of the Mortgage, the Operating Partnership, with the concurrence of the Managing General Partner, has entered into a workout agreement with HUD (the "Workout Agreement") and, to implement the Workout Agreement, has developed a comprehensive debt and ownership restructuring plan (the "Restructuring Plan").

7. The Workout Agreement provides for the replacement of the note evidencing the indebtedness secured by the Mortgage with a new $127 million first note and a second note in the amount of the balance of the principal and accrued interest secured by the Mortgage (approximately $58 million). The Workout Agreement also provides that monthly payments of principal and interest will be payable only on the first $71 million of the new first note, thereby reducing the mandatory monthly mortgage payment for the Project by more than 50%. Additional payments of principal and interest on the first note will be payable semiannually in an amount of 80% of the Project's net cash flow remaining after a specified priority payment to the Operating Partnership. The Workout Agreement further provides that the Operating Partnership will raise and pay to HUD $13 million to reduce the outstanding principal of the new first note and to fund a deficit escrow. In addition, HUD has required that the Operating Partnership set aside and subsidize seven percent of the apartments in the Project for occupancy by very low and low income tenants.

8. To raise $13 million required by HUD, the Operating Partnership proposes to admit, as a general partner of the Operating Partnership, Penguin Presidential Partners (the "New Investor"). The New Investor will contribute $14 million to the capital of the Operating Partnership (the $13 million required by the Workout Agreement plus $1 million to pay costs and expenses) in exchange for a general partner interest constituting a 79% interest in the Operating Partnership and specified preferential interests in cash flow, losses, and proceeds from a sale or refinancing.

9. In recognition of the New Investors's majority interest in the Operating Partnership, the New Investor will receive certain rights to propose and approve actions of the Operating Partnership, including the right to direct the sale of all or substantially all of the assets of the Operating Partnership, the right to approve all annual capital expenditure budgets for the Project, and the right, under specified circumstances, to designate a replacement managing general partner for the Operating Partnership or to remove and replace the management agent for the Project. These provisions will grant the New Investor rights similar to, but more extensive then, rights now held by the Partnership or WFC Realty.

10. To implement the Workout Agreement and facilitate the entry of the New Investor into the Operating Partnership, the Managing General Partner will seek the approval of the Limited Partners to implement the Restructuring Plan through a proxy statement and consent solicitation made in accordance with the requirements of Regulation 14A and Schedule 14A promulgated under the Securities Exchange Act of 1934. The principal provisions of the Restructuring Plan are: (a) Restructuring the Mortgage indebtedness pursuant to the terms of the Workout Agreement; (b) amending the limited partnership agreement of the Partnership to, among other things, remove a provision concerning dilution and rights to participate in additional capital contributions; and (c) adopting an amended and restated limited partnership agreement of the Operating Partnership that, among other things, will (i) admit the New Investor as a general partner with a 79% interest in the Operating Partnership, thus diluting each of the present partner's interests and leaving the Partnership with a 19.998% interest in the Operating Partnership, and (ii) grant the New Investor the rights discussed above.

Applicants' Legal Analysis

1. Section 6(c) provides that the SEC may exempt any person, security or transaction from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The Partnership provides a vehicle for private investment in government assisted low and moderate housing in accordance with the express Congressional policy to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income families. Pursuant to the provisions of the Workout Agreement, the Project's original target population of moderate income persons and families will be supplemented by a commitment to provide, at the expense of the owner of the Project, rent-subsidized housing for a substantial number of very low and low income persons or families.

3. The application for the Prior Order noted that both the Partnership Agreement and the Confidential Offering Memorandum relating to the Units contained numerous provisions designed to insure fair dealing by the general partners of the Partnership with the Limited Partners. In addition, the Units were offered only to persons for whom investment in limited profit, tax-sheltered investments would be suitable. The Restructuring Plan does not in any way modify any of these suitability or fair dealing provisions.

4. The failure of the Operating Partnership to implement the Restructuring Plan will almost certainly result in the foreclosure of the Mortgage by HUD. Foreclosure will result in a total loss of the Partnership's indirect ownership interest in the Project. In addition, a foreclosure as of December 31, 1993 would have produced approximately $133,300,000 of non-cash taxable income to the Operating Partnership, resulting in an allocation of taxable income per Unit of approximately $217,800. Thus, foreclosure would produce a substantial tax bill for the limited partners—a tax

bill that would not be accompanied by a distribution of any cash with which to pay the tax. It also will deprive the Limited Partners of a chance to share in the net cash flow projected to be produced by the Project after the Restructuring Plan is implemented and the opportunity to share, should the Project be sold or refinanced, in any proceeds of such a sale or refinance paid to the Operating Partnership. The application is being made in the context of a workout of a financial troubled, existing project that faces virtually certain foreclosure if the workout is not consummated. Accordingly, applicants believe that it would be consistent with the public interest and the protection of investors for the SEC, pursuant to section 6(c), to issue the requested order.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the following condition:

The Restructuring Plan shall be approved by the holders of not less than 51% of the Units by written consents obtained by a proxy statement and consent solicitation in accordance with the requirements of Regulation 14A and Schedule 14A promulgated under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17319 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20396; No. 612–9022]

Pruco Life Insurance Company, et al.

July 12, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Pruco Life Insurance Company ("Pruco"), Pruco Life Individual Variable Annuity Account ("Variable Account"), and Pruco Securities Corporation ("PruSec") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of a mortality and expense risk charge in connection with the offer and sale of certain flexible premium combination fixed/variable annuity contracts ("Contracts").

FILING DATE: The application was filed on May 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 8, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Pruco Life Insurance Company, 213 Washington Street, Newark, New Jersey 07102–222992.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, or Michael Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Pruco, a stock life insurance company, is a wholly owned subsidiary of The Prudential Insurance Company of America ("Prudential"). Pruco is licensed to conduct business in the District of Columbia, Guam, and all states except New York.

2. The Variable Account was established as a separate account by Pruco to fund its variable annuity contracts. The Separate Account has filed a notification of registration on Form N–8A and a registration statement on Form N–4 with the Commission as a unit investment trust under the 1940 Act. Applicants have filed on Form N–4 a registration statement to register the Contracts as securities under the Securities Act of 1933.

The Variable Account currently consists of eleven subaccounts (Money Market, Bond, High Yield Bond, Government Securities, Common Stock, Stock Index, High Dividend Stock, Natural Resources, Global Equity, Conservatively Managed Flexible, and Aggressive Managed Flexible) ("Subaccounts"), each investing in shares of a corresponding portfolio ("Portfolio(s)") of The Prudential Series Fund, Inc. ("Series Fund"). Other portfolios of the Series Fund or of other funds or investment vehicles may be made available for investment in the future through additional subaccounts.

3. The Series Fund is a no-load, diversified, open-end management investment company registered under the 1940 Act. The Series Fund currently offers fourteen Portfolios, of which eleven are available for investment by the Variable Account. Prudential, an investment adviser registered under the Investment Advisers Act of 1940, will be the investment adviser for the Series Fund.

4. PruSec is an indirect wholly-owned subsidiary of Prudential and the principal underwriter of the Contracts, which will be sold and distributed by PruSec's registered representatives. PruSec is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are flexible premium combination fixed/variable annuity contracts offered in connection with either non-tax qualified plans or as an Individual Retirement Annuity ("IRA") that qualify for favorable tax-deferred treatment under Section 408(b) of the Internal Revenue Code of 1986, as amended. The Contracts also may be made available to certain other retirement plans that qualify for special federal income tax treatment in the future. The Contracts initially will be issued as individual contracts but also may be issued as group contracts used in connection with either immediate or deferred annuities. The Contracts permit premiums to vary in amount and frequency but require certain minimum initial premium payments and additional payments. The Contracts further provide for accumulation of values on either a variable or a fixed basis, or both. The fixed-rate option is part of Pruco's general account. Premiums allocated to the fixed-rate option will earn interest at a minimum guaranteed effective annual rate of 3 percent. Initially, the fixed-rate applicable at the time of allocation to the fixed-rate option will be earned for a one-year period, with a new interest rate set monthly thereafter. At the end of each guarantee period, amounts allocated to that period will automatically be "rolled over" and receive the new guarantee rate, unless transferred to the Subaccounts.

6. During the accumulation period, a full or partial surrender of the Contract may be made, subject to certain minimums and constraints or partial withdrawals. Withdrawals from fixed-rate option guarantee periods maybe effected only on the maturity date.

7. The Contracts also will provide for a death benefit and a variety of payout options at annuitization. The death benefits will equal the greater of (a) total purchase payments (less previous withdrawals), and (b) the Account Value. Payout options include both variable and fixed payment options, and payment options based on fixed periods or on one or more measuring lives.

8. No sales charges are deducted under the Contracts. All expenses relating to the sale of the Contracts will be paid by Pruco from its general assets, including amounts derived from the mortality and expenses risk charge. Shares of the Series Fund will be sold to the Variable Account at the net asset value, which reflects the investment advisory fee and other expenses deducted from Fund assets.

9. Various fees and expenses are deducted under the Contracts and the Variable Account. A charge may be deducted for state, local or federal premium taxes, and any income, excise, business or other type of tax measured by or based on the amount of premium received by Pruco. The tax rates currently range from 1% to 5% and may be imposed upon purchase payments, on Account Value upon surrender, or when converted into an annuity or other benefit payment. Pruco may also charge Account Value or the Separate Account for any taxes attributable to the Separate Account or the Contract, including income taxes incurred by Pruco attributable to the Separate Account.

10. Initially, Pruco will charge $15 for each transfer or withdrawal from or among the Subaccounts after the first four transfers or withdrawals in each Contract year. No charge is imposed for transfers or withdrawals in connection with dollar cost averaging, the systematic withdrawal programs or from the fixed-rate option. Initially, an annual maintenance fee of $30 may be deducted proportionately from Contract Value allocated among the Subaccounts and the fixed-rate option if the Contract Value is less than $10,000 on December 31 or at the time a full withdrawal is effected. Pruco reserves the right to deduct a separate charge against the assets in the Separate Account to compensate it for administration of the Contract and the Separate Account, but does not currently intend to do so. This charge is guaranteed not to exceed .15% for the duration of the Contract.

Applicants represent that current and future charges for administration of the Contract will be deducted from the Subaccounts in reliance on Rule 26a-1 under the 1940 Act and will not be greater than the cost of administrative services provided under the Contract. Pruco does not expect or intend to make a profit from these charges.

11. A daily charge equal to an annual rate of .95% of the value of the net assets in each Subaccount attributable to the Contracts will be imposed to compensate Pruco for bearing certain mortality and expense risks it assumes in offering and administering the Contracts and in operating the Variable Account. Of this amount, .63% is attributable to mortality risks, and .32% is attributable to expense risks. The aggregate charge is guaranteed by Pruco not to increase. The charge may be a source of profit for Pruco, which will be added to its surplus and may be used for, among other things, the payment of distribution, sales and other expenses. Pruco currently anticipates a profit from this charge.

12. The mortality risk arises from Pruco's contractual obligation to make periodic annuity payments (determined in accordance with Pruco's annuity tables and other Contract provisions) regardless of how long all annuitants or any individual annuitant lives. Contract owners thus are assured that neither annuitant's longevity nor an improvement in life expectancy generally (which is greater than expected) will adversely effect annuity payments the payee will receive under the Contracts. This eliminates the risk of outliving the funds accumulated for retirement. Morality risk also is assumed in connection with payment of the death benefit because the death benefit guarantee could exceed the Account Value. There is no charge for the guaranteed death benefit.

13. The expense risk assumed by Pruco is that its actual expenses in issuing and administering the Contracts and operating the Variable Account will exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Separate Account of the charge for mortality and expense risks. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants submit that Pruco is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge. The charge is a reasonable charge to compensate Pruco for the risks that: (a) Annuitants under the Contract will live longer individually or as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the Account Value will be less than the death benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges.

5. Applicants represent that the .95% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, and guaranteed annuity rates. Applicants represent that Pruco will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses. Pruco has

concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract Owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Pruco at its administrative offices and will be available to the Commission.

7. Applicants also represents that the Variable Account will invest only in open-end management investment companies that undertake, in the event that such company should adopt a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not "interested persons" of the company, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Accordingly, Applicants request relief from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge under the Contracts. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17354 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0332]

Advent Industrial Capital Company II; Notice of Surrender of License

Notice is hereby given that Advent Industrial Capital Company, 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Advent Industrial Capital Company, was licensed by the Small Business Administration on November 9, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 25, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 6, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–17337 Filed 7–15–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0331]

Advent V Capital Company Limited Partnership II; Surrender of License

Notice is hereby given that Advent V Capital Company Limited Partnership, 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Advent V Capital Company Limited Partnership, was licensed by the Small Business Administration on September 5, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 27, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 6, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–17343 Filed 7–15–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0336]

Chestnut Capital International II, L.P.; Surrender of License

Notice is hereby given that Chestnut Capitol International II, L.P., 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Chestnut Capital International II, L.P., was licensed by the Small Business Administration on July 10, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 19, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 6, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–17344 Filed 7–15–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2037]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet Friday, August 5, 1994 in the Department of State.

The Committee will meet in open session from 9:00 a.m. to 11:00 a.m. on the morning of Friday, August 5, 1994, in Room 1205, Main State. The remainder of the Committee's session until 5:00 p.m. on that day will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withhold from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123.

Dated: July 8, 1994.

William Z. Slany,

Executive Secretary.

[FR Doc. 94–17323 Filed 7–15–94; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 8, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or

Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49638.

Date filed: July 5, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 1994.

Description: Application of Uzbekistan Airways, pursuant to Section 402 of the Act requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail from a point or points in Uzbekistan to New York, New York, United States of America, via Manchester, England. In addition, Uzbekistan Airways requests authority to operate passenger and cargo charter services between all points in the Republic of Uzbekistan and all points in the United States of America, and between points in the United States of America and points not in Uzbekistan or in the United States.

Docket Number: 49644.

Date filed: July 8, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 1994.

Description: Application of Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc. (d/b/a American Eagle), pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for amendment of their certificate of public convenience and necessity for Route 537, as reissued by Order 92–6–15, June 6, 1992, to authorize foreign air transportation of persons, property, and mail between the United States and the Bahamas.

Docket Number: 45723.

Date filed: July 8, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 1994.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for Amendment of its Foreign Air Carrier Permit issued to it in Order 89–8–29, to the extent necessary to permit TAESA to engage in the scheduled air transportation of persons, property and mail on its Mexico-U.S. scheduled combination routes.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–17371 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended July 8, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49637.

Date filed: July 5, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 694, Japan-China fares, Amendment to Mail Vote, r-1—043i r-4—063ii r-7—092f r-2—053i r-5—076t r-8—092v r-3—063i r-6—085hh.

Proposed Effective Date: September 7, 1994.

Docket Number: 49642.

Date filed: July 7, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/C 0599 dated June 3, 1994, Composite Resos 003rr (r-1) & 501 (r-2).

Proposed Effective Date: September 1, 1994.

Docket Number: 49643.

Date filed: July 7, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1585 dated June 3, 1994, Mid Atlantic-Europe/Middle East Resos r-1; TC12 Reso/P 1586 dated June 3, 1994, Mid Atlantic-Europe r-2 to r-34; TC12 Reso/P 1587 dated June 3, 1994, Mid Atlantic-Middle East Resos r-35 to r-43.

Proposed Effective Date: October 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–17372 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Applications of Air Serve, Inc.; For Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–7–14), Dockets 49100 and 49101.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order; (1) Finding Air Serve, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 27, 1994.

ADDRESSES: Objections and answers to objections should be filed in Dockets 49100 and 49101 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: July 12, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–17338 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–62–P

Maritime Administration

[Docket S–909]

Vulcan Carriers, Ltd.; Application for Waiver Under Section 804 and for Written Permission Under Section 805(a) of the Merchant Marine Act of 1936, as Amended

Pursuant to sections 804 and 805 of the Merchant Marine Act of 1936, as amended, (Act), the current and future shareholders of Vulcan Carriers, Ltd. (Vulcan), by letter dated July 12, 1994, request a waiver under section 804 and permission under section 805 to own a fraction of one percent of the shares of stock in OMI Corp. (OMI) for some or all of the limited period of time remaining during which Vulcan will be receiving Operating Differential Subsidy (ODS) pursuant to Operating Differential Subsidy Agreements (ODSA), Contracts MA/MSB–167 (a), (b), (c), and (d).

Vulcan advises that this request is being submitted in order to permit the sale of Vulcan from Captain Jack Gordon, the current president of Vulcan, to Captain Enrico Fenzi. Vulcan advises that its request for approval of the sale of Vulcan to Captain Fenzi under section 608 of the Act was submitted to the Maritime Administration on June 9, 1994.

Vulcan states that its request of July 12, 1994, is being submitted because the purchaser of the Vulcan stock is a retired former employee of OMI who is entitled to receive upon his retirement shares of stock purchased for him by the trustee of OMI's Employee Stock Ownership Plan (ESOP). The seller of the Vulcan stock also is seeking approval of the ownership of an even smaller amount of OMI stock (approximately .007%) which he purchased unaware that approval was required.

Vulcan advises that Captain Fenzi, the purchaser of Vulcan, is a retired former vice president of OMI Corp. As an employee of OMI, Captain Fenzi became vested in OMI's ESOP. OMI no longer has a separate defined benefit pension plan for its employees. The ESOP acts as the primary pension benefit available to OMI employees along with a 401(k) program which became effective July 1, 1993, and which currently provides minimal lump sum distribution on an employee's retirement. As an eight-year employee of OMI prior to his retirement, Captain Fenzi is the beneficiary of 38,248 shares of OMI stock currently held by the trustee of the ESOP.[1] Upon application to transfer these shares to him, the stock would be transferred to him as his main source of pension income from OMI or for his "rollover" into other pension assets. If Captain Fenzi were to retain all of these shares of stock, they would constitute one-tenth of one percent (0.1%) of the outstanding shares of OMI stock.

Vulcan advises that during his employment at OMI, Captain Fenzi, like all other senior management employees at OMI, was also eligible for stock options pursuant to three separate option plans governing the grant of stock options as a portion of an employee's compensation. Captain Fenzi received his first grant in 1986 and continued to receive them though his time at OMI. However, during his entire tenure at OMI, Captain Fenzi never exercised any option to purchase additional stock, nor does he have any immediate plans to do so. Nevertheless, Captain Fenzi is eligible to exercise options on up to 41,882 shares of OMI for the next one to three years. Captain Fenzi requests permission to include these options in this approval to ensure all potential purchases are covered, even if not contemplated. In the highly unlikely event that all of these options were exercised, Captain Fenzi's holding would constitute only (at most) 0.2% of the outstanding shares of OMI stock.

Vulcan advises that Captain Gordon was also a retiree of OMI at the time he established Vulcan. At or near the time of the creation of Vulcan, Captain Gordon sold the OMI stock he received through the ESOP for other retirement investments, but over the last several years, Captain Gordon has purchased on the open market or received through option exercises a total of 2,243 shares of OMI stock. (At this time, Captain Gordon no longer retains any right to exercise options for the purchase of additional OMI stock.) Captain Gordon's shares represent .007% of the shares of OMI stock. Captain Gordon requests approval of his ownership of this stock retroactive to the dates of purchase through the date of sale of Vulcan.

Vulcan states that OMI currently operates only four U.S.-flag vessels in the coastwise trade. OMI operates, on a spot market basis, a crude oil carrier in the Alaska trade and three chemical product carriers in the coastwise trade. OMI's other U.S.-flag vessels (three bulk carriers and four product tankers) operate in the foreign trade. OMI also operates 34 foreign flag tankers, dry bulk vessels, and liquefied petroleum gas carriers (28 are owned, often with joint venture partners, and six are chartered in).

Vulcan states that approval for the ownership of these shares of stock is being requested for a limited period of time (until the sale of Vulcan is completed or until the termination of the ODSAs) and under special circumstances that are very limited in scope. Ownership by Captain Fenzi and Captain Gordon of such a small portion of the shares of a publicly traded company would not result in unfair competition to any U.S.-flag operator either an avenue by which such subsidy could be "leaked" to OMI. Vulcan states that based on these special circumstances and upon the lack of any competitive disadvantage to any U.S.-flag operator, a waiver of section 804(a) and granting permission under section 805(a) would not be contrary to the objectives and policies of the Merchant Marine Act.

This application and Vulcan's application of June 9, 1994, may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in the application of July 12, 1994, within the meaning of section 804 or section 805(a) of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on July 22, 1994, including petition for leave to intervene under section 805(a) of the Act. Any petition for leave to intervene under section 805(a) of the Act shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no comments are received within the specified time, including any petition for leave to intervene under section 805(a) of the Act, or if it is determined that such petition does not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By Order of the Maritime Administration.

Dated: July 13, 1994.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 94–17436 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–81–M

[1] As an employee who retired in 1994, Captain Fenzi will be entitled to one more distribution of stock through the ESOP at the end of the year. The number of shares to be provided to 1994 retirees is not determined until that time. This request therefore covers all shares of stock available to Captain Fenzi through his participation in the ESOP.

National Highway Traffic Safety Administration

[Docket No. 94–52; Notice 1]

Receipt of Petition for Determination That Nonconforming 1971 Lancia Fulvia Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1971 Lancia Fulvia passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1971 Lancia Fulvia that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 17, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates, Inc. of Ronkonkoma, New York ("Liphardt") (Registered Importer R–92–004) has petitioned NHTSA to determine whether 1971 Lancia Fulvia passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1971 Lancia Fulvia that was manufactured for importation into and sale in the United States and certified by its manufacturer, Lancia & Company S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 1971 Lancia Fulvia to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1971 Lancia Fulvia, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1971 Lancia Fulvia is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, and 212 *Windshield Retention*.

Petitioner also contends that the 1971 Lancia Fulvia is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection*: installation of a buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 12, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17368 Filed 7–15–04; 8:45 am]

BILLING CODE 4910–50–M

[Docket No. 94–34; Notice 2]

Determination That Nonconforming 1971 Rolls Royce Corniche Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1971 Rolls Royce Corniche passenger care are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1971 Rolls Royce Corniche passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1971 Rolls Royce Corniche), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202)–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108 (c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397 (c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the FEDERAL REGISTER of each petition that is receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the FEDERAL REGISTER.

J.K. Motors of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to determine whether 1971 Rolls Royce Corniche passenger cares are eligible for importation into the United States. NHTSA published notice of the petition on May 5, 1994 (59 FR 23259) to afford an opportunity for public comment. The reader is referred to that notice or a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 72 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1971 Rolls Royce Corniche not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1971 Rolls Royce Corniche originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is cpable of being readily modified t o conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397 (c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on July 12, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17367 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–33; Notice 2]

Determination That Nonconforming 1988 Volkswagen Golf Rallye Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1988 Volkswagen Golf Rallye passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1988 Volkswagen Golf Rallye passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1988 Volkswagen Golf GTI), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1988 Volkswagen Golf Rallye passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 5, 1993 (58 FR 23258) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 73 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Volkswagen Golf Rallye is substantially similar to a 1988 Volkswagen Golf GTI originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic

and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.c. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 12, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17366 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–36; Notice 1]

Solectria Corporation; Receipt of Petition for Temporary Exemption From Four Federal Motor Vehicle Safety Standards

Solectria Corporation of Arlington, Massachusetts, has petitioned to be exempted from four Federal motor vehicle safety standards for passenger cars that it converts to electric power. The basis of the petition is that compliance with the standards would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency on the merits of the petition (49 CFR 555.7(a)).

Previously, petitioner received NHTSA Exemption No. 92–2 covering Geo Metro passenger cars that it converts to electric power, and markets under the name "Solectria Force." Its petition seeks renewal of the exemption from four Federal motor vehicle safety standards which expired on May 1, 1994. As the petition was not received until after the expiration date of the previous exemption, the matter must be considered de novo. NHTSA notes that the petitioner is also manufacturing electric truck conversions under NHTSA Exemption No. 94–2.

Petitioner has sold 45 Solectria Forces under its previous exemption. This exemption extended to seven Federal motor vehicle safety standards. Petitioner was able to ensure conformance of the Force with three of these. The Geo Metros to be converted have been certified by their original manufacturer to conform to all applicable Federal motor vehicle safety standards. However, petitioner determined that the vehicles may not conform with all or part of four Federal motor vehicle safety standards after their modification. The standards for which exemptions are requested are discussed below.

1. Standard No. 204, Steering Control Rearward Displacement

The conversion affects the ability to meet paragraph S4.2, although the petitioner is confident that it will be able to certify compliance for perpendicular frontal impact under the conditions of S5 of Standard No. 208.

2. Standard No. 208, Occupant Crash Protection

The conversion affects the ability to meet paragraph S4.1.4. Solectria has completed certification testing for a perpendicular frontal barrier test, but has yet to complete testing for an angled barrier test, side-impact test or roll-over test. [NHTSA note: Paragraph S4.1.4 does not require manufacturers to certify compliance with the side-impact or rollover tests if the vehicle is equipped with seat belts at every seating position.]

3. Standard No. 214, Side Door Strength

The modifications will affect compliance with the requirements of S3.1.3 and S3.2.3 requiring a minimum peak crush resistance based on the vehicle curb weight. Solectria is confident that the Force will meet this standard though it has not recertified the vehicle. In addition, the Geo Metro may not have been certified by its original manufacturer to meet the dynamic side impact test due to the phase-in provision of this portion of the standard.

4. Standard No. 216, Roof Crush Resistance

According to the petitioner, the modifications will affect the requirements in S4(a) which specifies a maximum crush force based on the vehicle curb weight. However, the petitioner is confident that the vehicle is capable of meeting Standard No. 216.

Exemption was requested from these four standards for a period of eight months.

Petitioner argued that to require immediate compliance would create substantial economic hardship. As of September 30, 1993, the company had cumulative net losses of $107,300. It estimates that the total cost of testing for compliance with the four standards would be $122,825. If modifications appear indicated, further testing would be required. An exemption would permit vehicle sales and the generation of cash permitting testing and full certification of compliance while the exemptions are in effect. It anticipates orders for 50 additional Forces while the exemption is in effect. A denial of the petition would remove the Force from production for a year, with total revenue losses of $1,300,000. It could result in discontinuing production altogether.

According to the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act (the Act) because it "will be able to make a substantial contribution to the country's transportation needs both in themselves and as precursor to future electric vehicles." The petitioner believes that "it is critical that low-emission electric vehicles be brought to market as quickly as possible to advance the field and relieve the environmental and economic problems associated with pollution and dependence on fossil fuel."

Interested persons are invited to submit comments on the petition described above. Comments should refer to the Docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 17, 1994.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50)

Issued on July 12, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–17370 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–59–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 136
Monday, July 18, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: July 12, 1994, 59 FR 35560.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 13, 1994, 10 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Item have been added on the Agenda scheduled for July 13, 1994:

Item No., Docket No., and Company

CAG–17—RP85–177–121, *et al.*, RP92–171–005, RP93–122–002, RP93–125–006, *et al.*, RP93–128–003, RP93–181–005, RP93–204–005, RP94–33–004, RP94–66–006, RP94–99–002, RP94–135–002, TM93–2–17–002 and TM94–2–17–004, Texas Eastern Transmission Corporation

CAG–52—CP92–606–002, Great Lakes Gas Transmission Limited Partnership

Lois D. Cashell,

Secretary.

[FR Doc. 94–17542 Filed 7–14–94; 1:34 pm]

BILLING CODE 6717–01–M

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD EXECUTIVE COMMITTEE

DATE AND TIME: July 25, 1994, 1:00 p.m.—Closed Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1205.1, Arlington, Virginia 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Monday, July 25, 1994

CLOSED SESSION (1:00 p.m.–1:30 p.m.)

—On behalf of the National Science Board, consideration of grant proposal.

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–17479 Filed 7–14–94; 10:29 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18

Tuesday, July 19

10:00 a.m.
Briefing on Fuel Cycle and Waste Management Activities in France (Public Meeting)

Wednesday, July 20

10:00 a.m.
Discussion of Interagency and Management Issues (Closed—Ex. 9 (Part I); 2 and 6 (Part II)

3:00 p.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, July 21

3:00 p.m.
Briefing on Proposed Rulemaking on Decommissioning of Nuclear Power Reactors (Public Meeting)
(Contact: David Futoma, 301–504–1621)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Week of August 1—Tentative

There are no meetings scheduled for the Week of August 1.

Week of August 8—Tentative

There are no meetings scheduled for the Week of August 8.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill—(301) 504–1661.

Dated: July 13, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–17543 Filed 7–14–94; 1:34 pm]

BILLING CODE 7590–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1467]

Meeting of the Board of Directors

TIME AND DATE: 10 a.m. (EDT), July 20, 1994.

PLACE: TVA West Tower Auditorium, Knoxville, Tennessee.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Agenda

Approval of minutes of meeting held on May 25, 1994.

Action Items

New Business

C—Energy

C1. Low-Sulfur Bituminous Coal and Transportation Contracts Under Requisition 29 for Shawnee Units 1–8 and Allen Fossil Plants.

E—Real Property

E1. Sales of Permanent Easement Affecting Approximately 1.35 Acres of TVA's Great Falls Reservoir Property in White County, Tennessee, to the State of Tennessee.

E2. Public Auction Sale of Approximately 0.12 Acre of Fee-Owned Property and Approximately 8.22 Miles of Access Road Easements of the Jasper, Tennessee, Microwave Reflector Station Site Property in Marion County, Tennessee.

E3. Grant of Permanent Easement Affecting Approximately 1.928 Acres of Land on Chickamauga Lake in McMinn County, Tennessee, to the State of Tennessee.

E4. Grant of Permanent Easement Affecting Approximately 1.09 Acres of Land on Guntersville Lake in Marshall County, Alabama, to the State of Alabama.

E5. Grant of Permanent Easement Affecting Approximately 5.03 Acres of TVA's Widows Creek Fossil Plant Property in Jackson County, Alabama.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement No. 12 to Contract No. TV–85454V–1 with Stone & Webster Engineering Corporation for Sequoyah Nuclear Plant.

F3. Award of an Integrated Maintenance Contract to Concept Automation, Inc. for Onsite Hardware Maintenance and Support Services.

F4. Supplement No. 2 to Contract Nos. 92PGN77052E–01 and –02 with FD Engineers and Constructors, Inc.

F5. Supplement No. 5 to Contracts Nos. 92PGN77052E–03 and –04 with G–UB–MK Constructors.

F6. Award of a Fixed-Price Contract to Babcock and Wilcox To Design and Furnish Low No_x Burnder Assemblies for Shawnee Fossil Plant Units 1 Through 9.

F7. Award of a Fixed-Price Contract to International Combustion Limited for Low No_x Tangential Firing System Assemblies for

John Sevier and Kingston Fossil Plants, All Units.

Information Items

1. Valley Economic Development Initiatives.

2. Plans for the Construction and Operation of a Waterfowl Subimpoundment along Chickamauga Lake in Meigs County, Tennessee.

3. Supplement 17 to Performance/Personnel Support Contract No. 91NNP–44970C with Ebasco Constructors, Inc., for Work at Watts Bar Nuclear Plant.

4. Amendments to the Rules and Regulations of the TVA Retirement System to Allow Members of the System Who are Entitled to Veterans' Preference at TVA and Who Retire on or After October 1, 1994, to Obtain Creditable Service in the System for up to Four Years of their pre-TVA Employment Military Service Under Certain Conditions.

5. Authorization for the Senior Vice President, Resource Group, to Enter Into Agreement(s) to Provide Funding and Services in Connection with the 1996 Olympic Whitewater Slalom Venue to be held on the Ocoee River in Polk County, Tennessee.

6. Contract with Calgon Corporation for Raw Water Chemicals and Chemical Treatment Services for TVA Nuclear Facilities and Fossil and Hydro Plants.

7. Amendment to the Rules and Regulations of the TVA Retirement System to Allow Vested Members who Voluntarily leave TVA Employment by December 31, 1994, to Receive an Immediate Retirement Benefit Regardless of Age.

8. Filing of Condemnation Cases.

CONTACT PERSON FOR MORE INFORMATION: Ron Loving, Vice President, Governmental Relations, or a member of this staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: July 13, 1994.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 94–17471 Filed 7–14–94; 3:21 pm]

BILLING CODE 8120–02–M

federal register

Monday
July 18, 1994

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Hazardous Materials: Transportation of Dangerous Goods in International Commerce; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 177, and 178

[Docket No. HM–215A; Notice No. 94–6]

RIN 2137–AC42

Implementation of the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these proposed revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m. Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Assistant International Standards Coordinator, telephone (202) 366–0586, Beth Romo or John Gale, Office of Hazardous Materials Standards, telephone (202) 366–8553, Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule [Docket HM–181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 to 180, with respect to hazard communication, classification, and packaging requirements, based on the UN Recommendations. One intended effect of the rule was to facilitate the international transportation of hazardous materials by ensuring a basic consistency between the HMR and international regulations.

The UN Recommendations are not regulations, but are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the Committee of Experts and are distributed to nations throughout the world. They serve as the basis for international modal regulations; specifically the IMDG Code, issued by the International Maritime Organization (IMO), and the ICAO Technical Instructions. In 49 CFR 171.12, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. Offering, accepting and transporting hazardous materials by aircraft, in conformance with the ICAO Technical Instructions, and by motor vehicle either before or after being transported by aircraft, are authorized in § 171.11 (with certain exceptions).

On December 22, 1992, RSPA issued an interim final rule [Docket HM–215; 57 FR 60738] amending § 171.7 by incorporating the 1993–1994 edition of the ICAO Technical Instructions and Amendment 26 to the IMDG Code. This rulemaking action authorized the use of the updated international regulations, effective January 1, 1993. Amendment 26 promulgated numerous miscellaneous changes to the IMDG Code regarding classification, labeling, packaging, and documentation. The 1993–1994 edition of the ICAO Technical Instructions contained amendments relating to the seventh revised edition of the UN Recommendations, as well as changes specific to air transportation.

The HMR, as revised under Docket HM–181, are largely based on the sixth revised edition of the UN Recommendations. Selected provisions from the seventh and eighth revised editions of the UN Recommendations have been incorporated into the HMR under subsequent Docket HM–181 rulemaking actions. This NPRM seeks to more fully align the HMR with the seventh and eighth revised editions of the UN Recommendations. These proposed changes to the HMR will provide consistency with the international air and sea transport requirements which, effective January 1, 1995, will be aligned with the eighth revised edition of the UN Recommendations.

While the changes introduced in the seventh and eighth revised editions are extensive and in some cases very detailed, some of the more significant changes are highlighted below.

Major changes in the seventh revised edition include:

—Definitions and criteria for the classification for gases were revised, three subdivisions for gases were created; and the physical states of gases were defined (e.g. liquefied gas, refrigerated liquefied gas, etc). Gases listed in the UN Recommendations were reclassified according to the agreed criteria. This effort will lead to improved harmonization of U.S. and European requirements for the classification of gases. These changes have already been incorporated in the HMR in Subpart D of Part 173.

—Training requirements similar to those introduced into Part 172 Subpart H of the HMR under Docket HM–126F were added.

—Criteria for self-reactive substances assigned to Division 4.1 were developed. The applicable test methods and criteria for self-reactive substances are based on organic peroxide tests and criteria. New generic proper shipping names for self-reactive substances were introduced.

—A number of new "Not Otherwise Specified" (N.O.S.) proper shipping names for substances in Class 4 and Division 5.1 were introduced. Proposals for introducing the new names originated from efforts in Europe to adopt the classification criteria for Class 4 and Division 5.1 into European road and rail regulations.

—Provisions defining conditions under which minor variations of tested design-type packagings and requirements for "V" marked packagings were added. Proposals to include these requirements originated in the U.S. out of concern for the extent of testing that would otherwise be required to certify packagings in accordance with the UN performance standards. These provisions have already been adopted in the HMR in Subpart M of Part 178.

Major changes in the eighth revised edition include:

—Numerous additional types of packaging were added to the explosive packing instructions. This was largely a U.S. initiative arising from a concern for the number of packagings that would otherwise have to be authorized through exemptions.
—Provisions for elevated temperature materials were added. These provisions are consistent with those adopted in the HMR under Docket HM–198A.
—Criteria defining substances not able to sustain combustion were included. The criteria for flammable liquids were amended so that certain substances which meet the flash point criteria for flammable liquids, but which are shown to be incapable of sustaining combustion, are excepted from the Recommendations. This proposal was originally proposed by the United Kingdom, which had similar provisions in its domestic regulations.
—The criteria for corrosive substances were modified to reference the Organization for Economic Cooperation and Development test protocol for skin corrosivity and to clarify the extent of skin damage needed for substances to be classified as corrosives. This was done in response to initial proposals by Germany and the European chemical industry.
—A number of new N.O.S. proper shipping names for substances in Class 3, Division 6.1 and Class 8 were introduced. Proposals for introducing the new names originated from efforts in Europe to adopt the classification criteria for these hazard classes into European road and rail regulations. Proper shipping names for petroleum products also were updated as part of this effort.
—The Recommendations were amended to require that a package bear labels representing each subsidiary risk of a material described using an N.O.S. proper shipping name. This amendment was based on a proposal made by the United Kingdom.
—The current Division 6.1 Packing Group III label was deleted. For a more detailed discussion of the events leading to this decision, see RSPA's Notice 93–21 under Docket HM–217 published in the **Federal Register** on November 8, 1993 [58 FR 59224].
—Requirements for a freight container packing certificate were added on the basis of a United Kingdom proposal seeking to bring the UN Recommendations in line with the IMDG Code requirements.
—A number of substances meeting the criteria of Division 6.1 Packing Group I toxic by inhalation were reclassified based on U.S. proposals.
—Provisions on the marking of steel drums used to transport dangerous goods and provisions clarifying the requirements applicable to drum reconditioners and remanufacturers were included on the basis of proposals by the International Association for Drum Reconditioners (ICDR).
—Detailed test criteria for lithium batteries were added. The new provisions allow batteries with a higher lithium content to be excepted from regulation if they meet new tests and criteria. The initial proposal on this topic was introduced by Canada.
—Criteria under which air bag modules and air bag inflators could be transported as Class 9 items were introduced. Proper shipping names for these articles were also added. These changes were made on the basis of U.S. proposals.

With a few exceptions described in this paragraph, the following changes are proposed to ensure a basic consistency with many changes contained in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and the 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 of the IMDG Code. However, proposed changes to the KEEP AWAY FROM FOOD label and placard provisions will be addressed in a notice of proposed rulemaking under Docket HM–217. In addition, proposed amendments to provisions for Division 6.2 materials (infectious substances) will be addressed in a separate rulemaking action under Docket HM–181G. Although the eighth revised edition of the UN Recommendations adopted a quality assurance program for the manufacture of performance packagings, RSPA is not proposing a formal quality assurance program in this document. RSPA believes that periodic retest provisions in Subpart M of Part 178 offer an equivalent measure of quality assurance, but RSPA may propose adoption of a more formal quality assurance program in a future rulemaking action. Comments are solicited on this issue.

Summary of Proposed Regulatory Changes by Section

Part 171

Section 171.7. Various standards such as those issued by the International Organization for Standardization (ISO) and the American Society for Testing and Materials (ASTM) would be added or updated, and the most current versions of the ICAO Technical Instructions, the IMDG Code, and the UN Recommendations would be incorporated.

Section 171.8. New definitions for "Asphyxiant gas," "Gas" and "Siftproof packaging" would be added, and definitions for "Box," "Liquid," "Overpack" and "Solid" would be revised for consistency with the seventh and eighth revised editions of the UN Recommendations. The definition for "UN standard packaging" would be revised to clarify that it applies to both U.S-manufactured and foreign-manufactured packagings and to delete reference to Subparts L and M of Part 178.

Section 171.11. Paragraph (d)(5) would be revised to include the word "toxic" when referring to a poison.

Section 171.12. Paragraph (c) would be revised to clarify that this paragraph applies only to the shipment of hazardous materials through U.S. port areas in the course of being transported from one foreign country to another.

In addition, paragraph (b) would be revised for the following reasons. RSPA received three petitions for rulemaking requesting an amendment to the HMR to require a container packing certification attesting that the freight container has been properly packed, stowed, segregated and secured for transport. Those responsible for packing the unit would be required to provide a certificate or declaration to the carrier for international transportation by vessel.

A freight container packing certification requirement was adopted several years ago under Amendment 24 to the IMDG Code and became effective worldwide on January 1, 1994, as mandated under the International Convention on Safety of Life at Sea (SOLAS Convention). When hazardous materials are packed into a freight container or transport vehicle for transportation by vessel, those responsible for packing the unit must provide a certificate or declaration to the carrier attesting that the container is suitable for transport, that it contains compatible materials in packages that have been properly inspected, packed, and secured, and the container and packages are properly marked, labeled, and placarded. This certification may appear either in a separate document or in a signed statement provided on the dangerous goods shipping document.

Because the U.S. is a signatory to the SOLAS Convention, petitioners urged RSPA to adopt a similar container packing certification requirement under the HMR. RSPA is proposing to amend §§ 171.12(b) and 176.27(c) to reference

IMDG Code requirements for a container packing certification for freight containers and transport units intended for carriage by vessel. A "unit" could be a freight container, van trailer, or other transport vehicle. This requirement would apply to persons who load hazardous materials for transportation (including freight forwarders, freight consolidators and non-vessel operating common carriers) or transport hazardous materials by vessel.

Section 171.14. Paragraph (c)(3) contains provisions for intermixing old and new hazard communication requirements. Because of the October 1, 1993 mandatory compliance date for new hazard communication requirements, these provisions no longer apply. Therefore, paragraph (c)(3) would be removed and reserved.

Part 172

Sections 172.101 and 172.102. RSPA is proposing to revise the Hazardous Materials Table (HMT) and the list of special provisions in § 172.102 for basic conformance with the eighth revised edition of the UN Recommendations, the ICAO Technical Instructions (1995–1996 edition) and the 27th edition of the IMDG Code. Under Docket HM–181, the HMT was revised by consolidating the existing HMT, the Optional Table in § 172.102, the UN Recommendations' List of Dangerous Goods, the ICAO Dangerous Goods List, the IMDG Code list of dangerous goods, the list of dangerous goods found in Canada's Transport of Dangerous Goods (TDG), and the IM Tank Table. The IM Tank Table, though not codified in the HMR, authorized the transport of hazardous materials in intermodal (IM) portable tanks. The Optional Table contained in the pre-HM–181 HMR was the table used for selection of proper shipping names to be used in domestic and international transportation by vessel.

RSPA consolidated the tables under Docket HM–181 to simplify the use and reduce the volume of the HMR, as well as to align HMR hazard communication and classification requirements with the UN Recommendations. Since publication of HM–181, the UN, ICAO, and IMO have incorporated changes to their lists of dangerous goods. If RSPA does not incorporate comparable changes to the HMT, the result will be two sets of regulations (one for domestic and one for international transportation) and confusion in the regulated community—which could result in unsafe shipments and restrictions on international trade. In addition, by not adopting such changes, RSPA will expend considerable resources reviewing and issuing approvals and initiating separate rulemakings to authorize shipments prepared in accordance with the international standards.

Proposed changes to shipping descriptions are based primarily on Chapters 2 and 3 of the UN Recommendations. In turn, the changes to the IMO and ICAO lists of dangerous goods also are based on the UN Recommendations. Proposed changes include additions, deletions and revisions of shipping names, classifications, subsidiary hazards, labeling requirements, and packing group assignments—such as adding or changing a material's packing group. In addition, RSPA proposes to permit a special provision to be assigned to a shipping description to clarify the composition of a material described under a specific entry.

Except for certain materials, such as elevated temperature materials and sodium batteries, proposed changes to a material's packaging authorizations are based on a material's packing group and subsidiary hazard, and physical state (solid, liquid, or gas). Packaging authorizations would be consistent with corresponding entries already appearing in the HMT. For example, the non-bulk packaging section for a Class 3, Packing Group I material would be § 173.201. A Division 6.1, Packing Group III material would be assigned § 173.153 for a possible packaging exception, while a Division 6.1, Packing Group I or II material would receive no packaging exception section. A Class 8, Packing Group I liquid material would be assigned § 173.243 for bulk packaging requirements while a Class 8, Packing Group II liquid material would be assigned to § 173.242. It is important to note that any change to a material's classification, packing group, or subsidiary hazards could have an effect on the material's packaging authorizations.

Under HM–181, IM tank authorizations were consolidated into the HMT (through the use of special provisions prefaced by a "T") and were consistent with the sixth revision of the UN Recommendations. In this notice, RSPA is proposing to revise the IM tank authorizations for consistency with the changes in Chapter 12 of the seventh and eighth revised editions of the UN Recommendations. These proposed changes can be found in the "T-note" authorizations that are listed in Column 7 of the HMT.

The aircraft quantity limitations in Column 9 and the vessel stowage requirements in Column 10 would be revised for consistency with the ICAO Technical Instructions and IMDG Code, respectively. In § 172.101(k)(1)–(k)(5), the definitions of the vessel stowage codes, which are prescribed in the § 172.101 Table, would be revised for consistency with the IMDG Code. This proposed revision would broaden current stowage provisions for hazardous materials on cargo vessels to apply to hazardous materials (such as propane) on passenger vessels carrying a limited number of passengers.

Changes proposed to the HMT are quite extensive—approximately 33% of the entries in the HMT would be changed. Therefore, RSPA is publishing the entire proposed HMT in this notice, but does not believe it is necessary to discuss every proposed change in this section review. However, in order to facilitate the reader's understanding of the changes to the HMT, RSPA is providing a list of all entries that would be added, deleted, or made more restrictive. This list includes changes in (1) the shipping name, (2) IM tank authorization, (3) subsidiary labeling, (4) classification, and (5) packaging. In addition, a discussion of some of the more substantive changes is provided.

Many proper shipping names were added in the 1995–1996 ICAO Technical Instructions to reflect both singular and plural forms. The eighth revised edition of the UN Recommendations added a provision allowing the use of either the singular or plural form of a proper shipping name. RSPA is not proposing to add separate entries in the HMT to indicate both the singular and plural form of a proper shipping name because § 172.101(c)(1) currently permits use of either form.

Numerous editorial changes would be made to the HMT to correct misspellings and errors, and to provide more consistency. An entry having only a typographical error corrected is not shown in the list of significant changes. Therefore, it is necessary to review the entire HMT to determine every proposed change.

Currently under the HMR, compressed and liquefied gases of the same material have the same shipping description and identification number (I.D. number). RSPA is proposing to split the generic shipping descriptions for "Compressed *or* Liquefied gases" into separate entries and add new generic entries and I.D. numbers for liquefied gases, consistent with the UN Recommendations. In addition, new generic entries would be added for self-heating liquids and solids. Specific entries for self-reactive materials would be removed from the HMT and replaced with new generic entries.

The UN Recommendations, ICAO Technical Instructions, and IMDG Code replaced the term "poisonous" with the term "toxic." RSPA is proposing to amend the proper shipping names in the HMT that contain the word "poisonous" by replacing the word "poisonous" with the word "toxic" to conform to international terminology. For example, the proper shipping name "Flammable liquid, poisonous, n.o.s." would be revised to read "Flammable liquid, toxic, n.o.s.". However, § 172.101(c)(3) would be revised to allow the use of the word "poisonous" interchangeably with the word "toxic".

The words "inorganic" and "organic" would be added to certain generic shipping descriptions. Comments are invited regarding the safety benefits of these modified descriptions, and as to whether there is a need for domestic exceptions. In addition, RSPA is proposing to add new generic entries for a corrosive material to indicate whether the material is "basic" or "acidic." RSPA also is proposing to add new entries, as adopted in the UN Recommendations, for solid materials containing flammable, corrosive, or toxic liquids.

The eighth revised edition of the UN Recommendations added entries and assigned new UN I.D. numbers for elevated temperature materials. RSPA is proposing to change the I.D. numbers for elevated temperature materials in the HMT to correspond with those in the UN Recommendations.

Currently under the HMR, air bags are assigned to the Division 4.1 hazard class and the proper shipping name is limited to "Air bag inflators" or "Air bag modules." Based on changes in the UN Recommendations, RSPA would revise the proper shipping name for air bags to include seat belt pre-tensioners and modules. The new proper shipping name would be "Air bag inflators *or* Air bag modules *or* Seat-belt modules *or* Seat-belt pre-tensioners." This entry also would reflect a change in classification from Division 4.1 to Class 9, adoption of a new UN number, and removal of the "D" in Column 1.

Two new domestic entries would be added for "Toy caps" and "Toy propellant devices". Toy propellant devices containing 30 grams or less propellant would be classed as Division 1.4S while items containing more than 30 grams but not more than 62.5 grams would be classed as Division 1.4C.

Two new entries for "Batteries, containing sodium" and "Cells, containing sodium" would be added in the HMT based on the UN Recommendations entry (UN 3292). Since these materials were previously authorized only under the terms of an exemption or competent authority approval, RSPA is proposing to add a new packaging section § 173.189 that prescribes general packaging and transport requirements for these materials consistent with the UN Recommendations.

Currently, in Column 1, a "+" is assigned to certain materials meeting the criteria of Division 6.1, Packing Group I, toxic by inhalation, but classed in another hazard class. The eighth revised edition of the UN Recommendations incorporated revisions to the hazard classification of these materials to Division 6.1, Packing Group I, toxic by inhalation. Therefore, the "+" would be removed from Column 1 for any liquid poison by inhalation (PIH) material newly classed in Division 6.1, Packing Group I.

The shipping name "acetonitrile" is proposed to replace the name "methyl cyanide." The hazard class for "Formaldehyde solutions" currently shown as Class 9 would be revised to Class 8. Numerous generic pesticide entries would be revised to remove the "n.o.s." from the shipping names.

Previously under the UN Recommendations, ICAO Technical Instructions, and the IMDG Code, a subsidiary hazard of Division 6.1, Packing Group III was not recognized. However, the international standards now take such a subsidiary hazard into account. Therefore, numerous entries would appear for the first time with a Division 6.1, Packing Group III subsidiary hazard. In addition, an exception in § 172.101(c)(12)(iii), which allows a subsidiary hazard of Division 6.1, Packing Group III to be disregarded when selecting a proper shipping name, would be removed.

Revised generic shipping descriptions for Division 4.3 materials would be prefaced by the words "water-reactive" in lieu of the words "substances which in contact with water emit". The prefix of the identification number for "Polyester resin kits" would be changed to "UN" from "NA" and a special provision "40" would be added in Column 7 that would specify contents and packaging requirements for polyester resin kits. In addition, Special Provision "117" would be removed from the entry corresponding to "UN 0150."

The entry for alcoholic beverages would be revised in Column 7 to include Special Provision "24", which would indicate that alcoholic beverages with more than 70 percent alcohol by volume would be assigned Packing Group II and alcoholic beverages containing more than 24 percent but not more than 70 percent alcohol would be assigned Packing Group III. In addition, § 173.150 would be revised to increase (to five liters per inner packaging) the quantity of alcoholic beverage in a packaging excepted from the HMR and to provide an exception adopted in the UN Recommendations to permit Packing Group III alcoholic beverages transported in receptacles of 250 L (66 gallons) or less to be excepted from the HMR unless transported by air.

The following tables identify those entries that would be: (1) deleted; (2) significantly changed; or (3) added. An entry is considered significantly changed if there is a change in (1) the shipping name, (2) IM tank authorization, (3) subsidiary labeling, (4) classification, or (5) packaging. Each entry is identified by its identification number which, along with the cross-reference table appearing in the HMR prior to the HMT, can be used to identify the affected entries. Unless otherwise indicated, the identification numbers are "UN" numbers:

LIST OF ENTRIES THAT WOULD BE DELETED FROM THE § 172.101 TABLE

NA2255*	0416	1270	1705	2497	3030–3043
NA2810*	1118	1271	1864	2553	NA9259*
NA2811*	1255	1584	2207	2860	NA9276*
0273	1256	1592	2229	2951–2955	
0274	1257	1703	2449	2970–2973	

*See new entry added by the UN recommendations.

LIST OF ENTRIES THAT WOULD BE SIGNIFICANTLY CHANGED

NA1760	1322	1474	1731	2006	2379	2534	2818
NA1986	1325	1475	1740	2022	2382	2557	2821
NA2922	1328	1477	1747	2029	2383	2564	2823
1106	1334	1481	1750	2047	2386	2571	2826
1125	1336	1482	1751	2051	2389	2583	2834
1135	1337	1483	1752	2076	2399	2584	2837
1143	1344	1489	1755	2189	2401	2585	2841
1154	1348	1502	1757	2194	2407	2586	2845
1158	1349	1506	1761	2195	2417	2604	2846
1160	1350	1508	1773	2196	2418	2606	2857
1162	1353	1511	1783	2198	2420	2610	2869
1167	1354	1517	1787	2206	2421	2616	2874
1198	1355	1549	1788	2209	2427	2619	2881
1202	1356	1564	1789	2211	2428	2626	2904–2905
1210	1357	1566	1809	2218	2429	2670	2921–2930
1214	1361	1570	1811	2219	2430	2677	2938
1221	1364	1588	1814	2232	2438	2679	2945–2946
1228	1373	1589	1816	2242	2445	2681	2965
1235	1378	1590	1819	2251	2461	2684	2985–2988
1265	1395	1599	1824	2257	2478	2693	2991–3021
1268	1402	1601	1888	2258	2482	2733	3024–3027
1274	1408	1602	1908	2260	2484	2734	3049–3050
1277	1409	1605	1922	2264	2485	2735	3065–3066
1282	1415	1613	1952	2267	2495	2741	3071
1289	1418	1614	1953	2270	2501	2742	3079
1296	1420	1648	1954	2276	2502	2757–2787	3084
1297	1428	1660	1955	2332	2517	2789	3086–3088
1298	1454	1708	1956	2337	2521	2796	3094
1308	1455	1715	1975	2343	2526	2801	3096
1310	1458	1719	1986	2351	2529	2810	3098–3100
1320	1459	1722	1988	2359	2530	2813	3119–3150
1321	1462	1724	1992	2361	2533	2817	

LIST OF ADDITIONS TO THE § 172.101 TABLE

UN #	SHIPPING NAMF
0491 ..	CHARGES, PROPELLING.
0492 ..	SIGNALS, RAILWAY TRACK, EXPLOSIVE.
0493 ..	SIGNALS, RAILWAY TRACK, EXPLOSIVE.
0494 ..	JET PERFORATING GUNS, CHARGED, oil well, without detonator.
0495 ..	PROPELLANT, LIQUID.
0496 ..	OCTONAL.
0497 ..	PROPELLANT, LIQUID.
0498 ..	PROPELLANT, SOLID.
0499 ..	PROPELLANT, SOLID.
1851 ..	MEDICINE, LIQUID, TOXIC, N.O.S.
1990 ..	BENZALDEHYDE.
3155 ..	PENTACHLOROPHENOL.
3156 ..	COMPRESSED GAS, OXIDIZING, N.O.S.
3157 ..	LIQUEFIED GAS, OXIDIZING, N.O.S.
3158 ..	GAS, REFRIGERATED LIQUID, N.O.S.
3159 ..	1,1,1,2-TETRAFLUOROETHANE.
3160 ..	LIQUEFIED GAS, TOXIC, FLAMMABLE, N.O.S.
3161 ..	LIQUEFIED GAS, FLAMMABLE, N.O.S.
3162 ..	LIQUEFIED GAS, TOXIC, N.O.S.
3163 ..	LIQUEFIED GAS, N.O.S.
3164 ..	ARTICLES, PRESSURIZED PNEUMATIC or HYDRAULIC (containing non-flammable gas).

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3166 ..	ENGINES, INTERNAL COMBUSTION, including when fitted in machinery or vehicles.
3167 ..	GAS SAMPLE, NON-PRESSURIZED, FLAMMABLE, N.O.S., not refrigerated liquid.
3168 ..	GAS SAMPLE, NON-PRESSURIZED, TOXIC, FLAMMABLE, N.O.S., not refrigerated liquid.
3169 ..	GAS SAMPLE, NON-PRESSURIZED, TOXIC, N.O.S., not refrigerated liquid.
3170 ..	ALUMINIUM PROCESSING BY-PRODUCTS.
3171 ..	BATTERY-POWERED VEHICLE or BATTERY-POWERED EQUIPMENT (wet battery).
3174 ..	TITANIUM DISULPHIDE.
3175 ..	SOLIDS CONTAINING FLAMMABLE LIQUID, N.O.S.
3176 ..	FLAMMABLE SOLID, ORGANIC, MOLTEN, N.O.S.
3178 ..	FLAMMABLE SOLID, INORGANIC, N.O.S.
3179 ..	FLAMMABLE SOLID, TOXIC, INORGANIC, N.O.S.
3180 ..	FLAMMABLE SOLID, CORROSIVE, INORGANIC, N.O.S.
3181 ..	METAL SALTS OF ORGANIC COMPOUNDS, FLAMMABLE, N.O.S.
3182 ..	METAL HYDRIDES, FLAMMABLE, N.O.S.
3183 ..	SELF-HEATING LIQUID, ORGANIC, N.O.S.

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3184 ..	SELF-HEATING LIQUID, TOXIC, ORGANIC, N.O.S.
3185 ..	SELF-HEATING LIQUID, CORROSIVE, ORGANIC, N.O.S.
3186 ..	SELF-HEATING LIQUID, INORGANIC, N.O.S.
3187 ..	SELF-HEATING LIQUID, TOXIC, INORGANIC, N.O.S.
3188 ..	SELF-HEATING LIQUID, CORROSIVE, INORGANIC, N.O.S.
3189 ..	METAL POWDER, SELF-HEATING, N.O.S.
3190 ..	SELF-HEATING SOLID, INORGANIC, N.O.S.
3191 ..	SELF-HEATING SOLID, TOXIC, INORGANIC, N.O.S.
3192 ..	SELF-HEATING SOLID, CORROSIVE, INORGANIC, N.O.S.
3194 ..	PYROPHORIC LIQUID, INORGANIC, N.O.S.
3200 ..	PYROPHORIC SOLID, INORGANIC, N.O.S.
3203 ..	PYROPHORIC ORGANOMETALLIC COMPOUND, N.O.S.
3205 ..	ALKALINE EARTH METAL ALCOHOLATES, N.O.S.
3206 ..	ALKALI METAL ALCOHOLATES, SELF-HEATING, CORROSIVE, N.O.S.
3207 ..	ORGANOMETALLIC COMPOUND or COMPOUND SOLUTION or COMPOUND DISPERSION, WATER-REACTIVE, FLAMMABLE, N.O.S.

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3208 ..	METALLIC SUBSTANCE, WATER-REACTIVE, N.O.S.
3209 ..	METALLIC SUBSTANCE, WATER-REACTIVE, SELF-HEATING, N.O.S.
3210 ..	CHLORATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3211 ..	PERCHLORATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3212 ..	HYPOCHLORITES, INORGANIC, N.O.S.
3213 ..	BROMATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3214 ..	PERMANGANATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3215 ..	PERSULPHATES, INORGANIC, N.O.S.
3216 ..	PERSULPHATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3217 ..	PERCARBONATES, INORGANIC, N.O.S.
3218 ..	NITRATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3219 ..	NITRITES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3220 ..	PENTAFLUOROETHANE.
3221 ..	SELF-REACTIVE LIQUID TYPE B.
3222 ..	SELF-REACTIVE SOLID TYPE B.
3223 ..	SELF-REACTIVE LIQUID TYPE C.
3224 ..	SELF-REACTIVE SOLID TYPE C.
3225 ..	SELF-REACTIVE LIQUID TYPE D.
3226 ..	SELF-REACTIVE SOLID TYPE D.
3227 ..	SELF-REACTIVE LIQUID TYPE E.
3228 ..	SELF-REACTIVE SOLID TYPE E.
3229 ..	SELF-REACTIVE LIQUID TYPE F.
3230 ..	SELF-REACTIVE SOLID TYPE F.
3231 ..	SELF-REACTIVE LIQUID TYPE B, TEMPERATURE CONTROLLED.
3232 ..	SELF-REACTIVE SOLID TYPE B, TEMPERATURE CONTROLLED.
3233 ..	SELF-REACTIVE LIQUID TYPE C, TEMPERATURE CONTROLLED.
3234 ..	SELF-REACTIVE SOLID TYPE C, TEMPERATURE CONTROLLED.
3235 ..	SELF-REACTIVE LIQUID TYPE D, TEMPERATURE CONTROLLED.
3236 ..	SELF-REACTIVE SOLID TYPE D, TEMPERATURE CONTROLLED.
3237 ..	SELF-REACTIVE LIQUID TYPE E, TEMPERATURE CONTROLLED.
3238 ..	SELF-REACTIVE SOLID TYPE E, TEMPERATURE CONTROLLED.
3239 ..	SELF-REACTIVE LIQUID TYPE F, TEMPERATURE CONTROLLED.
3240 ..	SELF-REACTIVE SOLID TYPE F, TEMPERATURE CONTROLLED.
3241 ..	2-BROMO-2-NITROPROPANE-1,3-DIOL.
3242 ..	AZODICARBONAMIDE.
3243 ..	SOLIDS CONTAINING TOXIC LIQUID, N.O.S.
3244 ..	SOLIDS CONTAINING CORROSIVE LIQUID, N.O.S.
3246 ..	METHANESULPHONYL CHLORIDE.
3247 ..	SODIUM PEROXOBORATE, ANHYDROUS.
3248 ..	MEDICINE, LIQUID, FLAMMABLE, TOXIC, N.O.S.
3249 ..	MEDICINE, SOLID, TOXIC, N.O.S.
3250 ..	CHLOROACETIC ACID, MOLTEN.
3251 ..	ISOSORBIDE-5-MONONITRATE.

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3252 ..	DIFLUOROMETHANE.
3253 ..	DISODIUM TRIOXOSILICATE, PENTAHYDRATE.
3254 ..	TRIBUTYLPHOSPHANE.
3255 ..	tert-BUTYL HYPOCHLORITE.
3256 ..	ELEVATED TEMPERATURE LIQUID, N.O.S. with flash point above 37.8 °C, at or above its flash point.
3257 ..	ELEVATED TEMPERATURE LIQUID, N.O.S., at or above 100 °C and below its flash point.
3258 ..	ELEVATED TEMPERATURE SOLID, N.O.S., at or above 240 °C.
3259 ..	AMINES, SOLID, CORROSIVE, N.O.S. or POLYAMINES, SOLID, CORROSIVE, N.O.S.
3260 ..	CORROSIVE SOLID, ACIDIC, INORGANIC, N.O.S.
3261 ..	CORROSIVE, SOLID, ACIDIC, ORGANIC, N.O.S.
3262 ..	CORROSIVE, SOLID, BASIC, INORGANIC, N.O.S.
3263 ..	CORROSIVE, SOLID, BASIC, ORGANIC, N.O.S.
3264 ..	CORROSIVE, LIQUID, ACIDIC, INORGANIC, N.O.S.
3265 ..	CORROSIVE, LIQUID, ACIDIC, ORGANIC, N.O.S.
3266 ..	CORROSIVE, LIQUID, BASIC, INORGANIC, N.O.S.
3267 ..	CORROSIVE, LIQUID, BASIC, ORGANIC, N.O.S.
3268 ..	AIR BAG INFLATORS or AIR BAG MODULES or SEAT-BELT PRETENSIONERS or SEAT-BELT MODULES.
3269 ..	POLYESTER RESIN KIT.
3270 ..	NITROCELLULOSE MEBRANE FILTERS.
3271 ..	ETHERS, N.O.S.
3272 ..	ESTERS, N.O.S.
3273 ..	NITRILES, FLAMMABLE, TOXIC, N.O.S.
3274 ..	ALCOHOLATES SOLUTION, N.O.S., in alcohol.
3275 ..	NITRILES, TOXIC, FLAMMABLE, N.O.S.
3276 ..	NITRILES, TOXIC, N.O.S.
3277 ..	CHLOROFORMATES, TOXIC, CORROSIVE, N.O.S.
3278 ..	ORGANOPHOSPHORUS COMPOUND, TOXIC N.O.S.
3279 ..	ORGANOPHOSPHORUS COMPOUND, TOXIC, FLAMMABLE, N.O.S.
3280 ..	ORGANOARSENIC COMPOUND, N.O.S.
3281 ..	METAL CARBONYLS, N.O.S.
3282 ..	ORGANOMETALLIC COMPOUND, TOXIC N.O.S.
3283 ..	SELENIUM COMPOUND, N.O.S.
3284 ..	TELLURIUM COMPOUND, N.O.S.
3285 ..	VANADIUM COMPOUND, N.O.S.
3286 ..	FLAMMABLE LIQUID, TOXIC, CORROSIVE, N.O.S.
3287 ..	TOXIC LIQUID, INORGANIC, N.O.S.
3288 ..	TOXIC SOLID, INORGANIC, N.O.S.
3289 ..	TOXIC LIQUID, CORROSIVE, INORGANIC, N.O.S.
3290 ..	TOXIC SOLID, CORROSIVE, INORGANIC, N.O.S.

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3292 ..	BATTERIES, CONTAINING SODIUM, or CELLS, CONTAINING SODIUM.
3293 ..	HYDRAZINE, AQUEOUS SOLUTION with not more than 37% hydrazine, by mass.
3294 ..	HYDROGEN CYANIDE, SOLUTION IN ALCOHOL with not more than 45% hydrogen cyanide.
3295 ..	HYDROCARBONS, LIQUID, N.O.S.
3296 ..	HEPTAFLUOROPROPANE.
3297 ..	ETHYLENE OXIDE AND CHLORO-TETRAFLUOROETHANE MIXTURE with not more than 8.8% ethylene oxide.
3298 ..	ETHYLENE OXIDE AND PENTAFLUOROETHANE MIXTURE with not more than 7.9% ethylene oxide.
3299 ..	ETHYLENE OXIDE AND TETRAFLUOROETHANE MIXTURE with not more than 5.6% ethylene oxide.
3300 ..	ETHYLENE OXIDE AND CARBON DIOXIDE MIXTURE with more than 87% ethylene oxide.
3301 ..	CORROSIVE LIQUID, SELF-HEATING, N.O.S.

Appendix B to § 172.101. In a November 5, 1992 final rule entitled "Marine Pollutants" [57 FR 52934], RSPA stated that it would consider, in a future rulemaking action, a criteria-based system to identify marine pollutants. Adoption of a criteria-based system would provide continuity and harmony, as well as permit identification of potential pollutants previously not identified. Therefore, RSPA is proposing to add two notes which are consistent with recent IMO decisions. The first, Note 4, would allow a material meeting criteria for a marine pollutant in the IMDG Code but not listed in Appendix B of § 172.101, to be transported as a marine pollutant. Note 5 would allow the Associate Administrator for Hazardous Materials Safety to except from HMR requirements a material listed in Appendix B of the HMR that does not meet the IMDG Code criteria for a marine pollutant. In addition, a number of materials would be added to, or removed from, the HMR's List of Marine Pollutants.

Section 172.102. Special Provisions 23, 24, 26, 32, 34–40, and 43–51 would be added to § 172.102. These special provisions relate to certain materials' classifications and any special packaging requirements that are necessary to safely transport these materials. Due to an oversight, Special Provision 23 was already added in a

final rule published June 2, 1994 [Docket HM–166Z; 59 FR 28493]. This special provision concerned classification of ammonium nitrate fertilizer. Special Provision 23 in this notice does not apply to ammonium nitrate fertilizer and is not intended to revise the recently adopted Special Provision 23. However, because of a time constraint and the difficulty in amending Column 7 of the HMT, the new provision will be proposed in this notice under Special Provision 23, but will be renumbered to Special Provision 38 in the final rule under Docket HM–215A.

Section 172.203. A new paragraph (o) would be added to require additional information to be included in the shipping paper description for organic peroxides and self-reactive materials. In addition, paragraphs (k) and (m) would be revised based on changes to the HMT. In paragraph (k), the list of shipping names requiring technical names would be revised based on changes to the HMT. In paragraph (m), the reference to "Poison" would be modified to include an alternative reference to "Toxic."

Section 172.204. The certification statement in paragraph (a)(2) would be revised to add "placarded" as a condition for declaring a shipment to be properly prepared for transportation. This wording is consistent with international declarations and would enable one shipper certification statement to be used for both domestic and export shipments so that different preprinted forms are not needed.

Section 172.320. Section 172.320 would be revised to permit all product codes that are traceable to an "EX-number" to be marked on boxes of explosives in lieu of the EX number.

Section 172.400a. A new paragraph (c) would be added to state that a subsidiary POISON label is not required on a package bearing a primary CORROSIVE label if the poison hazard of the material inside is based solely on corrosive destruction of tissue and is not due to systemic poisoning. This provision was omitted inadvertently in the Docket HM–181 final rule, and reinstating it would be consistent with international requirements.

Section 172.402. For consistency with revisions to the UN Recommendations, ICAO Technical Instructions, and the IMDG Code, labeling for certain subsidiary hazards would be required. The subsidiary labeling table in paragraph (a)(2) would be revised to exclude Class 3 Packing Group III subsidiary risk materials having a flash point at or above 38 °C (100 °F) from the requirement to label, except when transporting the materials by air or vessel. This proposed revision would require that a material having a subsidiary risk of Class 3 Packing Group III and a flash point below 38 °C (100 °F) be labeled for the Class 3 subsidiary hazard in accordance with this section. In addition, the exception from subsidiary hazard labeling for Class 8 Packing Group III and Division 6.1 Packing Group III materials transported by highway or rail would be removed. Previously, a Division 6.1 Packing Group III subsidiary hazard was not required internationally or domestically. Based on a change adopted in the eighth revised edition of the UN Recommendations, which removed the STOW AWAY FROM FOODSTUFFS label and placard, packages containing materials having either a primary or subsidiary hazard in Division 6.1 Packing Group III are required to bear a POISON label. As noted previously in this document, RSPA is addressing this issue in a rulemaking action under Docket HM–217. However, RSPA believes that a package containing a material meeting Division 6.1 Packing Group III criteria as either a primary or subsidiary hazard should bear a label which communicates a warning that the material must be kept separate from foodstuffs. Therefore, RSPA is proposing that any material having a subsidiary hazard of Division 6.1 Packing Group III must bear a KEEP AWAY FROM FOOD subsidiary label when transported domestically by any mode. Also, new subsidiary labeling requirements for Class 2 materials would, under this proposal, be added as paragraphs (f) and (g).

Section 172.411. A requirement specifying a minimum height for the compatibility group letter on certain EXPLOSIVE labels would be removed.

Section 172.416. Section 172.416 would be revised to allow the use of the words "TOXIC GAS" on the POISON GAS label.

Section 172.430. Section 172.430 would be revised to allow the use of the word "TOXIC" on the POISON label.

Section 172.540. Section 172.540 would be revised to allow the use of the words "TOXIC GAS" on the POISON GAS placard.

Section 172.547. Section 172.547 would be revised to reduce the size requirement for the word "spontaneously" in the "SPONTANEOUSLY COMBUSTIBLE" placard from 25 mm to 12 mm.

Section 172.554. Section 172.554 would be revised to allow the use of the word "TOXIC" on the POISON placard.

Part 173

Section 173.2a. Consistent with the UN Recommendations, the Precedence of Hazards Table would be amended to account for combinations of Division 4.2 and Class 8 materials which currently are denoted as impossible combinations. In addition, a new footnote 5 would be added to the paragraph (b) table to specify that, for materials having multiple risks which are not listed by technical name in the § 172.101 Table, the most stringent packaging group must be used. Also, a note would be added to the paragraph (b) table to specify the class assignment for a material which meets the definition of Class 8, has an inhalation toxicity by dusts and mists at the Packing Group I level and meets criteria for oral or dermal toxicity.

Section 173.21. A reference to the § 173.224 self-reactive materials table would be revised to reflect proposed changes to the table.

Section 173.22. Paragraph (a)(3)(i) would be revised to indicate that the marking appearing on the bottom of a metal or plastic drum in accordance with § 178.503 would not be an acceptable means of determining if the drum is an authorized packaging.

Section 173.24. Paragraph (d) would be revised to specify the conditions under which foreign-manufactured packagings may be used. The proposed revision would stipulate the conditions under which foreign-manufactured UN packagings may be filled and used in the U.S. Under this proposal, only packagings from countries affording the same degree of acceptance to U.S.-manufactured packagings may be used. Current provisions of the regulations authorize their use only for import/export shipments under §§ 171.11 and 171.12. In addition, paragraph (e)(4)(ii) would be revised to prohibit hazardous materials from being packed or mixed with other hazardous or nonhazardous materials in the same outer packaging if such materials are capable of reacting with each other and causing the evolution of "asphyxiant gases."

Section 173.25. Paragraph (a) would be amended to refer to the definition of "Overpack" in § 171.8, which also would be amended to provide examples of suitable overpacks. Paragraph (b) would be added to authorize shrink-wrapped or stretch-wrapped trays as outer packagings for inner packagings prepared under limited quantity or consumer commodity provisions if the completed package is capable of meeting the Packing Group III performance level and the gross weight of the package does not exceed 20 kg.

Section 173.28. Paragraph (b)(4), as revised under the Docket HM–181 final rule, currently requires that metal and plastic single packagings meet certain minimum thicknesses and that the "minimum" thickness be marked on the package. Since issuance of the Docket HM–181 final rule, the eighth revised edition of the UN Recommendations and the international regulations have adopted a provision that metal drums with a capacity greater than 100 liters must be marked in accordance with tolerances allowed under ISO standard 3574 for each nominal thickness of steel.

Unless the below-described proposed changes to § 173.28 are adopted, thicknesses and thickness marking requirements that differ between the HMR and international regulations could result in confusion, with drum users and reconditioners unsure whether drums are suitable for reuse or remanufacture. Drum manufacturers in the U.S. might find it necessary to mark both minimum and nominal thicknesses on each drum in order to satisfy DOT and international requirements. Consistent with changes proposed in § 178.503(a), RSPA is proposing that metal drums and jerricans which are to be reused be marked with the nominal thickness, in millimeters. The minimum thickness table in paragraph (b)(4) would be revised for metal drums and jerricans to reflect a minimum thickness corresponding to the minimum allowed under ISO standard 3574 for various nominal thicknesses. In developing the minimum thickness proposed for each listed capacity of packaging, the thickness chosen is that most closely corresponding numerically (i.e., without regard to whether it is thicker or thinner) to the minimum thickness previously required. That is, based on the tolerances allowed under ISO 3574 for each nominal thickness of steel, the minimum thickness corresponding to that nominal thickness was determined and compared to the minimum thickness required under the current provisions for the given capacity of packaging. Each proposed minimum thickness would result in a minimum sheet thickness closely corresponding to that required under the current regulations. However, for packagings with a capacity up to and including 120 liters, the proposed minimum thicknesses would result in slight increases in the required thickness.

Drums would continue to be suitable for reuse only if they meet the minimum thickness criteria of the table in paragraph (b)(4). A person reusing a metal drum or jerrican could not rely on the thickness marking appearing on the packaging to satisfy the minimum thickness requirements, since that marking would represent the nominal, rather than the minimum, thickness in accordance with proposed § 178.503(a)(9). Because the eighth revised edition of the UN Recommendations did not address thickness requirements for plastic packagings, RSPA is not proposing any changes to the thickness requirements for plastic packagings.

Based on the merits of a petition for rulemaking (P–1133), a new paragraph (b)(7) would be added to waive retesting requirements for certain packagings used in limited operations prior to each reuse. The petitioner states that this proposed change would provide consistency with corresponding provisions in international requirements. According to both the HMR and the UN Recommendations, a packaging must be design-qualification tested before use. However, unlike the HMR, the UN Recommendations do not require a packaging to be leakproof tested before it is reused for transport, but only after it is reconditioned. Packagings that are reused without reconditioning include metal drums that are refilled with the same or similar compatible contents and transported within distribution chains controlled by the consignor of the product. RSPA is proposing similar provisions in new paragraph (b)(7) for certain packagings to be reused without leakproof testing. Packagings would be limited to stainless steel, monel, or nickel drums (or other packagings approved by the Associate Administrator for Hazardous Materials Safety) refilled with the same or similar compatible contents and transported by a private carrier, contract carrier, or common carrier in a transport vehicle or freight container used exclusively for such service, within a distribution chain controlled by the offeror. In order to ensure an appropriate level of safety, when stainless steel, monel, or nickel drums are reused without undergoing leakproof testing, they would be required to meet more stringent thickness standards than prescribed in paragraph (b)(4). Other packagings could qualify only if approved by the Associate Administrator for Hazardous Materials Safety. Packagings also would require an inspection prior to each reuse, and any packaging showing evidence of a reduction in integrity would not be authorized for reuse without reconditioning.

Section 173.33. Paragraph (c)(5) would be revised to limit the provisions of the paragraph to materials in Packing Groups I and II of Division 6.1.

Section 173.52. In § 173.52, the description of Compatibility Group B would be revised to clarify that detonators and similar articles are included within this description even if they do not contain primary explosives. In addition, in the descriptions for Compatibility Groups E and F, the word "gel" would be added to clarify that articles with a propelling charge containing gel may not be classified in Compatibility Group E or F.

Section 173.59. In § 173.59, the definitions "powder, smokeless," "propellants," and "charges, propelling" would be revised and definitions for "charges, propelling for cannon," "propellent, liquid," and "propellant, solid" would be added.

Section 173.60. In § 173.60, paragraph (b)(15) would be added to require all plastic packagings to be static-resistant.

Section 173.62. In § 173.62, the Explosives Table would be revised to add new descriptions for Class 1 materials. In addition, the packing method for UN0075 and UN0143 would be revised to E–159. The Table of Packing Methods would be editorially revised to change the reference to steel and aluminum boxes from 4A1 or 4A2 and 4B1 or 4B2 to 4A and 4B, respectively. Several packing methods would be revised by authorizing aluminum boxes (4B) as an alternate packaging. For clarity, the entire proposed Explosive Packing Methods Table has been reprinted with the Table of Particular Packaging Requirements and Exceptions following. Paragraph (e) would be revised to update the military packaging exception to allow explosives packaged prior to January 1, 1990, to be transported in accordance with the packaging provisions in effect on that date.

Section 173.115. The definition of a Division 2.2 gas would be expanded to include asphyxiant and oxidizing gases.

Section 173.120. Definitions for Class 3 liquids would be revised to include provisions for evaluating a material's ability to sustain combustion and to measure flame point. A new method of testing for combustibility would be referenced and added as Appendix H to Part 173. Specific exceptions consistent with the UN Recommendations would be added as paragraphs (a)(3), (a)(4), and (a)(5). In addition, references to ASTM standards would be revised to reflect updated versions. Paragraph (b)(2) would be revised to clarify that an elevated temperature material in Class 3 may not be reclassed as a combustible liquid. As explained more fully in a notice of proposed rulemaking and in a final rule issued under Docket HM–198A [54 FR 38931; September 21, 1989

and 56 FR 49981; October 2, 1991], when a liquid is intentionally heated to a temperature that is equal to or greater than its flash point, flammable vapors are produced above the liquid. If these flammable vapors are exposed to an ignition source, an explosion or fire could result.

Section 173.121. Criteria for including viscous Class 3 materials in Packing Group III would be revised. ISO method ISO 1523–1983 would be referenced for determination of flash point. Several modifications to the method would be provided when the temperature of the flash point is too low for the standard procedures. Reference to ISO method 2431–1989 would reflect the latest revision. The table in § 173.121(b)(1)(iv) would be amended for consistency with the eighth revision of the UN Recommendations.

Section 173.124. The definition of self-reactive materials would be revised to conform to the changes in the UN Recommendations, which now contains "generic" shipping descriptions. When a new self-reactive material is introduced into commerce, its transportation hazards currently are determined based on standard tests. The competent authority then assigns the new self-reactive material to a generic type based on the test results.

In the proposed revision to § 173.124, seven types of self-reactive material (Types A–G) are defined in paragraph (a)(2). The procedure for assigning a specific self-reactive material to a generic type is set forth in paragraph (a)(2)(vi). If a self-reactive material is identified by technical name in the Self-Reactive Materials Table in § 173.224, the generic type is assigned in that Table. The lengthy process by which importing and exporting countries agree on the packaging requirements or assignment of a shipping description for a new self-reactive material would be avoided by using this procedure.

Section 173.128. Editorial changes would be made in paragraphs (a), (c)(2) and (c)(3), and procedures for obtaining approvals would be clarified in revised paragraph (d).

Sections 173.136 and 173.137. The definition and packing group assignment for Class 8 materials would be clarified. Specific test protocols developed by the Organization for Economic Cooperation and Development (OECD) and published in the 1992 OECD Guideline for Testing of Chemicals, No. 404, "Acute Dermal Irritation/Corrosion" would be incorporated. A copy of this guideline may be obtained from the OECD Publications and Information Center, 2001 L Street, Suite 700, Washington, DC 20036 or by contacting the RSPA Dockets Unit.

Section 173.150. Paragraph (a) would be revised to allow Class 3 materials that meet the definition of Class 8 Packing Group III or Division 6.1 Packing Group III, to utilize limited quantity exceptions provided in this section. Paragraph (b) would be expanded to include limited quantity exceptions for combustible liquids to provide relief from specification packaging and placarding requirements for combustible liquids which are also hazardous substances or hazardous wastes. The paragraph (d) provisions for alcoholic beverages would be revised to clarify that an alcoholic beverage containing 24 percent or less alcohol by volume is not subject to the HMR. The maximum quantity per package of alcoholic beverage excepted from the HMR would be raised from four liters to five liters, and a Packing Group III alcoholic beverage in a packaging of 250 L or less would not be subject to the HMR unless transported by air.

Section 173.152. The limited quantity provisions for organic peroxides would be amended by increasing the authorized net capacity per inner packaging for Type D, E, or F liquid and solid organic peroxides and Type B or C solid organic peroxides. However, the authorized net capacity for liquid Type B or C organic peroxides would decrease from 30 ml to 25 ml per inner packaging.

Section 173.164. Certain exceptions for mercury (metallic and articles containing mercury), would be clarified and a 4H2 solid plastic box would be authorized as an outer packaging, consistent with the ICAO Technical Instructions.

Section 173.166. This section would be amended to limit its applicability to air bag inflators and modules showing certain specified results when subjected to a bonfire test. Under this proposed revision, airbag modules and inflators not meeting the test criteria must be transported as explosives.

Section 173.168. This section would be added to define a "nonspillable battery", establish separate requirements for nonspillable batteries (as opposed to the requirements for wet batteries contained in § 173.159), and provide vibration and pressure differential testing criteria. Except when transporting a wheelchair or other battery-powered mobility aid equipped with a non-spillable battery by air as checked baggage, a nonspillable battery which is protected against short circuits, securely packaged and durably marked would not be subject to any other HMR requirements.

Section 173.171. Paragraph (a) would be revised to clarify that smokeless powder must be examined and approved as both Division 1.3 and Division 4.1.

Section 173.185. RSPA is proposing to amend the requirements for lithium batteries consistent with changes in the UN Recommendations. While the new requirements apply more severe test requirements to lithium batteries, they also will allow batteries with higher quantities of lithium to be transported without being subject to the regulations, provided specified criteria are met. Existing batteries previously allowed to be transported as Class 9 batteries may continue to be transported under the present requirements indefinitely if the present requirements are met.

Section 173.189. This new section would be added to establish the packaging and general transport requirements for batteries and cells containing sodium. The packagings and transport conditions proposed reflect those prescribed for these articles in the UN Recommendations, the ICAO Technical Instructions and the IMDG Code. Specific conditions under which batteries containing liquid sodium may be transported are proposed based on the conditions prescribed for the transport of batteries containing liquid sodium under DOT–E 10917.

Section 173.196. The seventh edition of the UN Recommendations revised a provision for infectious substances packagings to require that either the primary receptacle or the secondary packaging be capable of withstanding the prescribed pressure differential. RSPA is proposing a similar revision to paragraph (f) to clarify that both the inner and the outer packagings are not required to have this capability.

Sections 173.211–213. These sections would be revised to change packaging identification codes (for steel boxes from 4A1 and 4A2 to 4A and for aluminum boxes from 4B1 and 4B2 to 4B) for consistency with international requirements.

Section 173.224. This section would be revised based on the UN Recommendations. Paragraph (b) sets forth the Self-Reactive Materials Table which identifies the technical name for specific self-reactive materials, the identification number which is used to select the appropriate generic shipping description, specifications for concentrations of the self-reactive material, packing methods that may be used, temperature control requirements, and additional special provisions. The existing packing methods for self-reactive materials would be replaced with the packing methods for organic

peroxides which are prescribed in § 173.225.

Paragraph (c) sets forth procedures for new self-reactive materials, formulations and samples. New self-reactive materials and formulations of currently identified self-reactive materials would have to be approved in accordance with the provisions in § 173.124(a)(2)(vi). Paragraph (c)(4) contains provisions for the shipping of samples of new formulations. Paragraph (d) would specify that self-reactive materials of Type F may be transported in bulk only under the approval of the Associate Administrator for Hazardous Materials Safety.

Section 173.225. In § 173.225, paragraph (a) would be revised to prohibit the use of metallic non-bulk packagings meeting a Packing Group I packaging standard. Paragraph (c)(5) would be added to authorize the transportation of mixtures of organic peroxides that are specifically identified in the Organic Peroxides Table without approval by the Associate Administrator for Hazardous Materials Safety. In addition, the Organic Peroxide Table would be revised to add new organic peroxides adopted in the UN Recommendations.

Section 173.304. In the paragraph (a)(2) table, for the entry "carbon dioxide," an erroneous reference to a DOT–311800 cylinder would be corrected to authorize a DOT–3T1800 cylinder for carbon dioxide.

Section 173.306. In paragraph (a)(3)(v), the hot water immersion test for aerosols and small gas receptacles would include a reference temperature of 50 °C (122 °F) in addition to the reference temperature of 55 °C (131 °F). A reference temperature of 50 °C would be permitted if the liquid phase of the materials contained in the receptacle does not exceed 95 percent of the capacity of the receptacle at 50 °C. In addition, provisions would be added for plastic receptacles or contents which are sensitive to heat.

Appendix A to Part 173. Appendix A, which provides a method of testing corrosion to skin, would be removed and reserved for consistency with proposed changes to the definition and packing group assignment for Class 8 materials.

Appendix E to Part 173. New criteria would be added for self-reactive materials possessing explosive properties, and an editorial change would be made to clarify that powders of metals or metal alloys that can be ignited are classified in Division 4.1.

Appendix F to Part 173. In paragraph 1., an editorial revision would be made to correctly reference Division 5.1.

Appendix H to Part 173. A new Appendix H would be added to Part 173 to provide a method of testing for combustibility. This method outlines a procedure for determining if a material can sustain combustion if heated under test conditions and exposed to an external source of flame.

Part 175

Section 175.10. The phrase "environmental restoration or protection" would be added as an exception in paragraph (a)(12) to clarify that certain aircraft operations pertaining to environmental restoration may be conducted under the provisions of this paragraph. Exceptions currently contained in paragraphs (a)(13) and (a)(17) for carbon dioxide (dry ice) would be consolidated into paragraph (a)(13) to except this material from regulation from Part 175 when it is used as a refrigerant for a package, intended for use in food or beverage service aboard an aircraft, or when used to pack perishables in carry-on baggage. Paragraph (a)(4) would be revised for consistency with the ICAO Technical Instructions which prohibit the carriage of undeclared flammable aerosols in checked or carry-on luggage. The carriage of such aerosols may create an unnecessary risk to ground handlers, passengers, and air crew members. In addition, a new paragraph (a)(26) would be added to except from regulation small medical or clinical mercury thermometers carried by passengers or crew members for personal use.

Section 175.33. Paragraph (a)(1) would be revised and a new paragraph (a)(9) would be added to require an aircraft operator, in the written notification to the pilot-in-command, to include a compatibility group letter for a Class 1 material and an air waybill number where one has been issued.

Part 176

Section 176.27. A new paragraph (c) would be added to reference a container packing certificate required under the provisions of the SOLAS Convention. (See discussion under § 171.12 of this section review for additional information.)

Section 176.76. A new paragraph (i) is being proposed for inclusion in § 176.76 to address the transport of fumigated transport units on vessels. These proposed fumigation requirements would be in addition to the fumigation requirements contained in § 173.9. The new vessel requirements are generally consistent with the IMDG Code requirements for transporting fumigated transport units and are consistent with Special Permits currently being issued by the Coast Guard for U.S. maritime transport of fumigated transport units. Contrary to the IMDG Code but consistent with the UN Recommendations, RSPA is not proposing that fumigated units be treated as items of Class 9. If the proposed requirements for fumigated transport units on vessels are adopted in the final rule, a Special Permit issued by the Coast Guard would no longer be necessary.

Part 177

Section 177.841. Paragraph (e)(3) would be revised to specify requirements for separating Division 6.1 Packing Group III materials from foodstuffs, consistent with provisions in § 177.848.

Part 178

Section 178.2. Paragraph (a) would be revised to clarify that Part 178 requirements for UN standard packagings apply only to packagings manufactured in the U.S. See § 173.24(d)(2) for foreign-manufactured packagings. A new paragraph (e) would be added to include definitions for "manufacturer" and "specification markings." These new definitions would specify who is to be identified through a specification marking as the "manufacturer" and would clarify the manufacturer's responsibility under Part 178.

Section 178.3. The introductory text in paragraph (a) and the text in subparagraph (a)(2) would be revised editorially for clarity. A new marking provision would be added to paragraph (a)(4) to permit markings of an appropriate, rather than specific, size for packagings of 5 L (1 gallon) or 5 kg (11 pounds) or less capacity. Paragraph (b) would be revised to clarify the requirements for UN standard packagings marked in accordance with HMR requirements and UN standard packagings marked in accordance with the ICAO Technical Instructions or the IMDG Code.

Section 178.502. In paragraph (a) introductory text and paragraph (a)(1), the terms "type" or "types" of packagings would be amended for consistency with international regulations to read "kind" or "kinds" of packagings.

Section 178.503. Consistent with the UN Recommendations, RSPA is proposing revisions to certification marking requirements in this section. Each packaging certified to a UN standard is required to have a series of markings which describe the packaging and its characteristics. Paragraph (a) would be revised to require, for

packagings having a gross mass greater than 30 kg (66 pounds), that these markings appear on the top or side of the packaging. Currently, § 178.503 requires that metal or plastic drums or jerricans intended for reuse be marked with the minimum thickness of the packaging material. Consistent with the UN Recommendations, RSPA is proposing that metal drums and jerricans intended for reuse be marked with the nominal thickness. The nominal thickness marked would be in accordance with ISO 3574; that is, the nominal thickness marked could only exceed the actual minimum thickness of the packaging material by the tolerance specified in ISO 3574. Packagings to be reused would still be subject to the minimum thickness requirements of § 173.28. Because the eighth revised edition of the UN Recommendations did not address thickness requirements for plastic packagings, RSPA is proposing that plastic drums and jerricans intended for reuse continue to be marked with the minimum thickness of the packaging material.

In addition to the full marking on the top or side of a metal or plastic drum having a capacity greater than 100 liters and intended for reuse or reconditioning as a single packaging or the outer packaging of a composite packaging, RSPA is proposing to require a permanent marking of the drum characteristics on the bottom of the drum. The country authorizing the mark, the name and address of the manufacturer, and the packaging thickness would not be required as part of this permanent mark. This marking would identify the packaging as it was originally manufactured, and could not necessarily be used to determine compliance with packaging requirements. For example, if a non-removable head drum had been converted to a removable head drum, this conversion would not be reflected in the marking on the bottom of the drum, but would be evident in the top or side marking. For drums marked permanently on the bottom, the top or side mark would not be required to be permanent (i.e., able to withstand the reconditioning process).

RSPA is proposing a new paragraph (d), which would specify additional requirements for markings on reconditioned metal drums. The paragraph would require that reconditioners reapply markings which no longer appear on drums after the reconditioning process. A reconditioner could duplicate the original markings or apply markings which reflect a lower performance level, but could not apply markings which identify a performance level greater than that for which the original design type had been tested and marked.

Section 178.512. Standards for steel boxes and aluminum boxes would be consolidated by removing the distinction between unlined/uncoated steel or aluminum boxes and steel or aluminum boxes having an inner liner or coating. Therefore, both unlined and lined steel boxes would be identified as 4A and unlined and lined aluminum boxes would be identified as 4B. Corresponding revisions would be reflected in the packaging authorizations of Part 173.

Section 178.513. A new paragraph would be added to the standards for natural wood boxes to specify fastening requirements.

Section 178.516. In paragraph (b)(1), the reference to ISO Standard 535–1976(E) would be updated. Paragraph (b)(2) would be revised to authorize the ends of fiberboard boxes to be constructed of suitable materials other than wood, which is already authorized.

Section 178.521. In paragraph (b)(2), the term "water-resistant" would be revised to "waterproof" and examples of a waterproof ply or barrier would be provided.

Section 178.522. A composite packaging consisting of a plastic receptacle in a protective plastic drum is designated as 6HH in the current HMR standards. The UN Recommendations recently adopted a new composite packaging standard to authorize a plastic receptacle in a protective plastic box. Therefore, in paragraph (b)(3), the previous 6HH composite packaging would be redesignated as 6HH1 and the new composite packaging (the plastic receptacle in a protective plastic box) would be designated as 6HH2.

Section 178.601. Based on the merits of a petition (P–1195), paragraph (b) would be revised to limit the responsibility of shippers to those packaging assembly functions they actually perform or are responsible for performing. The petitioner claims that § 178.601(b) currently requires any shipper who closes a package to ensure that each package is capable of passing prescribed performance tests, thereby making the shipper legally responsible for every aspect of the manufacture and testing of the packaging. RSPA agrees, and is proposing a revision to paragraph (b)(2) to remove the shipper responsibility provision regarding packaging fabrication and testing functions not performed by the shipper. Paragraph (g)(2)(i) would be revised to clarify that selective testing under Variation 2 would require the fragile inner packagings to contain liquids. A new sentence would be added to the end of paragraph (g)(2)(vi) to clarify that where outer packagings are not leakproof or siftproof and consequently require some type of leakproof liner, plastic bag or other means of containment, sufficient absorbent material must be placed inside the liner or bag. A new paragraph (k) would be added to permit several tests to be performed on one sample if the validity of test results is not affected and if approved by the Associate Administrator for Hazardous Materials Safety. Newly designated paragraph (l) would be revised to clarify recordkeeping requirements and provide consistency with test report requirements in the UN Recommendations.

Section 178.602. In paragraph (c) a reference to "§ 178.603(d)(2)" would be corrected to read "§ 178.603(e)".

Section 178.603. In paragraph (a), a new provision would be added to require that the drop test be performed using the package orientation most likely to result in failure if more than one orientation is possible. Paragraph (c) would be revised to clarify that the cold drop test outlined in this paragraph applies only to plastic packagings. A proposed revision to paragraph (f)(1) would clarify that inner packagings of combination packagings are not required to be vented to reach equilibrium after the drop test.

Section 178.604. For consistency with a change in the UN Recommendations, the length of time to conduct a leakproofness test, other than for production testing, would be specified as five minutes in revised paragraph (d).

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A preliminary regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts

State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous materials;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This notice of proposed rulemaking addresses covered subjects under items i, ii, iii and v above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the "substantively the same" standard. The HMTA (49 App. U.S.C. 1804(a)(5), as amended, provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be [insert date six months after date of publication]. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This proposed rule would incorporate changes introduced in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 to the IMDG Code. It would apply to offerors and carriers of hazardous materials and would facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will be forced to comply with a dual system of regulation, to their economic disadvantage, if the changes proposed in this NPRM are not adopted. The proposed changes are intended to avoid this result. I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act Of 1980 (Pub. L. 96–511) under OMB control number 2137–0034 for shipping papers and 2137–0557 for approvals.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR part 1.

2. In the § 171.7(a)(3) Table, under the entry *American Society for Testing and Materials* a new entry would be added in numerical order; under the entry *International Organization for Standardization*, two new entries would be added at the end of existing entries; and a new entry would be added in alphabetical order, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
. . . . .	
American Society for Testing and Materials	
. . . . .	
ASTM G 31–72 Practice for Laboratory Immersion Corrosion Testing of Metals (Reapproved 1990)	173.137

Source and name of material	49 CFR reference
* * * * * * *	
International Organization for Standardization	
* * * * * * *	
ISO 3574–1986(E) Cold-reduced carbon steel sheet of commercial and drawing qualities	178.503
ISO 2592–1973 Petroleum Products—Determination of Flash and Fire Points Cleveland Cup Method, 1973	173.120
ISO 2604 (IV)-1975 Steel Products for Pressure Purposes—Plates	173.137
* * * * * * *	
Organization for Economic Cooperation and Development (OECD)	
OECD Publications and Information Center, 2001 L Street, Suite 700, Washington, DC 20036	
OECD Guideline for Testing of Chemicals, No.404 "Acute Dermal Irritation/Corrosion", 1992	173.136
* * * * * * *	

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§ 171.7 [Amended]

3. In addition, in § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. In the entry ASTM D 56–79, the wording "D 56–79" would be revised to read "D 56–87".

b. In the entry ASTM D 93–80, the wording "D 93–80" would be revised to read "D 93–90".

c. In the entry ASTM D 3278–78, the wording "D 3278–78" would be revised to read "ASTM D 3278–89".

d. In the entry ASTM D 4359–84, the wording "D 4359–84" would be revised to read "ASTM D 4359–90".

e. Under International Civil Aviation Organization (ICAO), for the entry "Technical Instructions for the Safe Transport of Dangerous Goods by Air", the date "1993–1994" would be revised to read "1995–1996".

f. Under International Maritime Organization (IMO), the entry "International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 26 thereto" would be amended by removing the wording "Amendment 26" and replacing it with "Amendment 27".

g. Under International Organization for Standardization, the words "ISO–535–1976(E)" would be revised to read "ISO–535–1991(E)".

h. Under Transport Canada, the entry "Transportation of Dangerous Goods Regulations, as of July 1, 1985, incorporating Registration Numbers SOR/85–77, SOR/85–585 and SOR/85–609" would be revised to read "Transportation of Dangerous Goods Regulations, 1 July 1985, SOR/85/77, incorporating the following Registration Numbers: SOR/85–314, SOR/85–585, SOR/85–609, SOR/86–526, SOR/88–635, SOR/87–335, SOR/87–186, SOR/89–39, SOR/89–294, SOR/90–847, SOR/91–711, SOR/91–712, SOR/92–447, SOR/92–600, SOR/93–203, SOR/93–274, SOR/93–525, SOR/94–146 and SOR/94–264".

i. Under United Nations, for the entry "UN Recommendations on the Transport of Dangerous Goods, Sixth Revised Edition (1989)" the wording "Sixth Revised Edition (1989)" would be revised to read "Eighth Revised Edition (1993)".

j. Under United Nations, for the entry "UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria", in column 2, the references "173.124;" "173.128;" "173.166;" and "173.185" would be added in appropriate numerical order.

4. In § 171.8, the following definitions would be added or revised, as indicated, in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

[Add:]

* * * * *

Asphyxiant gas means a gas which dilutes or replaces oxygen normally in the atmosphere.

* * * * *

Gas means a material which, at a standard pressure of 101.3 kPa (14.7 psi), has a vapor pressure greater than 300 kPa (43.5 psi) at 50 °C (122 °F) or is completely gaseous at 20 °C (68 °F).

* * * * *

Siftproof packaging means a packaging impermeable to dry contents, including fine solid material produced during transportation.

* * * * *

[Revise:]

* * * * *

Box means a packaging with complete rectangular or polygonal faces, made of metal, wood, plywood, reconstituted wood, fiberboard, plastic, or other suitable material. Small holes for purposes such as ease of handling or opening, or to meet classification requirements, are permitted as long as they do not compromise the integrity of the packaging during transportation, and are not otherwise prohibited in this subchapter.

* * * * *

Liquid means a material, other than an elevated temperature material, with a melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 psi). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D 4359–90 "Standard Test Method for Determining Whether a Material is Liquid or Solid"

* * * * *

Overpack, except as provided in subpart K of part 178 of this subchapter, means an enclosure that is used by a single consignor to provide protection or convenience in handling of a package or to consolidate two or more packages. *Overpack* does not include a transport vehicle, freight container, or aircraft unit load device. Examples of overpacks are one or more packages:

(1) Placed or stacked onto a load board such as a pallet and secured by strapping, shrink wrapping, stretch wrapping, or other suitable means; or

(2) Placed in a protective outer packaging such as a box or crate.

* * * * *

Solid means a material which is not a gas or a liquid.

* * * * *

UN standard packaging means a packaging conforming to standards in the UN Recommendations on the Transport of Dangerous Goods.

* * * * *

§ 171.11 [Amended]

5. In § 171.11, in the last sentence of paragraph (d)(5), the wording "Poison" would be revised to read " 'Poison' or 'Toxic' ".

§ 171.12 [Amended]

6. In § 171.12, the following changes would be made:

a. In paragraph (b) introductory text, in the second sentence, the wording

"stowed and segregated, and certified in accordance with the IMDG Code" would be revised to read "stowed and segregated, and certified (including a container packing certification, if applicable) in accordance with the IMDG Code".

b. In the first sentence of paragraph (c) introductory text, the wording "being imported into or exported from the United States or" would be removed.

§ 171.14 [Amended]

7. In § 171.14, paragraph (c)(3) would be removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

9. In § 172.101, paragraphs (c)(3), (c)(13) and (k)(1) through (k)(5) would be revised and, in paragraph (g), a new sentence would be added as the last sentence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(3) The word "poison" or "poisonous" may be used interchangeably with the word "toxic" when only domestic transportation is involved. The abbreviation "n.o.i." or "n.o.i.b.n." may be used interchangeably with "n.o.s.".

* * * * *

(13) *Self-reactive materials and organic peroxides.* Generic proper shipping names for self-reactive materials and organic peroxides, as listed in Column 2 of the Table, must be selected based on the material's technical name and concentration, in accordance with the provisions of §§ 173.224 or 173.225 of this subchapter, respectively.

* * * * *

(g) * * * No label is required for a material classed as a combustible liquid or for a Class 3 material that is reclassed as a combustible liquid.

* * * * *

(k) * * *

(1) Stowage category "A" means the material may be stowed "on deck" or "under deck" on a passenger or cargo vessel.

(2) Stowage category "B" means—

(i) The material may be stowed "on deck" or "under deck" on a cargo vessel;

(ii) The material may be stowed "under deck" on a passenger vessel carrying not more than 25 passengers or, alternatively, one passenger per each three meters of overall vessel length, whichever is larger; and

(iii) "On deck only" on passenger vessels in which the number of passengers specified in paragraph (k)(2)(ii) of this section is exceeded.

(3) Stowage category "C" means the material must be stowed "on deck only" on a cargo vessel and on a passenger vessel.

(4) Stowage category "D" means material must be stowed "on deck only" on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each three meters of overall vessel length, but is prohibited on passenger vessels in which the limiting number of passengers is exceeded.

(5) Stowage category "E" means material may be stowed "on deck" or "under deck" on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each three meters of overall vessel length, but is prohibited from carriage on passenger vessels in which the limiting number of passengers is exceeded.

* * * * *

§ 172.101 [Amended]

10. In addition, in § 172.101, in paragraph (c)(12)(iii), the last sentence would be removed.

11. In § 172.101, the Hazardous Materials Table would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Accelierene, see p-Nitrosodimethylaniline												
	Accumulators, electric, see Batteries, wet *etc.*												
D	Accumulators, pressurized, pneumatic *or* hydraulic *(containing non-flammable gas)*	2.2	NA1956		NONFLAMMABLE GAS		306	306	None	No limit	No limit	A	
	Acetal	3	UN1088	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	Acetaldehyde	3	UN1089	I	FLAMMABLE LIQUID	A3, B16, T20, T26, T29.	None	201	243	Forbidden	30 L	E	
A	Acetaldehyde ammonia	9	UN1841	III	CLASS 9		155	204	240	200 kg	200 kg	A	34
	Acetaldehyde oxime	3	UN2332	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Acetic acid, glacial *or* Acetic acid solution, *with more than 80 percent acid, by mass*	8	UN2789	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, A7, A10 B2, T8.	154	202	243	1 L	30 L	A	
	Acetic acid solution, *with more than 10 percent but not more than 80 percent acid, by mass*	8	UN2790	II	CORROSIVE	A3, A6, A7, A10 B2, T8.	154	202	242	1 L	30 L	A	
	Acetic anhydride	8	UN1715	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, A7, A10, B2, T8.	154	202	243	1 L	30 L	A	40
	Acetone	3	UN1090	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Acetone cyanohydrin, stabilized	6.1	UN1541	I	POISON	2, A3, B9, B14, B32, B76, B77, N34, T38, T43, T45.	None	227	244	Forbidden	30 L	D	25, 40, 49
	Acetone oils	3	UN1091	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
	Acetonitrile	3	UN1648	II	FLAMMABLE LIQUID	T14	150	202	242	1 L	60 L	B	40
	Acetonitrile, see Methyl cyanide												
	Acetyl acetone peroxide with more than 9 percent by mass active oxygen	Forbidden											
	Acetyl benzoyl peroxide, solid, or with more than 40 percent in solution	Forbidden											
	Acetyl bromide	8	UN1716	II	CORROSIVE	B2, T12, T26	154	202	242	1 L	30 L	C	40
	Acetyl chloride	3	UN1717	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A6, A7, N34, T18, T26.	None	202	243	1 L	5 L	B	40
	Acetyl cyclohexanesulfonyl peroxide, with more than 82 percent wetted with less than 12 percent water	Forbidden											
	Acetyl iodide	8	UN1898	II	CORROSIVE	B2, T9	154	202	242	1 L	30 L	C	40
	Acetyl methyl carbinol	3	UN2621	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Acetyl peroxide, solid, or with more than 25 percent in solution	Forbidden											
	Acetylene, dissolved	2.1	UN1001		FLAMMABLE GAS		None	303	None	Forbidden	15 kg	D	25, 40, 57
	Acetylene (liquefied)	Forbidden											
	Acetylene silver nitrate	Forbidden											
	Acetylene tetrabromide, see Tetrabromoethane												
	Acid butyl phosphate, see Butyl acid phosphate												
	Acid, sludge, *see* Sludge acid												
	Acridine	6.1	UN2713	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Acrolein dimer, stabilized	3	UN2607	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
	Acrolein, inhibited	6.1	UN1092	I	POISON, FLAMMABLE LIQUID.	1, B9, B12, B14, B30, B42, B72, B77, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Acrylamide	6.1	UN2074	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	12
	Acrylic acid, inhibited	8	UN2218	II	CORROSIVE, FLAMMABLE LIQUID.	B2, T8	154	202	243	1 L	30 L	C	25, 40
	Acrylonitrile, inhibited	3	UN1093	I	FLAMMABLE LIQUID, POISON.	B9, T18, T26	None	201	243	Forbidden	30 L	E	40
	Actuating cartridge, explosive, see Cartridges, power device												
	Adhesives, *containing a flammable liquid*	3	UN1133	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	173	242	60 L	220 L	A	
	Adiponitrile	6.1	UN2205	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity)*	2.2	UN1950		NONFLAMMABLE GAS, CORROSIVE.	A34	306	None	None	75 kg	150 kg	A	40, 48, 85
	Aerosols, *flammable, (each not exceeding 1 L capacity)*	2.1	UN1950		FLAMMABLE GAS	N82	306	None	None	75 kg	150 kg	A	40, 48, 85

Aerosols, *non-flammable, (each not exceeding 1 L capacity)*		2.2	UN1950		NONFLAMMABLE GAS		306, 307	None	None	75 kg	150 kg	A	48, 85
Aerosols, *poison, each not exceeding 1 L capacity*		2.2	UN1950		NONFLAMMABLE GAS		306	None	None	Forbidden	Forbidden	A	40, 48, 85
Air bag inflators *or* Air bag modules *or* Seat-belt pre-tensioners *or* Seat-belt modules		9	UN3268	III	CLASS 9		166	166	166	25 kg	100 kg	A	
Air, compressed		2.2	UN1002		NONFLAMMABLE GAS		306	302	302	75 kg	150 kg	A	
Air, refrigerated liquid, *(cryogenic liquid)*		2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	150 kg	D	51
Air, refrigerated liquid, *(cryogenic liquid) non-pressurized*		2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	Forbidden	D	51
Aircraft evacuation slides, *see* Life saving appliances *etc.*													
Aircraft hydraulic power unit fuel tank *(containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel)*		3	UN3165	I	FLAMMABLE LIQUID, POISON, CORROSIVE.		None	172	None	Forbidden	42 L	E	
Aircraft survival kits, *see* Life saving appliances *etc.*													
Alcoholates solution, n.o.s., *in alcohol*		3	UN3274	II	FLAMMABLE LIQUID, CORROSIVE.		None	202	243	1 L	5 L	B	
Alcoholic beverages		3	UN3065	II	FLAMMABLE LIQUID	24, B1, T1	150	202	242	5 L	60 L	A	
				III	FLAMMABLE LIQUID	24, B1, N11, T1	150	203	242	60 L	220 L	A	
Alcohols, n.o.s		3	UN1987	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Alcohols, toxic, n.o.s.		3	UN1986	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8, T31	None	203	242	60 L	220 L	A	
Aldehydes, n.o.s.		3	UN1989	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Aldehydes, toxic, n.o.s.		3	UN1988	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8, T31	150	203	242	60 L	220 L	A	
Aldol		6.1	UN2839	II	POISON	T8	None	202	243	5 L	60 L	A	12
D Aldrin, *liquid*		6.1	NA2762	II	POISON		None	202	243	5 L	60 L	B	
D Aldrin, *solid*		6.1	NA2761	II	POISON		None	212	242	25 kg	100 kg	A	40
Alkali metal alcoholates, self-heating, corrosive, n.o.s.		4.2	UN3206	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	212	242	15 kg	50 kg	B	
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	213	242	25 kg	100 kg	B	
Alkali metal alloys, liquid, n.o.s.		4.3	UN1421	I	DANGEROUS WHEN WET.	A2, A3, B48, N34	None	201	244	Forbidden	1 L	D	
Alkali metal amalgams		4.3	UN1389	I	DANGEROUS WHEN WET.	A2, A3, N34	None	201	244	Forbidden	1 L	D	
Alkali metal amides		4.3	UN1390	II	DANGEROUS WHEN WET.	A6, A7, A8, A19, A20.	None	212	241	15 kg	50 kg	E	40
Alkali metal dispersions, *or* Alkaline earth metal dispersions		4.3	UN1391	I	DANGEROUS WHEN WET.	A2, A3	None	201	244	Forbidden	1 L	D	
Alkaline corrosive liquids, n.o.s., see Caustic alkali liquids, n.o.s.													
Alkaline earth metal alcoholates, n.o.s.		4.2	UN3205	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	B	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	15 kg	100 kg	B	
Alkaline earth metal alloys, n.o.s.		4.3	UN1393	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E	
Alkaline earth metal amalgams		4.3	UN1392	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D	
Alkaloids, liquid, n.o.s., *or* Alkaloid salts, liquid, n.o.s.		6.1	UN3140	I	POISON	A4, T42	None	201	243	1 L	30 L	A	
				II	POISON	T14	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
Alkaloids, solid, n.o.s. *or* Alkaloid salts, solid, n.o.s. *poisonous*		6.1	UN1544	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Alkyl sulfonic acids, liquid *or* Aryl sulfonic acids, liquid *with more than 5 percent free sulfuric acid*		8	UN2584	II	CORROSIVE	B2, T8, T27	154	202	242	1 L	30 L	B	
Alkyl sulfonic acids, liquid *or* Aryl sulfonic acids, liquid *with not more than 5 percent free sulfuric acid*		8	UN2586	III	CORROSIVE	T8	154	203	241	5 L	60 L	B	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Alkyl sulfonic acids, solid *or* Aryl sulfonic acids, solid, *with more than 5 percent free sulfuric acid*	8	UN2583	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Alkyl sulfonic acids, solid *or* Aryl sulfonic acids, solid *with not more than 5 percent free sulfuric acid*	8	UN2585	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Alkylphenols, liquid, n.o.s. *(including C2-C12 homologues)*	8	UN3145	I	CORROSIVE	T8	None	201	243	0.5 L	2.5 L	B	
				II	CORROSIVE	T8	154	202	242	1 L	30 L	B	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Alkylphenols, solid, n.o.s. *(including C2-C12 homologues)*	8	UN2430	I	CORROSIVE	T8	None	211	242	1 kg	25 kg	B	
				II	CORROSIVE	T8	154	212	240	15 kg	50 kg	B	
				III	CORROSIVE	T6	154	213	240	25 kg	100 kg	A	
	Alkylsulfuric acids	8	UN2571	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	14
	Allethrin, see Pesticides, liquid, toxic, n.o.s.												
	Allyl acetate	3	UN2333	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Allyl alcohol	6.1	UN1098	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Allyl bromide	3	UN1099	I	FLAMMABLE LIQUID, POISON.	T18	None	201	243	Forbidden	30 L	B	40
	Allyl chloride	3	UN1100	I	FLAMMABLE LIQUID, POISON.	T18, T26	None	201	243	Forbidden	30 L	E	40
	Allyl chlorocarbonate, see Allyl chloroformate												
	Allyl chloroformate	6.1	UN1722	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, A3, B9, B14, B30, B72, N41, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Allyl ethyl ether	3	UN2335	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Allyl formate	3	UN2336	I	FLAMMABLE LIQUID, POISON.	T18, T26	None	201	243	Forbidden	30 L	E	40
	Allyl glycidyl ether	3	UN2219	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Allyl iodide	3	UN1723	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A6, N34, T18	None	202	243	1 L	5 L	B	40
+	Allyl isothiocyanate, stabilized	6.1	UN1545	II	POISON	2, A3, A7, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	D	40
	Allylamine	6.1	UN2334	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Allyltrichlorosilane, stabilized	8	UN1724	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B2, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	Aluminium processing by-products	4.3	UN3170	II	DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	S	85, 103
				III	DANGEROUS WHEN WET.		None	213	241	25 kg	100 kg	S	85, 103
	Aluminum alkyl halides	4.2	UN3052	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum alkyl hydrides	4.2	UN3076	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum alkyls	4.2	UN3051	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum borohydride *or* Aluminum borohydride in devices	4.2	UN2870	I	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	B11	None	181	244	Forbidden	Forbidden	D	
	Aluminum bromide, anhydrous	8	UN1725	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Aluminum bromide, solution	8	UN2580	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Aluminum carbide	4.3	UN1394	II	DANGEROUS WHEN WET.	A20, N41	None	212	242	15 kg	50 kg	A	
	Aluminum chloride, anhydrous	8	UN1726	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Aluminum chloride, solution	8	UN2581	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Aluminum dross, wet or hot	Forbidden											
	Aluminum ferrosilicon powder	4.3	UN1395	II	DANGEROUS WHEN WET, POISON.	A19	None	212	242	15 kg	50 kg	A	40, 85, 103

				III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.	A19, A20	None	213	241	25 kg	100 kg	A	40, 85, 103
	Aluminum hydride	4.3	UN2463	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
D	Aluminum, molten	9	NA9260	III	CLASS 9		None	None	247	Forbidden	Forbidden	D	
	Aluminum nitrate	5.1	UN1438	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Aluminum phosphate solution, see Corrosive liquids, n.o.s.												
	Aluminum phosphide	4.3	UN1397	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Aluminum phosphide pesticides	6.1	UN3048	I	POISON	A8	None	211	242	Forbidden	15 kg	E	40, 85
	Aluminum powder, coated	4.1	UN1309	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	A	13, 39, 101
				III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A	13, 39, 101
	Aluminum powder, uncoated	4.3	UN1396	II	DANGEROUS WHEN WET.	A19, A20	None	212	242	15 kg	50 kg	A	39
				III	DANGEROUS WHEN WET.	A19, A20	None	213	241	25 kg	100 kg	A	39
	Aluminum resinate	4.1	UN2715	III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A	
	Aluminum silicon powder, uncoated	4.3	UN1398	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	40, 85, 103
	Amatols, see Explosives, blasting, type B												
	Amines, flammable, corrosive, n.o.s. *or* Polyamines, flammable, corrosive, n.o.s.	3	UN2733	I	FLAMMABLE LIQUID. CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	D	40
				II	FLAMMABLE LIQUID. CORROSIVE.	T8, T31	None	202	243	1 L	5 L	B	40
				III	FLAMMABLE LIQUID. CORROSIVE.	B1, T8, T31	150	203	242	5 L	60 L	A	40
	Amines, liquid, corrosive, flammable, n.o.s. *or* Polyamines, liquid, corrosive, flammable, n.o.s.	8	UN2734	I	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, N34, T8, T31.	None	201	243	0.5 L	2.5 L	A	
				II	CORROSIVE, FLAMMABLE LIQUID.	T8, T31	None	202	243	1 L	30 L	A	
	Amines, liquid, corrosive, n.o.s. *or* Polyamines, liquid, corrosive, n.o.s.	8	UN2735	I	CORROSIVE	A3, A6, B10, N34, T42.	None	201	243	0.5 L	2.5 L	A	
				II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Amines, solid, corrosive, n.o.s., *or* Polyamines, solid, corrosive n.o.s.	8	UN3259	I	CORROSIVE		None	211	242	1 kg	25 kg	A	
				II	CORROSIVE		154	212	240	15 kg	50 kg	A	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	2-Amino-4-chlorophenol	6.1	UN2673	II	POISON		None	212	242	25 kg	100 kg	A	
	2-Amino-5-diethylaminopentane	6.1	UN2946	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	2-(2-Aminoethoxy) ethanol	8	UN3055	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	N-Aminoethylpiperazine	8	UN2815	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	12
	Aminophenols *(o-; m-; p-)*	6.1	UN2512	III	KEEP AWAY FROM FOOD.	T1	153	213	240	100 kg	200 kg	A	
	Aminopropyldiethanolamine, see Alkylamines, n.o.s.												
	n-Aminopropylmorpholine, see Alkylamines, n.o.s.												
	Aminopyridines *(o-; m-; p-)*	6.1	UN2671	II	POISON	T7	None	212	242	25 kg	100 kg	B	12, 40
I	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia*	2.3	UN1005		POISON GAS	4	None	304	314, 315	Forbidden	25 kg	D	40, 57
D	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia*	2.2	UN1005		NONFLAMMABLE GAS	13	None	304	314, 315	Forbidden	25 kg	D	40, 57
	Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*	8	UN2672	III	CORROSIVE	T14	154	203	241	5 L	60 L	A	40, 85
	Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 35 percent but not more than 50 percent ammonia*	2.2	UN2073		NONFLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40, 57
	Ammonium arsenate	6.1	UN1546	II	POISON		None	212	242	25 kg	100 kg	A	
	Ammonium azide	Forbidden											
	Ammonium bifluoride, solid, see Ammonium hydrogen fluoride, solid												
	Ammonium bifluoride solution, see Ammonium hydrogen fluoride, solution												
	Ammonium bromate	Forbidden											
	Ammonium chlorate	Forbidden											
	Ammonium dichromate	5.1	UN1439	II	OXIDIZER		152	212	242	5 kg	25 kg	A	
	Ammonium dinitro-o-cresolate	6.1	UN1843	II	POISON	T8	None	212	242	25 kg	100 kg	B	36, 65, 66, 77
	Ammonium fluoride	6.1	UN2505	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Ammonium fluorosilicate	6.1	UN2854	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ammonium fulminate	Forbidden											
	Ammonium hydrogen difluoride, solid	8	UN1727	II	CORROSIVE	N34	154	212	240	15 kg	50 kg	A	25, 26, 40
	Ammonium hydrogen difluoride, solution	8	UN2817	II	CORROSIVE, POISON	N34, T15	None	202	243	1 L	30 L	B	40
				III	CORROSIVE, KEEP AWAY FROM FOOD.	T8	154	203	241	5 L	60 L	B	40, 95
	Ammonium hydrogen sulfate	8	UN2506	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Ammonium hydrosulfide, solution, see Ammonium sulfide solution												
D	Ammonium hydroxide, *see* Ammonia solutions, *etc.*												
	Ammonium metavenadete	6.1	UN2859	II	POISON		None	212	242	25 kg	100 kg	A	
D	Ammonium nitrate fertilizers	5.1	NA2072	III	OXIDIZER	7	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
AW	Ammonium nitrate fertilizers: *uniform non-segregating mixtures of nitrogen/phosphate or nitrogen/potash types or complete fertilizers of nitrogen/phosphate/potash type, with not more than 70 percent* ammonium nitrate *and not more than 0.4 percent total added combustible material or with not more than 45 percent* ammonium nitrate *with unrestricted combustible material*	9	UN2071	III	CLASS 9		155	213	240	200 kg	200 kg	A	
D	Ammonium nitrate-fuel oil mixture *containing only prilled* ammonium nitrate *and fuel oil*	1.5D	NA0331	II	EXPLOSIVE 1.5D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Ammonium nitrate, liquid *(hot concentrated solution)*	5.1	UN2426		OXIDIZER	B5, T25	None	None	243	Forbidden	Forbidden	D	59, 60
D	Ammonium nitrate mixed fertilizers	5.1	NA2069	III	OXIDIZER	10	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
	Ammonium nitrate, *with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance*	1.1D	UN0222	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium nitrate, *with not more than 0.2 percent of combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance*	5.1	UN1942	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	48, 59, 60, 118
	Ammonium nitrite	Forbidden											
	Ammonium perchlorate	1.1D	UN0402	II	EXPLOSIVE 1.1D	107	None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium perchlorate	5.1	UN1442	II	OXIDIZER	107, A9	152	212	242	5 kg	25 kg	E	58, 69, 106
	Ammonium permanganate	Forbidden											
	Ammonium persulfate	5.1	UN1444	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Ammonium picrate, *dry or wetted with less than 10 percent water, by mass*	1.1D	UN0004	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium picrate, wetted *with not less than 10 percent water, by mass*	4.1	UN1310	I	FLAMMABLE SOLID	23, A2, N41	None	211	None	0.5 kg	0.5 kg	D	28, 36
	Ammonium polysulfide, solution	8	UN2818	II	CORROSIVE, POISON	T14	None	202	243	1 L	30 L	B	12, 26, 40
				III	CORROSIVE, KEEP AWAY FROM FOOD.	T7	154	203	241	5 L	60 L	B	12, 26, 40
	Ammonium polyvanadate	6.1	UN2861	II	POISON		None	212	242	25 kg	100 kg	A	
	Ammonium silicofluoride, see Ammonium fluorosilicate												
	Ammonium sulfide solution	8	UN2683	II	CORROSIVE, POISON, FLAMMABLE LIQUID.	T14	None	202	243	1 L	30 L	B	12, 22, 26, 100
	Ammunition, blank, see Cartridges for weapons, blank												
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	1.2G	UN0171	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	1.3G	UN0254	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	1.4G	UN0297	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
	Ammunition, incendiary *liquid or gel, with burster, expelling charge or propelling charge*	1.3J	UN0247	II	EXPLOSIVE 1.3J			62	None	Forbidden	Forbidden	E	7E, 13E, 23E
	Ammunition, incendiary (water-activated contrivances) with burster, expelling charge or propelling charge, see Contrivances, water-activated, etc.												
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge*	1.2H	UN0243	II	EXPLOSIVE 1.2H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge*	1.3H	UN0244	II	EXPLOSIVE 1.3H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
	Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*	1.2G	UN0009	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	

Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*	1.3G	UN0010	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B		
Ammunition, incendiary *with or without burster, expelling charge or propelling charge*	1.4G	UN0300	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A		24E
Ammunition, practice	1.4G	UN0362	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A		24E
Ammunition, practice	1.3G	UN0488	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B		
Ammunition, proof	1.4G	UN0363	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A		24E
Ammunition, rocket, see Warheads, rocket *etc.*													
Ammunition, SA (small arms), see Cartridges for weapons, *etc.*													
Ammunition, smoke (water-activated contrivances), white phosphorus, with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc. (UN 0248)*													
Ammunition, smoke (water-activated contrivances), without white phosphorus or phosphides, with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc. (UN 0249)*													
Ammunition smoke, white phosphorus *with burster,expelling charge, or propelling charge*	1.2H	UN0245	II	EXPLOSIVE 1.2H			62	None	Forbidden	Forbidden	E		8E, 14E, 15E, 17E
Ammunition, smoke, white phosphorus *with burster, expelling charge, or propelling charge*	1.3H	UN0246	II	EXPLOSIVE 1.3H			62	None	Forbidden	Forbidden	E		8E, 14E, 15E, 17E
Ammunition, smoke *with or without burster, expelling charge or propelling charge*	1.2G	UN0015	II	EXPLOSIVE 1.2G, CORROSIVE.			62	None	Forbidden	Forbidden	E		17E, 20E
Ammunition, smoke *with or without burster, expelling charge or propelling charge*	1.3G	UN0016	II	EXPLOSIVE 1.3G, CORROSIVE.			62	None	Forbidden	Forbidden	E		17E, 20E
Ammunition, smoke *with or without burster, expelling charge or propelling charge*	1.4G	UN0303	II	EXPLOSIVE 1.4G, CORROSIVE.			62	None	Forbidden	75 kg	E		17E, 20E
Ammunition, sporting, see Cartridges for weapons, *etc. (UN 0012; UN 0328; UN 0339)*													
Ammunition, tear-producing, non-explosive, *without burster or expelling charge, non-fuzed*	6.1	UN2017	II	POISON, CORROSIVE		None	212	None	Forbidden	50 kg	E		13, 40
Ammunition, tear-producing *with burster, expelling charge or propelling charge*	1.2G	UN0018	II	EXPLOSIVE 1.2G, CORROSIVE, POISON.			62	None	Forbidden	Forbidden	E		20E
Ammunition, tear-producing *with burster, expelling charge or propelling charge*	1.3G	UN0019	II	EXPLOSIVE 1.3G, CORROSIVE, POISON.			62	None	Forbidden	Forbidden	E		17E, 20E
Ammunition, tear-producing *with burster, expelling charge or propelling charge*	1.4G	UN0301	II	EXPLOSIVE 1.4G, CORROSIVE, POISON.			62	None	Forbidden	75 kg	E		17E, 20E
Ammunition, toxic, non-explosive, *without burster or expelling charge, non-fuzed*	6.1	UN2016	II	POISON		None	212	None	Forbidden	100 kg	E		13, 40
Ammunition, toxic (water-activated contrivances), with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc.*													
Ammunition, toxic *with burster, expelling charge, or propelling charge*	1.2K	UN0020	II	EXPLOSIVE 1.2K, POISON.			62	None	Forbidden	Forbidden	E		2E, 8E, 11E, 17E
Ammunition, toxic *with burster, expelling charge, or propelling charge*	1.3K	UN0021	II	EXPLOSIVE 1.3K, POISON.			62	None	Forbidden	Forbidden	E		2E, 8E, 11E, 17E
Amyl acetates	3	UN1104	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Amyl acid phosphate	8	UN2819	III	CORROSIVE	T7	154	203	241	5 L	60 L	A		
Amyl alcohols	3	UN1105	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
			III	FLAMMABLE LIQUID	B1, B3, T1	150	203	242	60 L	220 L	A		
Amyl butyrates	3	UN2620	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Amyl chlorides	3	UN1107	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
Amyl formates	3	UN1109	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Amyl mercaptans	3	UN1111	II	FLAMMABLE LIQUID	A3, T8	None	202	242	5 L	60 L	B		95, 102
Amyl methyl ketone	3	UN1110	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Amyl nitrate	3	UN1112	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		40
Amyl nitrites	3	UN1113	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E		40
Amylamines	3	UN1106	II	FLAMMABLE LIQUID, CORROSIVE.	T1	None	202	243	1 L	5 L	B		
			III	FLAMMABLE LIQUID, CORROSIVE.	B1	150	203	242	5 L	60 L	A		
n-Amylene	3	UN1108	I	FLAMMABLE LIQUID	T14	150	201	243	1 L	30 L	E		
Amyltrichlorosilane	8	UN1728	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C		40
Anhydrous ammonia *see Ammonia, anhydrous, liquefied*													
Anhydrous hydrofluoric acid, see Hydrogen fluoride, anhydrous													
Aniline	6.1	UN1547	II	POISON	T8	None	202	243	5 L	60 L	A		40
Aniline hydrochloride	6.1	UN1548	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Aniline oil, see Aniline													

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Anisidines	6.1	UN2431	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Anisole	3	UN2222	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Anisoyl chloride	8	UN1729	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	C	40
	Anti-freeze, liquid, see Flammable liquids, n.o.s.												
	Antimonous chloride, see Antimony trichloride												
	Antimony compounds, inorganic, liquid, n.o.s.	6.1	UN3141	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Antimony compounds, inorganic, solid, n.o.s.	6.1	UN1549	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony lactate	6.1	UN1550	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony pentachloride, liquid	8	UN1730	II	CORROSIVE	B2, T8, T26	None	202	242	1 L	30 L	C	40
	Antimony pentachloride, solutions	8	UN1731	II	CORROSIVE	B2, T8, T27	154	202	242	1 L	30 L	C	40
				III	CORROSIVE	T7, T26	154	203	241	5 L	60 L	C	40
	Antimony pentafluoride	8	UN1732	II	CORROSIVE, POISON	A3, A6, A7, A10, N3, T12, T26.	None	202	243	Forbidden	30 L	D	40
	Antimony potassium tartrate	6.1	UN1551	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony powder	6.1	UN2871	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony sulfide and a chlorate, mixtures of	Forbidden											
	Antimony sulfide, solid, see Antimony compounds, inorganic, n.o.s.												
D	Antimony tribromide, solid	8	NA1549	II	CORROSIVE		154	212	240	25 kg	100 kg	A	13
D	Antimony tribromide, solution	8	NA1549	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	13
	Antimony trichloride, liquid	8	UN1733	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	40
	Antimony trichloride, solid	8	UN1733	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
D	Antimony trifluoride, solid	8	NA1549	II	CORROSIVE		154	212	240	25 kg	25 kg	A	13
D	Antimony trifluoride solution	8	NA1549	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	13
	Aqua ammonia, see Ammonia solution, *etc.*												
	Argon, compressed	2.2	UN1006		NONFLAMMABLE GAS		306	302	314, 315	75 kg	150 kg	A	
	Argon, refrigerated liquid *(cryogenic liquid)*	2.2	UN1951		NONFLAMMABLE GAS		320	316	318	50 kg	500 kg	B	
	Arsenic	6.1	UN1558	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic acid, liquid	6.1	UN1553	I	POISON	T18, T27	None	201	243	1 L	30 L	B	46
	Arsenic acid, solid	6.1	UN1554	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic bromide	6.1	UN1555	II	POISON		None	212	242	25 kg	100 kg	A	12, 40
	Arsenic chloride, see Arsenic trichloride												
	Arsenic compounds, liquid, n.o.s. *including arsenates n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1556	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	B	40
	Arsenic compounds, solid, n.o.s. *including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1557	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Arsenic pentoxide	6.1	UN1559	II	POISON		None	212	242	25 kg	100 kg	A	
D	Arsenic sulfide	6.1	NA1557	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic sulfide and a chlorate, mixtures of	Forbidden											
	Arsenic trichloride	6.1	UN1560	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Arsenic trioxide	6.1	UN1561	II	POISON		None	212	242	25 kg	100 kg	A	
D	Arsenic trisulfide	6.1	NA1557	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic, white, solid, see Arsenic trioxide												
	Arsenical dust	6.1	UN1562	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenical pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2760	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40

			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40	
Arsenical pesticides, liquid, toxic	6.1	UN2994	I	POISON	T42	None	201	243	1 L	30 L	B	40	
			II	POISON	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40	
Arsenical pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN2993	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40	
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40	
Arsenical pesticides, solid, toxic	6.1	UN2759	I	POISON		None	211	242	5 kg	50 kg	A	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Arsenious acid, solid, see Arsenic trioxide													
Arsenious and mercuric iodide solution, see Arsenic compounds, liquid, n.o.s.													
Arsine	2.3	UN2188		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40	
Articles, explosive, extremely insensitive *or* Articles, EEI	1.6N	UN0486	II	EXPLOSIVE 1.6N	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.4S	UN0349	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	100 kg	A		
Articles, explosive, n.o.s.	1.4B	UN0350	II	EXPLOSIVE 1.4B	101	None	62	None	Forbidden	Forbidden	A	24E	
Articles, explosive, n.o.s.	1.4C	UN0351	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	Forbidden	A	24E	
Articles, explosive, n.o.s.	1.4D	UN0352	II	EXPLOSIVE 1.4D	101	None	62	None	Forbidden	Forbidden	A	24E	
Articles, explosive, n.o.s.	1.4G	UN0353	II	EXPLOSIVE 1.4G	101	None	62	None	Forbidden	Forbidden	A	24E	
Articles, explosive, n.o.s.	1.1L	UN0354	II	EXPLOSIVE 1.1L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E	
Articles, explosive, n.o.s.	1.2L	UN0355	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E	
Articles, explosive, n.o.s.	1.3L	UN0356	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E	
Articles, explosive, n.o.s.	1.1C	UN0462	II	EXPLOSIVE 1.1C	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.1D	UN0463	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.1E	UN0464	II	EXPLOSIVE 1.1E	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.1F	UN0465	II	EXPLOSIVE 1.1F	101	None	62	None	Forbidden	Forbidden	E		
Articles, explosive, n.o.s.	1.2C	UN0466	II	EXPLOSIVE 1.2C	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.2D	UN0467	II	EXPLOSIVE 1.2D	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.2E	UN0468	II	EXPLOSIVE 1.2E	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.2F	UN0469	II	EXPLOSIVE 1.2F	101	None	62	None	Forbidden	Forbidden	E		
Articles, explosive, n.o.s.	1.3C	UN0470	II	EXPLOSIVE 1.3C	101	None	62	None	Forbidden	Forbidden	B		
Articles, explosive, n.o.s.	1.4E	UN0471	II	EXPLOSIVE 1.4E	101	None	62	None	Forbidden	75 kg	A	24E	
Articles, explosive, n.o.s.	1.4F	UN0472	II	EXPLOSIVE 1.4F	101	None	62	None	Forbidden	Forbidden	E		
Articles, pressurized pneumatic *or* Hydraulic *containing non-flammable gas*	2.2	UN3164		NONFLAMMABLE GAS		306	302, 304	None	No limit	No limit	A		
Articles, pyrophoric	1.2L	UN0380	II	EXPLOSIVE 1.2L		None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E	
Articles, pyrotechnic *for technical purposes*	1.1G	UN0428	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B		
Articles, pyrotechnic *for technical purposes*	1.2G	UN0429	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B		
Articles, pyrotechnic *for technical purposes*	1.3G	UN0430	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B		
Articles, pyrotechnic *for technical purposes*	1.4G	UN0431	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E	
Articles, pyrotechnic *for technical purposes*	1.4S	UN0432	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A		
D Asbestos	9	NA2212	III	CLASS 9		155	216	240	200 kg	200 kg	A	34, 40	
Ascaridole (organic peroxide)	Forbidden												
D Asphalt, *at or above its flashpoint*	3	NA1999	III	FLAMMABLE LIQUID		150	203	247	Forbidden	Forbidden	D		
D Asphalt, cut back, *see* Tars, liquid, *etc.*													
Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus, see Vehicles, self-propelled													
Azaurolic acid (salt of) (dry)	Forbidden												
Azido guanidine picrate (dry)	Forbidden												
5-Azido-1-hydroxy tetrazole	Forbidden												
Azido hydroxy tetrazole (mercury and silver salts)	Forbidden												
3-Azido-1,2-Propylene glycol dinitrate	Forbidden												
Azidodithiocarbonic acid	Forbidden												
Azidoethyl nitrate	Forbidden												
1-Azindinyl phosphine oxide-(tris), see Tris-(1-aziridinyl) phosphine oxide, solution													
Azodicarbonamide	4.1	UN3242	II	FLAMMABLE SOLID		151	212	240	Forbidden	Forbidden	D	12, 61, 74	
Azotetrazole (dry)	Forbidden												
Barium	4.3	UN1400	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Barium alloys, pyrophoric	4.2	UN1854	I	SPONTANEOUSLY COMBUSTIBLE.		None	181	None	Forbidden	Forbidden	D	
	Barium azide, *dry or wetted with less than 50 percent water, by mass*	1.1A	UN0224	II	EXPLOSIVE 1.1A, POISON.	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Barium azide, wetted *with not less than 50 percent water, by mass*	4.1	UN1571	I	FLAMMABLE SOLID, POISON.	A2	None	182	None	Forbidden	0.5 kg	D	28
	Barium bromate	5.1	UN2719	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium chlorate	5.1	UN1445	II	OXIDIZER, POISON	A9, N34, T8	None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium compounds, n.o.s.	6.1	UN1564	II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Barium cyanide	8.1	UN1565	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	28, 40
	Barium hypochlorite *with more than 22 percent available chlorine*	5.1	UN2741	II	OXIDIZER, POISON	A7, A9, N34	152	212	None	5 kg	25 kg	B	56, 58, 106
	Barium nitrate	5.1	UN1446	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	
	Barium oxide	6.1	UN1884	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Barium perchlorate	5.1	UN1447	II	OXIDIZER, POISON	T8	None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium permanganate	5.1	UN1448	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	D	56, 58, 89, 106, 107
	Barium peroxide	5.1	UN1449	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	13, 75, 106
	Barium selenate, *see* Selenates *or* Selenites												
	Barium selenite, *see* Selenates *or* Selenites												
D	Barium styphnate	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Batteries, containing sodium	4.3	UN3292	II	DANGEROUS WHEN WET.		189	189	189	Forbidden	No limit	A	
	Batteries, dry, containing potassium hydroxide solid, *electric, storage*	8	UN3028	III	CORROSIVE		None	213	None	25 kg gross	230 kg gross	A	
	Batteries, wet, filled with acid, *electric storage*	8	UN2794	III	CORROSIVE		159	159	None	25 kg gross	No limit	A	
	Batteries, wet, filled with alkali, *electric storage*	8	UN2795	III	CORROSIVE		159	159	None	25 kg gross	No limit	A	
	Batteries, wet, non-spillable, *electric storage*	8	UN2800	III	CORROSIVE		159	159	None	No Limit	No Limit	A	
	Battery, dry, not subject to the requirements of this subchapter												
	Battery fluid, alkali	8	UN2797	II	CORROSIVE	B2, N6, T8	154	202	242	1 L	30 L	A	
	Battery lithium type, see Lithium batteries *etc.*												
	Battery-powered vehicle *or* Battery-powered equipment *wet battery*	9	UN3171		CLASS 9		220	220	None	No limit	No limit	A	
	Battery, wet, filled with acid or alkali with automobile (or named self-propelled vehicle or mechanical equipment containing internal combustion engine) see Vehicles, self-propelled *etc.*												
	Battery, wet, with wheelchair, see Wheelchair, electric												
	Benzaldehyde	9	UN1990	III	CLASS 9		155	203	241	100 L	220 L	A	
	Benzene	3	UN1114	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Benzene diazonium chloride (dry)	Forbidden											
	Benzene diazonium nitrate (dry)	Forbidden											
	Benzene phosphorus dichloride, see Phenyl phosphorus dichloride												
	Benzene phosphorus thiodichloride, see Phenyl phosphorus thiodichloride												
	Benzene sulfonyl chloride	8	UN2225	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	40
	Benzene triozonide	Forbidden											
	Benzenethiol, see Phenyl mercaptan												
	Benzidine	6.1	UN1885	II	POISON		None	212	242	25 kg	100 kg	A	
	Benzoic derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2770	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Benzoic derivative pesticides, liquid, toxic	6.1	UN3004	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Benzoic derivative pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3003	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40

			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40	
Benzoic derivative pesticides, solid toxic	6.1	UN2769	I	POISON		None	211	242	5 kg	50 kg	A	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Benzol, see Benzene													
Benzonitrile	6.1	UN2224	II	POISON	T14	None	202	243	5 L	60 L	A	26, 40	
Benzoquinone	6.1	UN2587	II	POISON		None	212	242	25 kg	100 kg	A		
Benzotrichloride	8	UN2226	II	CORROSIVE	B2, T15	154	202	242	1 L	30 L	A	40	
Benzotrifluoride	3	UN2338	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	40	
Benzoxidiazoles (dry)	Forbidden												
Benzoyl azide	Forbidden												
Benzoyl chloride	8	UN1736	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	40	
Benzyl bromide	6.1	UN1737	II	POISON, CORROSIVE	A3, A7, N33, N34, T12, T26.	None	202	243	1 L	30 L	D	13, 40	
Benzyl chloride	6.1	UN1738	II	POISON, CORROSIVE	A3, A7, B41, B70, N33, N43, T12, T26.	None	202	243	1 L	30 L	D	13, 40	
Benzyl chloride *unstabilized*	6.1	UN1738	II	POISON, CORROSIVE	A3, A7, B8, B11, N33, N34, N43, T12, T26.	None	202	243	1 L	30 L	D	13, 40	
Benzyl chloroformate	8	UN1739	I	CORROSIVE	A3, A6, B4, N41, T18, T26.	None	201	243	Forbidden	2.5 L	D	40	
Benzyl iodide	6.1	UN2653	II	POISON	T8	None	202	243	5 L	60 L	B	12, 40	
Benzyldimethylamine	8	UN2619	II	CORROSIVE, FLAMMABLE LIQUID.	B2, T1	154	202	243	1 L	30 L	A	40, 48	
Benzylidene chloride	6.1	UN1886	II	POISON	T8	None	202	243	5 L	60 L	D	40	
Beryllium compounds, n.o.s.	6.1	UN1566	II	POISON		None	212	242	25 kg	100 kg	A		
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Beryllium nitrate	5.1	UN2464	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A		
Beryllium, powder	6.1	UN1567	II	POISON, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	A		
Biphenyl triozonide	Forbidden												
Bipyridilium pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2782	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E		
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40	
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40	
Bipyridilium pesticides, liquid, toxic	6.1	UN3016	I	POISON	T42	None	201	243	1 L	30 L	B	40	
			II	POISON	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40	
Bipyridilium pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3015	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	21, 40	
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	21, 40	
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	21, 40	
Bipyridilium pesticides, solid, toxic	6.1	UN2781	I	POISON		None	211	242	5 kg	50 kg	A	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Bis (Aminopropyl) piperazine, see Corrosive liquid, n.o.s.													
Bisulfate, aqueous solution	8	UN2837	II	CORROSIVE	A7, B2, N34, T8, T26.	154	202	242	1 L	30 L	A		
			III	CORROSIVE	A7, N34, T7, T26	154	203	241	5 L	60 L	A		
Bisulfites, aqueous solutions, n.o.s.	8	UN2693	III	CORROSIVE	T8	154	203	241	1 L	30 L	A	26, 40	
Black powder, compressed *or* Gunpowder, compressed *or* Black powder, in pellets *or* Gunpowder, in pellets	1.1D	UN0028	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Black powder *or* Gunpowder, *granular or as a meal*	1.1D	UN0027	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	10E, 26E	
Blasting agent, n.o.s., see Explosives, blasting *etc.*													
Blasting cap assemblies, see Detonator assemblies, non-electric, *for blasting*													
Blasting caps, electric, see Detonators, electric *for blasting*													
Blasting caps, non-electric, see Detonators, non-electric, *for blasting*													

§172 101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	(8) Packaging authorizations (§173.***) Non-bulk packaging	(8) Packaging authorizations (§173.***) Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	(10) Vessel stowage requirements Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Bleaching powder, see Calcium hypochlorite mixtures, *etc.*												
I	Blue asbestos *(Crocidolite) or* Brown asbestos *(amosite, mysorite)*	9	UN2212	II	CLASS 9		155	216	240	Forbidden	Forbidden	A	34, 40
	Bombs, photo-flash	1.1F	UN0037	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Bombs, photo-flash	1.1D	UN0038	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.2G	UN0039	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.3G	UN0299	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Bombs, smoke, non-explosive, *with corrosive liquid, without initiating device*	8	UN2028	II	CORROSIVE		None	160	None	Forbidden	50 kg	E	40
	Bombs, *with bursting charge*	1.1F	UN0033	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Bombs, *with bursting charge*	1.1D	UN0034	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, *with bursting charge*	1.2D	UN0035	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, *with bursting charge*	1.2F	UN0291	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Bombs, *with bursting charge*	1.1J	UN0399	II	EXPLOSIVE 1.1J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Bombs with flammable liquid, *with bursting charge*	1.2J	UN0400	II	EXPLOSIVE 1.2J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
D	Boosters with detonator	1.4B	NA0350	II	EXPLOSIVE 1.4B	115	None	62	None	Forbidden	75 kg	A	24E
	Boosters with detonator	1.1B	UN0225	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Boosters with detonator	1.2B	UN0268	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	E	1E, 7E
	Boosters, *without detonator*	1.1D	UN0042	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Boosters, *without detonator*	1.2D	UN0283	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Borate and chlorate mixtures, see Chlorate and borate mixtures												
	Borneol	4.1	UN1312	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
+	Boron tribromide	8	UN2692	I	CORROSIVE, POISON	2, A3, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	C	12
	Boron trichloride	2.3	UN1741		POISON GAS, CORROSIVE.	3, 25, B9, B14	None	304	314	Forbidden	Forbidden	D	25, 40
	Boron trifluoride	2.3	UN1008		POISON GAS	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
	Boron trifluoride acetic acid complex	8	UN1742	II	CORROSIVE	B2, B6, T9, T27	154	202	242	1 L	30 L	A	
	Boron trifluoride diethyl etherate	8	UN2604	I	CORROSIVE, FLAMMABLE LIQUID.	A19, T8, T28	None	201	243	0.5 L	2.5 L	D	40
	Boron trifluoride dihydrate	8	UN2851	II	CORROSIVE	T9, T27	154	212	240	15 kg	50 kg	B	12, 40,
	Boron trifluoride dimethyl etherate	4.3	UN2965	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A19, T12, T26	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
	Boron trifluoride propionic acid complex	8	UN1743	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	A	
	Box toe gum, see Nitrocellulose *etc.*												
	Bromates, inorganic, aqueous solution, n.o.s.	5.1	UN3213	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	56, 58, 106
	Bromates, inorganic, n.o.s.	5.1	UN1450	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Bromine azide	Forbidden											
+	Bromine *or* Bromine solutions	8	UN1744	I	CORROSIVE, POISON	1, A3, A6, B9, B12, B64, B85, N34, N43, T18, T41.	None	226	249	Forbidden	2.5 L	D	12, 40, 66, 74, 89, 90
	Bromine chloride	2.3	UN2901		POISON GAS, CORROSIVE, OXIDIZER.	2, B9, B12, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
+	Bromine pentafluoride	5.1	UN1745	I	OXIDIZER, POISON, CORROSIVE.	1, B9, B14, B30, B72, T38, T43, T44.	None	228	244	Forbidden	Forbidden	D	25, 40, 66, 90
+	Bromine trifluoride	5.1	UN1746	I	OXIDIZER, POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	228	244	Forbidden	Forbidden	D	25, 40, 66, 90
	4-Bromo-1,2-dinitrobenzene	Forbidden											
	4-Bromo-1,2-dinitrobenzene (unstable at 59 degrees C.)	Forbidden											
	1-Bromo-3-methylbutane	3	UN2341	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	1-Bromo-3-nitrobenzene (unstable at 56 degrees C)	Forbidden											
	2-Bromo-2-nitropropane-1,3-diol	6.1	UN3241	III	KEEP AWAY FROM FOOD.	46	153	213	240	50 kg	50 kg	C	12, 25, 40
	Bromoacetic acid, *solid*	8	UN1938	II	CORROSIVE	A7, N34, T9	154	212	240	15 kg	50 kg	A	
	Bromoacetic acid, *solution*	8	UN1933	II	CORROSIVE	B2, T9	154	202	242	1 L	30 L	A	40

+	Bromoacetone	6.1	UN1569	II	POISON	2	None	193	245	Forbidden	Forbidden	D	40		
	Bromoacetyl bromide	8	UN2513	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	40		
	Bromobenzene	3	UN2514	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Bromobenzyl cyanides, *liquid*	6.1	UN1694	I	POISON	T18	None	201	243	Forbidden	30 L	D	12, 40		
	Bromobenzyl cyanides, *solid*	6.1	UN1694	I	POISON	T18	None	211	242	Forbidden	50 kg	D	12, 40		
	2-Bromobutane	3	UN2339	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	40		
	Bromochloromethane	6.1	UN1887	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A			
	2-Bromoethyl ethyl ether	3	UN2340	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40		
	Bromoform	6.1	UN2515	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	12, 40		
	Bromomethylpropanes	3	UN2342	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B			
	2-Bromopentane	3	UN2343	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
	2-Bromopropane	3	UN2344	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40		
	3-Bromopropyne	3	UN2345	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	D	40		
	Bromosilane	Forbidden													
	Bromotoluene-alpha, see Benzyl bromide														
	Bromotrifluoroethylene	2.1	UN2419		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40		
	Bromotrifluoromethane, *R13B1*	2.2	UN1009		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A			
	Brucine	6.1	UN1570	I	POISON		None	211	242	5 kg	50 kg	A			
	Bursters, *explosive*	1.1D	UN0043	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B			
	Butadienes, inhibited	2.1	UN1010		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40		
	Butane *or* Butane mixtures *see also* Petroleum gases, liquefied	2.1	UN1011		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40		
	Butane, butane mixtures and mixtures having similar properties in cartridges each not exceeding 500 grams, see Receptacles, *etc.*														
	Butanedione	3	UN2346	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
	1,2,4-Butanetriol trinitrate	Forbidden													
	Butanols	3	UN1120	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
		3	UN1120	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	tert-Butoxycarbonyl azide	Forbidden													
	Butoxyl	3	UN2708	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Butyl acetates	3	UN1123	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
		3	UN1123	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Butyl acid phosphate	8	UN1718	III	CORROSIVE	T7	154	203	241	5 L	60 L	A			
	Butyl alcohols, see Butanols														
	Butyl benzenes	3	UN2709	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	n-Butyl bromide	3	UN1126	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	40		
	n-Butyl chloride, see Chlorobutanes														
D	sec-Butyl chloroformate	6.1	NA2742	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100		
	n-Butyl chloroformate	6.1	UN2743	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 21, 25, 40, 100		
	Butyl ethers, see Dibutyl ethers														
	Butyl ethyl ether, see Ethyl butyl ether														
	n-Butyl formate	3	UN1128	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
	tert-Butyl hydroperoxide, with more than 90 percent with water	Forbidden													
	tert-Butyl hypochlorite	4.2	UN3255	I	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	211	243	Forbidden	Forbidden	D			
	N-n-Butyl imidazole	6.1	UN2690	II	POISON	T8	None	202	243	5 L	60 L	A			
	Tert-Butyl isocyanate	6.1	UN2484	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40		
	n-Butyl isocyanate	6.1	UN2485	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, B77, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40		
	Butyl mercaptans	3	UN2347	II	FLAMMABLE LIQUID	A3, T8	150	202	242	5 L	60 L	D	26, 95		
	n-Butyl methacrylate	3	UN2227	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Butyl methyl ether	3	UN2350	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B			
	Butyl nitrites	3	UN2351	I	FLAMMABLE LIQUID	T8	150	201	243	1 L	30 L	E	40		
				II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40		
				III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	40		
	tert-Butyl peroxyacetate, with more than 76 percent in solution	Forbidden													
	n-Butyl peroxydicarbonate, with more than 52 percent in solution	Forbidden													
	tert-Butyl peroxyisobutyrate, with more than 77 percent in solution	Forbidden													
	Butyl phosphoric acid, see Butyl acid phosphate														
	5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene	4.1	UN2956	III	FLAMMABLE SOLID		None	214	None	Forbidden	Forbidden	D	12		
	Butyl vinyl ether, inhibited	3	UN2352	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40		
	Butyraldehyde	3	UN2348	III	FLAMMABLE LIQUID	B1, T8, T31	150	203	242	60 L	220 L	A			

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	n-Butylamine	3	UN1125	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	242	1 L	5 L	B	40
	N-Butylaniline	6.1	UN2738	II	POISON	T8	None	202	243	5 L	60 L	A	
	tert-Butylcyclohexylchloroformete	8.1	UN2747	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	12, 13, 25
	Butylene *see also* Petroleum gases, liquefied	2.1	UN1012		FLAMMABLE GAS	19	None	304	314, 315	Forbidden	150 kg	E	40
	1,2-Butylene oxide, stabilized	3	UN3022	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	49
	Butylpropionate	3	UN1914	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Butyltoluenes	6.1	UN2667	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Butyltrichlorosilane	8	UN1747	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B2, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	1,4-Butynediol	6.1	UN2716	III	KEEP AWAY FROM FOOD.	A1	None	213	240	100 kg	200 kg	A	81, 70
	Butyraldehyde	3	UN1129	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Butyraldoxime	3	UN2840	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Butyric acid	8	UN2820	III	CORROSIVE	T1	154	203	241	5 L	60 L	A	12
	Butyric anhydride	8	UN2739	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Butyronitrile	3	UN2411	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	E	40
	Butyryl chloride	3	UN2353	II	FLAMMABLE LIQUID, CORROSIVE.	T9, T28	None	202	243	1 L	5 L	C	40
	Cacodylic acid	6.1	UN1572	II	POISON		None	212	242	25 kg	100 kg	E	26
	Cadmium compounds	6.1	UN2570	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Caesium hydroxide	8	UN2682	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Caesium hydroxide solution	8	UN2681	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Calcium	4.3	UN1401	II	DANGEROUS WHEN WET.		None	212	241	15 kg	50 kg	E	
	Calcium arsenate	6.1	UN1573	II	POISON		None	212	242	25 kg	100 kg	A	
	Calcium arsenate and calcium arsenite, mixtures, solid	6.1	UN1574	II	POISON		None	212	242	25 kg	100 kg	A	
D	Calcium arsenite, solid	6.1	NA1574	II	POISON		None	212	242	25 kg	100 kg	A	
	Calcium bisulfite solution, see Bisulfites, inorganic, aqueous solutions, n.o.s.												
	Calcium carbide	4.3	UN1402	I	DANGEROUS WHEN WET.	A1, A8, B55, N34	None	211	242	Forbidden	15 kg	B	
				II	DANGEROUS WHEN WET.	A1, A8, B55, N34	None	212	241	15 kg	50 kg	B	
	Calcium chlorate	5.1	UN1452	II	OXIDIZER	N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium chlorate aqueous solution	5.1	UN2429	II	OXIDIZER	A2, N41, T8	152	202	242	1 L	5 L	B	56, 58, 106
	Calcium chlorite	5.1	UN1453	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium cyanamide *with more than 0.1 percent of calcium carbide*	4.3	UN1403	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	
	Calcium cyanide	6.1	UN1575	I	POISON	N79, N80	None	211	242	5 kg	50 kg	A	26, 40
	Calcium dithionite *or* Calcium hydrosulfite	4.2	UN1923	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20	None	212	241	15 kg	50 kg	E	13
	Calcium hydride	4.3	UN1404	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Calcium hydrosulfite, *see* Calcium dithionite												
	Calcium hypochlorite, dry *or* Calcium hypochlorite mixtures dry *with more than 39 percent available chlorine (8.8 percent available oxygen)*	5.1	UN1748	II	OXIDIZER	A7, A9, N34	152	212	None	5 kg	25 kg	D	48, 56, 58, 69, 106, 118
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water*	5.1	UN2880	II	OXIDIZER		152	212	240	5 kg	25 kg	A	50, 56, 58, 69, 106
	Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine*	5.1	UN2208	III	OXIDIZER	A1, A29, N34	152	213	240	25 kg	100 kg	A	56, 58, 69, 106

	Calcium manganese silicon		4.3	UN2844	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A		85, 103
	Calcium nitrate		5.1	UN1454	III	OXIDIZER	34	152	213	240	25 kg	100 kg	A		
A	Calcium oxide		8	UN1910	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Calcium perchlorate		5.1	UN1455	II	OXIDIZER		152	212	242	5 kg	25 kg	A		56, 58, 106
	Calcium permanganate		5.1	UN1456	II	OXIDIZER		152	212	242	5 kg	25 kg	D		56, 58, 69, 106, 107
	Calcium peroxide		5.1	UN1457	II	OXIDIZER		152	212	242	6 kg	25 kg	A		13, 76, 106
	Calcium phosphide		4.3	UN1360	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E		40, 85
	Calcium, pyrophoric *or* Calcium alloys, pyrophoric		4.2	UN1855	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	None	Forbidden	Forbidden	D		
	Calcium resinate		4.1	UN1313	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A		
	Calcium resinate, fused		4.1	UN1314	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A		
	Calcium selenate, *see* Selenates *or* Selenites														
	Calcium silicide		4.3	UN1405	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	B		85, 103
					III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	B		85, 103
	Camphor oil		3	UN1130	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Camphor, *synthetic*		4.1	UN2717	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A		
	Cannon primers, see Primers, tubular														
	Caproic acid		8	UN2829	III	CORROSIVE	T1	154	203	241	5 L	60 L	A		
	Caps, blasting, see Detonators, *etc.*														
	Carbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*		3	UN2758	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40	
					II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40	
					III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40	
	Carbamate pesticides, liquid, toxic		6.1	UN2992	I	POISON	T42	None	201	243	1 L	30 L	B	40	
					II	POISON	T14	None	202	243	5 L	60 L	B	40	
					III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40	
	Carbamate pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C*		6.1	UN2991	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40	
					II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
					III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40	
	Carbamate pesticides, solid, toxic		6.1	UN2757	I	POISON		None	211	242	5 kg	50 kg	A	40	
					II	POISON		None	212	242	25 kg	100 kg	A	40	
					III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
	Carbolic acid, see Phenol, solid *or* Phenol, molten														
	Carbolic acid solutions, see Phenol solutions														
I	Carbon, activated		4.2	UN1362	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	0.5 kg	0.5 kg	A		12
I	Carbon, *animal or vegetable origin*		4.2	UN1361	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	242	Forbidden	Forbidden	A		12
					III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A		12
	Carbon bisulfide, see Carbon disulfide														
	Carbon dioxide		2.2	UN1013		NONFLAMMABLE GAS		306	302, 304	302, 314, 315	75 kg	150 kg	A		
	Carbon dioxide and nitrous oxide mixtures		2.2	UN1015		NONFLAMMABLE GAS		306	None	314, 315	75 kg	150 kg	A		
	Carbon dioxide and oxygen mixtures		2.2	UN1014		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
	Carbon dioxide, refrigerated liquid		2.2	UN2187		NONFLAMMABLE GAS	B43	306	304	314, 315	50 kg	500 kg	B		
AW	Carbon dioxide, solid *or* Dry ice		9	UN1845	III	None	B12	217	217	240	200 kg	200 kg	C	40	
	Carbon disulfide		3	UN1131	I	FLAMMABLE LIQUID, POISON.	B16, T18, T26, T28	None	201	243	Forbidden	Forbidden	D		18, 40, 115
	Carbon monoxide		2.3	UN1016		POISON GAS, FLAMMABLE GAS.	4	None	302	314, 315	Forbidden	25 kg	D	40	
	Carbon monoxide and hydrogen mixture		2.3	UN2600		POISON GAS, FLAMMABLE GAS.	6	None	302	302	Forbidden	Forbidden	D	40	
D	Carbon monoxide, refrigerated liquid *(cryogenic liquid)*		2.3	NA9202		POISON GAS, FLAMMABLE GAS.	4	None	316	318	Forbidden	Forbidden	D		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Carbon tetrabromide	6.1	UN2516	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	25
	Carbon tetrachloride	6.1	UN1846	II	POISON	N36, T8	None	202	243	5 L	60 L	A	40
	Carbonyl chloride, see Phosgene												
	Carbonyl fluoride	2.3	UN2417		POISON GAS, CORROSIVE.	2	None	302	None	Forbidden	Forbidden	D	40
	Carbonyl sulfide	2.3	UN2204		POISON GAS, FLAMMABLE GAS.	3, 25, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Cartridge cases, empty primed, see Cases, cartridge, empty, with primer												
	Cartridges, actuating, for aircraft ejector seat catapult, fire extinguisher, canopy removal or apparatus, see Cartridges, power device												
	Cartridges, explosive, see Charges, demolition												
	Cartridges, flash	1.1G	UN0049	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Cartridges, flash	1.3G	UN0050	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Cartridges for weapons, blank	1.1C	UN0326	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank	1.2C	UN0413	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank	1.4S	UN0014	II	None	112	None	62	None	25 kg	100 kg	A	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank	1.3C	UN0327	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank	1.4C	UN0338	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cartridges for weapons, inert projectile	1.2C	UN0328	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms	1.4S	UN0012	II	None	112	None	62	None	25 kg	100 kg	A	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms	1.4C	UN0339	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	B	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms	1.3C	UN0417	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, *with bursting charge*	1.1F	UN0005	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.1E	UN0006	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, *with bursting charge*	1.2F	UN0007	II	EXPLOSIVE 1.2F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.2E	UN0321	II	EXPLOSIVE 1.2E		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, *with bursting charge*	1.4F	UN0348	II	EXPLOSIVE 1.4F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.4E	UN0412	II	EXPLOSIVE 1.4E		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, oil well	1.3C	UN0277	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges, oil well	1.4C	UN0278	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, power device	1.3C	UN0275	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	75 kg	B	
	Cartridges, power device	1.4C	UN0276	II	EXPLOSIVE 1.4C	110	None	62	None	Forbidden	75 kg	A	24E
	Cartridges, power device	1.4S	UN0323	II	EXPLOSIVE 1.4S	110, 112	None	62	None	25 kg	100 kg	A	
	Cartridges, power device	1.2C	UN0381	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges, safety, blank, *see* Cartridges for weapons, blank *(UN 0014)*												
	Cartridges, safety, *see* Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323)*												
	Cartridges, signal	1.3G	UN0054	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Cartridges, signal	1.4G	UN0312	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, signal	1.4S	UN0405	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
D	Cartridges, small arms	ORM-D			None	112	230	None	None	30 kg gross	30 kg gross	A	
	Cartridges, sporting, see Cartridges for weapons, *other than blank*												
	Cartridges, starter, jet engine, see Cartridges, power device												
I	Cases, cartridge, empty with primer	1.4S	UN0055	II	EXPLOSIVE 1.4S	50	None	62	None	25 kg	100 kg	A	
I	Cases, cartridges, empty with primer	1.4C	UN0379	II	EXPLOSIVE 1.4C	50	None	62	None	Forbidden	75 kg	A	24E
	Cases, combustible, empty, without primer	1.4C	UN0446	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cases, combustible, empty, without primer	1.3C	UN0447	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Casinghead gasoline see Natural gasoline												
AW	Castor beans *or* Castor meal *or* Castor pomace *or* Castor flake	9	UN2969	II	None		155	204	240	No limit	No limit	E	34, 40
	Caustic alkali liquids, n.o.s.	8	UN1719	II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Caustic potash, see Potassium hydroxide *etc.*												
	Caustic soda, (etc.) see Sodium hydroxide *etc.*												
	Cells, containing sodium	4.3	UN3292	II	DANGEROUS WHEN WET.		189	189	189	25 kg	No limit	A	
	Celluloid, *in block, rods, rolls, sheets, tubes, etc., except scrap*	4.1	UN2000	III	FLAMMABLE SOLID		None	213	240	25 kg	100 kg	A	
	Celluloid, scrap	4.2	UN2002	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	D	
	Cement, see Adhesives *containing flammable liquid*												
	Cerium, *slabs, ingots, or rods*	4.1	UN1333	II	FLAMMABLE SOLID	N34	None	212	240	15 kg	50 kg	A	74, 91
	Cerium, *turnings or gritty powder*	4.3	UN3078	II	DANGEROUS WHEN WET.	A1	None	212	242	15 kg	50 kg	E	

	Cesium *or* Caesium		4.3	UN1407	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D	
	Cesium *nitrate or* Caesium *nitrate*		5.1	UN1451	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
D	Charcoal *briquettes, shell, screenings, wood, etc.*		4.2	NA1361	III	SPONTANEOUSLY COMBUSTIBLE.		151	213	240	25 kg	100 kg	A	12
	Charges, bursting, plastics bonded		1.1D	UN0457	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Charges, bursting, plastics bonded		1.2D	UN0458	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Charges, bursting, plastics bonded		1.4D	UN0459	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Charges, bursting, plastics bonded		1.4S	UN0460	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Charges, bursting, plastics bonded		1.1D	UN0048	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Charges, demolition		1.1D	UN0056	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Charges, depth													
	Charges, expelling, explosive, for fire extinguishers, see Cartridges, power device													
	Charges, explosive, commercial *without detonator*		1.1D	UN0442	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Charges, explosive, commercial *without detonator*		1.2D	UN0443	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Charges, explosive, commercial *without detonator*		1.4D	UN0444	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Charges, explosive, commercial *without detonator*		1.4S	UN0445	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Charges, propelling		1.1C	UN0271	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	
	Charges, propelling		1.3C	UN0272	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Charges, propelling		1.2C	UN0415	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	75 kg	A	1E, 5E
	Charges, propelling		1.4C	UN0491		EXPLOSIVE 1.4C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, propelling, for cannon		1.3C	UN0242	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, propelling, for cannon		1.1C	UN0279	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, propelling, for cannon		1.2C	UN0414	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Charges, shaped, commercial, *without detonator*		1.1D	UN0059	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Charges, shaped, commercial *without detonator*		1.2D	UN0439	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Charges, shaped, commercial *without detonator*		1.4D	UN0440	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Charges, shaped, commercial *without detonator*		1.4S	UN0441	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Charges, shaped, flexible, linear		1.4D	UN0237	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Charges, shaped, flexible, linear		1.1D	UN0288	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B	
	Charges, supplementary explosive		1.1D	UN0060	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
D	Chemical kit		8	NA1760	II	CORROSIVE		154	161	None	1 L	30 L	B	40
	Chemical kits *(must be classified and labelled according to the hazard class of the constituent(s) and must meet the requirements of special provision 15 in 172.102(c)(1))*													
	Chloral, anhydrous, inhibited		6.1	UN2075	II	POISON	T14	None	202	243	5 L	60 L	D	40
	Chlorate end borate mixtures		5.1	UN1458	II	OXIDIZER	A9, N34	152	212	240	5 kg	25 kg	A	56, 58, 106
					III	OXIDIZER	A9, N34	152	213	240	25 kg	100 kg	A	56, 58, 106
	Chlorate and magnesium chloride mixtures		5.1	UN1459	II	OXIDIZER	A9, N34, T8	152	212	240	5 kg	25 kg	A	56, 58, 106
					III	OXIDIZER	A9, N34, T8	152	213	240	25 kg	100 kg	A	56, 58, 106
	Chlorate of potash, see Potassium chlorate													
	Chlorate of soda, see Sodium chlorate													
	Chlorates, inorganic, aqueous solution, n.o.s.		5.1	UN3210	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	56, 58, 106
	Chlorates, inorganic, n.o.s.		5.1	UN1461	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Chloric acid aqueous solution, *with not more than 10 percent chloric acid*		5.1	UN2626	II	OXIDIZER	T25	None	229	None	Forbidden	Forbidden	D	56, 58, 106
	Chloride of phosphorus, see Phosphorus trichloride													
	Chloride of sulfur, see Sulfur chloride													
	Chlorinated lime, see Calcium hypochlorite mixtures, *etc.*													
	Chlorine		2.3	UN1017		POISON GAS, CORROSIVE, OXIDIZER.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 51, 55, 62, 68, 89, 90
	Chlorine azide		Forbidden											
D	Chlorine dioxide, hydrate, frozen		5.1	NA9191	II	OXIDIZER, POISON		None	229	None	Forbidden	Forbidden	E	
	Chlorine dioxide (not hydrate)		Forbidden											
	Chlorine pentafluoride		2.3	UN2548		POISON GAS, OXIDIZER, CORROSIVE.	1, B7, B9, B14	None	304	314	Forbidden	Forbidden	D	40, 89, 90
	Chlorine trifluoride		2.3	UN1749		POISON GAS, OXIDIZER, CORROSIVE.	2, 25, B7, B9, B14	None	304	314	Forbidden	Forbidden	D	40, 89, 90
	Chlorite solution *with more than 5 percent but less than 16 percent available chlorine*		8	UN1908	III	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	203	241	5 L	60 L	B	26
	Chlorite solution *with not less than 16 percent available chlorine*		8	UN1908	II	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	B	26
	Chlorites, inorganic, n.o.s.		5.1	UN1462	II	OXIDIZER	A7, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	1-Chloro-3-bromopropane		6.1	UN2688	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	1-Chloro-1,1-difluoroethane, see Chlorodifluoroethanes													
	1-Chloro-1,1-difluoroethanes, *R142b*		2.1	UN2517		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	3-Chloro-4-methylphenylisocyanate		6.1	UN2236	II	POISON		None	202	243	5 L	60 L	B	40
	1-Chloro-1,2,2,2,-tetrafluoroethane, *R124*		2.2	UN1021		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	4-Chloro-o-toluidine hydrochloride		6.1	UN1579	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	1-Chloro-2,2,2-trifluoroethane, *R133a*		2.2	UN1983		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Chloroacetic acid, molten	6.1	UN3250	II	POISON, CORROSIVE ..	T9	None	202	243	Forbidden ...	Forbidden ...	C	40
	Chloroacetic acid, solid	6.1	UN1751	II	POISON, CORROSIVE ..	A3, A7, N34	None	212	242	15 kg	50 kg	A	40
	Chloroacetic acid, solution	6.1	UN1750	II	POISON, CORROSIVE ..	A7, N34, T8, T27	None	202	243	1 L	30 L	C	40
+	Chloroacetone, stabilized	6.1	UN1695	II	POISON	2, B9, B14, B32, B74, N12, N32, N34, T38, T43, T45.	None	227	244	Forbidden ...	Forbidden ...	D	40
	Chloroacetone (unstabilized)	Forbidden											
+	Chloroacetonitrile	6.1	UN2668	II	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden ...	60 L	A	12, 26, 40
	Chloroacetophenone *(CN), liquid*	6.1	UN1697	II	POISON	A3, N12, N32, N33.	None	202	243	Forbidden ...	60 L	D	12, 40
	Chloroacetophenone *(CN), solid*	6.1	UN1697	II	POISON	A3, N12, N32, N33, N34.	None	212	None	Forbidden ...	100 kg	D	12, 40
	Chloroacetyl chloride	6.1	UN1752	I	POISON, CORROSIVE ..	2, A3, A6, A7, B3, B8, B9, B14, B32, B74, B77, N34, N43, T38, T43, T45.	None	227	244	Forbidden ...	Forbidden ...	D	40
	Chloroanilines, liquid	6.1	UN2019	II	POISON	T14	None	202	243	5 L	60 L	A	
	Chloroanilines, solid	6.1	UN2018	II	POISON	T14, T38	None	212	242	25 kg	100 kg	A	
	Chloroanisidines	6.1	UN2233	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Chlorobenzene	3	UN1134	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Chlorobenzol, see Chlorobenzene												
	Chlorobenzotrifluorides	3	UN2234	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
	Chlorobenzylchlorides	6.1	UN2235	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	
	Chlorobutanes	3	UN1127	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Chlorocresols, *liquid*	6.1	UN2669	II	POISON	T8	None	202	243	5 L	60 L	A	12
	Chlorocresols, *solid*	6.1	UN2669	II	POISON		None	212	242	25 kg	100 kg	A	12
	Chlorodifluorobromomethane, *R12B1*	2.2	UN1974		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Chlorodifluoromethane and chloropentafluoroethane mixture *with fixed boiling point with approximately 49 percent chlorodifluoromethane, R502*	2.2	UN1973		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Chlorodifluoromethane, *R22*	2.2	UN1018		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Chlorodinitrobenzenes	6.1	UN1577	II	POISON	T14	None	212	242	25 kg	100 kg	A	91
	2-Chloroethanal	6.1	UN2232	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden ...	Forbidden ...	D	40
	Chloroform	6.1	UN1888	III	KEEP AWAY FROM FOOD.	N36, T14	153	203	241	5 L	60 L	A	40
	Chloroformates, toxic, corrosive, flammable, n.o.s.	6.1	UN2742	II	POISON, CORROSIVE, FLAMMABLE LIQUID.	5	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
	Chloroformates, toxic, corrosive, n.o.s.	6.1	UN3277	II	POISON, CORROSIVE ..	T12, T26	None	202	243	1 L	30 L	A	12, 13, 25, 40
	Chloromethyl ethyl ether	3	UN2354	II	FLAMMABLE LIQUID. POISON.	T8	None	202	243	1 L	60 L	E	40
	Chloromethylchloroformate	6.1	UN2745	II	POISON, CORROSIVE ..	T18	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
	Chloronitroanilines	6.1	UN2237	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
•	Chloronitrobenzene, *ortho, liquid*	6.1	UN1578	II	POISON	T14	None	202	243	5 L	60 L	A	
•	Chloronitrobenzenes *meta or para, solid*	6.1	UN1578	II	POISON	T14	None	212	242	25 kg	100 kg	A	
	Chloronitrotoluenes *liquid*	6.1	UN2433	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	
	Chloronitrotoluenes, *solid*	6.1	UN2433	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Chloropentafluoroethane, *R115*	2.2	UN1020		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	

	Chlorophenolates, liquid *or* Phenolates, liquid	8	UN2904	III	CORROSIVE		154	203	241	5 L	60 L	A		
	Chlorophenolates, solid *or* Phenolates, solid	8	UN2905	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Chlorophenols, liquid	6.1	UN2021	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	Chlorophenols, solid	6.1	UN2020	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A		
	Chlorophenyltrichlorosilane	8	UN1753	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40	
◆	Chloropicrin	6.1	UN1580	I	POISON	2, B7, B9, B14, B32, B46, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40	
	Chloropicrin and methyl bromide mixtures	2.3	UN1581		POISON GAS	2, B9, B14	None	193	314, 315	Forbidden	Forbidden	D	25, 40	
	Chloropicrin and methyl chloride mixtures	2.3	UN1582		POISON GAS	2	None	193	245	Forbidden	Forbidden	D	25, 40	
	Chloropicrin mixture, flammable (pressure not exceeding 14.7 psia at 115 degrees F flash point below 100 degrees F) see Poisonous liquids, flammable, n.o.s.													
	Chloropicrin mixtures, n.o.s.	6.1	UN1583	I	POISON	5	None	201	243	Forbidden	Forbidden	C	40	
				II	POISON		None	202	243	Forbidden	Forbidden	C	40	
				III	KEEP AWAY FROM FOOD.		153	203	241	Forbidden	Forbidden	C	40	
D	Chloropivaloyl chloride	6.1	NA9263	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40	
	Chloroplatinic acid, solid	8	UN2507	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Chloroprene, inhibited	3	UN1991	I	FLAMMABLE LIQUID, POISON.	B57, T15	None	201	243	Forbidden	30 L	D	40	
	Chloroprene, uninhibited	Forbidden												
	2-Chloropropane	3	UN2356	I	FLAMMABLE LIQUID	N36, T14	150	201	243	1 L	30 L	E		
	3-Chloropropanol-1	6.1	UN2849	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A		
	2-Chloropropene	3	UN2456	I	FLAMMABLE LIQUID	A3, N36, T20	150	201	243	1 L	30 L	E		
	2-Chloropropionic acid	8	UN2511	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	8	
	2-Chloropyridine	6.1	UN2822	II	POISON	T14	None	202	243	5 L	60 L	A	40	
	Chlorosilanes, corrosive, flammable, n.o.s.	8	UN2986	II	CORROSIVE, FLAMMABLE LIQUID.		None	202	243	1 L	30 L	C	40	
	Chlorosilanes, corrosive, n.o.s.	8	UN2987	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	40	
	Chlorosilanes, flammable, corrosive, n.o.s.	3	UN2985	II	FLAMMABLE LIQUID, CORROSIVE.	T18, T26	None	201	243	1 L	5 L	B	40	
	Chlorosilanes, water-reactive, flammble, corrosive, n.o.s.	4.3	UN2988	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID, CORROSIVE.	A2	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100	
◆	Chlorosulfonic acid *(with or without sulfur trioxide)*	8	UN1754	I	CORROSIVE, POISON	2, A3, A6, A10, B9, B10, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	40	
	Chlorotoluenes	3	UN2238	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Chlorotoluidines *liquid*	6.1	UN2239	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	Chlorotoluidines *solid*	6.1	UN2239	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
	Chlorotrifluoromethane and trifluoromethane azeotropic mixture *with approximately 60 percent chlorotrifluoromethane, R503*	2.2	UN2599		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
	Chlorotrifluoromethane, *R13*	2.2	UN1022		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
D	Chromic acid, solid	5.1	NA1463	II	OXIDIZER, CORROSIVE		None	212	242	5 kg	25 kg	A		
	Chromic acid solution	8	UN1755	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	40	
				III	CORROSIVE	T8, T26	154	203	241	5 L	60 L	C	40	
	Chromic anhydride, see Chromium trioxide, anhydrous													
	Chromic fluoride, solid	8	UN1756	II	CORROSIVE		154	212	240	15 kg	50 kg	A	26	
	Chromic fluoride, solution	8	UN1757	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A		
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A		
	Chromium nitrate	5.1	UN2720	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A		
	Chromium oxychloride	8	UN1758	I	CORROSIVE	A3, A6, A7, B10, N34, T12, T26.	None	201	243	0.5 L	2.5 L	C	40, 66, 74, 89, 90	
	Chromium trioxide, anhydrous	5.1	UN1463	II	OXIDIZER, CORROSIVE		None	212	242	5 kg	25 kg	A		
	Chromosulfuric acid	8	UN2240	I	CORROSIVE	A3, A6, A7, B4, B6, N34, T12, T27.	None	201	243	0.5 L	2.5 L	B	40, 66, 74, 89, 90	
	Chromyl chloride, see Chromium oxychloride													
	Cigar and cigarette lighters, charged with fuel, see Lighters for cigars, cigarettes, *etc.*													
	Coal briquettes, hot	Forbidden												
	Coal gas	2.3	UN1023		POISON GAS, FLAMMABLE GAS.	3	None	302	314, 315	Forbidden	25 kg	D	40	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Coal tar distillates, flammable	3	UN1136	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Coal tar dye, corrosive, liquid, n.o.s., see Dyes, liquid *or* solid, n.o.s. *or* Dye intermediates, liquid *or* solid, n.o.s., *corrosive*												
	Coating solution	3	UN1139	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Cobalt naphthenates, powder	4.1	UN2001	III	FLAMMABLE SOLID	A19	151	213	240	25 kg	100 kg	A	
	Cobalt resinate, precipitated	4.1	UN1318	III	FLAMMABLE SOLID	A1, A19	151	213	240	25 kg	100 kg	A	
	Coke, hot	Forbidden											
	Collodion, see Nitrocellulose *etc.*												
D	Combustible liquid, n.o.s.	Combustible liquid	NA1993	III	None	T1	150	203	241	60 L	220 L	A	
	Components, explosive train, n.o.s.	1.2B	UN0382	II	EXPLOSIVE 1.2B	101	None	62	None	Forbidden	Forbidden	B	1E, 6E
	Components, explosive train, n.o.s.	1.4B	UN0383	II	EXPLOSIVE 1.4B	101	None	62	None	Forbidden	75 kg	A	24E
	Components, explosive train, n.o.s.	1.4S	UN0384	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	100 kg	A	
	Components, explosive train, n.o.s.	1.1B	UN0461	II	EXPLOSIVE 1.1B	101	None	62	None	Forbidden	Forbidden	B	1E, 6E
	Composition B, see Hexolite, *etc.*												
D	Compounds, cleaning liquid	8	NA1760	I	CORROSIVE	A7, B10, T42	None	201	243	0.5 L	2.5 L	B	40
				II	CORROSIVE	B2, N37, T14	154	202	242	1 L	30 L	B	40
				III	CORROSIVE	N37, T7	154	203	241	5 L	60 L	A	40
D	Compounds, cleaning liquid	3	NA1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A	
D	Compounds, tree killing, liquid *or* Compounds, weed killing, liquid	8	NA1760	I	CORROSIVE	A7, B10, T42	None	201	243	0.5 L	2.5 L	B	40
				II	CORROSIVE	B2, N37, T14	154	202	242	1 L	30 L	B	40
				III	CORROSIVE	N37, T7	154	203	241	5 L	60 L	A	40
D	Compounds, tree killing, liquid *or* Compounds, weed killing, liquid	3	NA1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A	
D	Compounds, tree killing, liquid *or* Compounds, weed killing, liquid	6.1	NA2810	I	POISON		153	201	243	1 L	30 L	B	40
				II	POISON		153	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD,		153	203	241	60 L	220 L	A	40
	Compressed gas, oxidizing, n.o.s.	2.2	UN3156		NONFLAMMABLE GAS, OXIDIZER.		306	302	314, 315	75 kg	150 kg	D	
	Compressed gases, flammable, n.o.s.	2.1	UN1954		FLAMMABLE GAS		306	302, 305	314, 315	Forbidden	150 kg	D	40
	Compressed gases, n.o.s.	2.2	UN1956		NONFLAMMABLE GAS		306, 307	302, 305	314, 315	75 kg	150 kg	A	
	Compressed gases, toxic, flammable, n.o.s. *Inhalation hazard Zone A*	2.3	UN1953		POISON GAS, FLAMMABLE GAS,	1	None	192	245	Forbidden	Forbidden	D	40, 95
	Compressed gases, toxic, flammable, n.o.s. *Inhalation hazard Zone B*	2.3	UN1953		POISON GAS, FLAMMABLE GAS,	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, flammable, n.o.s. *Inhalation Hazard Zone C*	2.3	UN1953		POISON GAS, FLAMMABLE GAS,	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, flammable, n.o.s. *Inhalation Hazard Zone D*	2.3	UN1953		POISON GAS, FLAMMABLE GAS,	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, n.o.s. *Inhalation Hazard Zone A*	2.3	UN1955		POISON GAS	1	None	192	245	Forbidden	Forbidden	D	40
	Compressed gases, toxic, n.o.s. *Inhalation Hazard Zone B*	2.3	UN1955		POISON GAS	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, *n.o.s, Inhalation Hazard Zone C*	2.3	UN1955		POISON GAS	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, *n.o.s, Inhalation Hazard Zone D*	2.3	UN1955		POISON GAS	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40
D	Consumer commodity	ORM-D			None		156, 306	156, 306	None	30 kg gross	30 kg gross	A	
	Contrivances, water-activated, *with burster, expelling charge or propelling charge*	1.2L	UN0248	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Contrivances, water-activated, *with burster, expelling charge or propelling charge*	1.3L	UN0249	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Copper acetoarsenite	6.1	UN1585	II	POISON		None	212	242	25 kg	100 kg	A	

Copper acetylide	Forbidden													
Copper amine azide	Forbidden													
Copper arsenite	6.1	UN1586	II	POISON		None	212	242	25 kg	100 kg	A			
Copper based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2778	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40		
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40		
			III	FLAMMABLE LIQUID. KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40		
Copper based pesticides, liquid, toxic	6.1	UN3010	I	POISON	T42	None	201	243	1 L	30 L	B	40		
			II	POISON	T14	None	202	243	5 L	60 L	B	40		
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40		
Copper based pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN3009	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40		
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40		
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40		
Copper based pesticides, solid, toxic	6.1	UN2775	I	POISON		None	211	242	5 kg	50 kg	A	40		
			II	POISON		None	212	242	25 kg	100 kg	A	40		
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40		
Copper chlorate	5.1	UN2721	II	OXIDIZER	A1	152	212	242	5 kg	25 kg	A	56, 58, 106		
Copper chloride	8	UN2802	III	CORROSIVE		154	213	240	25 kg	100 kg	A			
Copper cyanide	6.1	UN1587	II	POISON		None	204	242	25 kg	100 kg	A	26		
Copper selenate, *see* Selenates *or* Selenites														
Copper selenite, *see* Selenates *or* Selenites														
Copper tetramine nitrate	Forbidden													
AW Copra	4.2	UN1363	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	13, 19, 48, 119		
Cord, detonating, *flexible*	1.1D	UN0065	II	EXPLOSIVE 1.1D	102	63(a)	62	None	Forbidden	Forbidden	B			
Cord, detonating, *flexible*	1.4D	UN0289	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E		
Cord detonating *or* Fuse detonating *metal clad*	1.2D	UN0102	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B			
Cord, detonating *or* Fuse, detonating *metal clad*	1.1D	UN0290	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B			
Cord, detonating, mild effect *or* Fuse, detonating, mild effect *metal clad*	1.4D	UN0104	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E		
Cord, Igniter	1.4G	UN0066	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E		
Cordeau detonant fuse, see Cord, detonating, *etc.*; Cord, detonating, *flexible*														
Cordite, see Powder, smokeless														
Corrosive liquid, acidic, inorganic, n.o.s.	8	UN3264	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40		
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40		
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40		
Corrosive liquid, acidic, organic, n.o.s.	8	UN3265	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40		
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40		
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40		
Corrosive liquid, basic, inorganic, n.o.s.	8	UN3266	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40		
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40		
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40		
Corrosive liquid, basic, organic, n.o.s.	8	UN3267	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40		
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40		
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40		
Corrosive liquid, self-heating, n.o.s.	8	UN3301	I	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.	B10	None	201	243	0.5 L	2.5 L	D			
			II	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.	B2	154	202	242	1 L	30 L	D			
Corrosive liquids, flammable, n.o.s.	8	UN2920	I	CORROSIVE, FLAMMABLE LIQUID.	B10, T42	None	201	243	0.5 L	2.5 L	C	25, 40		
			II	CORROSIVE, FLAMMABLE LIQUID.	B2, T15, T26	None	202	243	1 L	30 L	C	25, 40		
Corrosive liquids, n.o.s.	8	UN1760	I	CORROSIVE	A7, B10, T42	None	201	243	0.5 L	2.5 L	B	40		
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40		
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40		
Corrosive liquids, oxidizing, n.o.s.	8	UN3093	I	CORROSIVE, OXIDIZER		None	201	243	Forbidden	2.5 L	C	89		
			II	CORROSIVE, OXIDIZER		None	202	243	1 L	30 L	C	89		
Corrosive liquids, toxic, n.o.s.	8	UN2922	I	CORROSIVE, POISON	A7, B10	None	201	243	0.5 L	2.5 L	B	40		
			II	CORROSIVE, POISON	B3	None	202	243	1 L	30 L	B	40		
			III	CORROSIVE, KEEP AWAY FROM FOOD.		154	203	241	5 L	60 L	B	40		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Corrosive liquids, water-reactive, n.o.s.	8	UN3094	I	CORROSIVE, DANGEROUS WHEN WET.		None	201	243	Forbidden	1 L	E	
				II	CORROSIVE, DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	
	Corrosive solid, acidic, inorganic, n.o.s.	8	UN3260	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solid, acidic, organic, n.o.s.	8	UN3261	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solid, basic, inorganic, n.o.s.	8	UN3262	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solid, basic, organic, n.o.s.	8	UN3263	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solids, flammable, n.o.s.	8	UN2921	I	CORROSIVE, FLAMMABLE SOLID.		None	211	242	1 kg	25 kg	B	12, 25
				II	CORROSIVE, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	B	12, 25
	Corrosive solids, n.o.s.	8	UN1759	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	A	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solids, oxidizing, n.o.s.	8	UN3084	I	CORROSIVE, OXIDIZER		None	211	242	1 kg	25 kg	C	
				II	CORROSIVE, OXIDIZER		None	212	242	15 kg	50 kg	C	
	Corrosive solids, self heating, n.o.s.	8	UN3095	I	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.		None	211	243	1 kg	25 kg	C	
				II	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	C	
	Corrosive solids, toxic, n.o.s.	8	UN2923	I	CORROSIVE, POISON		None	211	242	1 kg	25 kg	B	40
				II	CORROSIVE, POISON		None	212	240	15 kg	50 kg	B	40
				III	CORROSIVE, KEEP AWAY FROM FOOD.		154	213	240	25 kg	100 kg	B	40, 95
	Corrosive solids, water-reactive, n.o.s.	8	UN3096	I	CORROSIVE, DANGEROUS WHEN WET.		None	211	243	1 kg	25 kg	D	
				II	CORROSIVE, DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	D	
DW	Cotton	9			CLASS 9	W41	None	None	None	No limit	No limit	A	
AIW	Cotton waste, oily	4.2	UN1364	III	SPONTANEOUSLY COMBUSTIBLE.	N9	None	213	None	Forbidden	Forbidden	A	54
AIW	Cotton, wet	4.2		III	SPONTANEOUSLY COMBUSTIBLE.		None	204	241	Forbidden	Forbidden	A	
	Coumarin derivative pesticides, liquid, flammable, toxic, *flashpoint less than 23 degrees C*	3	UN3024	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
	Coumarin derivative pesticides, liquid, flammable, toxic, *flashpoint less than 23 degrees C*	6.1	UN3025	I	POISON, FLAMMABLE LIQUID.		None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD. FLAMMABLE LIQUID.	B1	153	203	242	60 L	220 L	A	40
	Coumarin derivative pesticides, liquid, toxic	6.1	UN3026	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	40
	Coumarin derivative pesticides, solid, toxic	6.1	UN3027	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40

			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Cresols	6.1	UN2076	II	POISON. CORROSIVE ..	T8	None	202	243	1 L	30 L	B		
Cresylic acid	6.1	UN2022	II	POISON. CORROSIVE ..	T8	None	202	243	1 L	30 L	B		
Crotonaldehyde, stabilized	6.1	UN1143	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	30 L	B	40	
Crotonic acid *liquid*	6	UN2823	III	CORROSIVE		154	203	241	5 L	60 L	A	12	
Crotonic acid, *solid*	8	UN2823	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12	
Crotonylene	3	UN1144	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E		
Cupriethylenediamine solution	6	UN1761	II	CORROSIVE, POISON ..	T8, T26	None	202	243	1 L	30 L	A	95	
			III	CORROSIVE, KEEP AWAY FROM FOOD.	T7	154	203	242	5 L	60 L	A	95	
Cutters, cable, explosive	1.4S	UN0070	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A		
Cyanide or cyanide mixtures, dry, see Cyanides, inorganic, n.o.s.													
Cyanide solutions, n.o.s.	6.1	UN1935	I	POISON	B37, T18, T26	None	201	243	1 L	30 L	B	40, 52	
			II	POISON	T16, T26	None	202	243	5 L	60 L	A	40, 52	
			III	KEEP AWAY FROM FOOD.	T16, T26	153	203	241	60 L	220 L	A	40, 52	
Cyanides, inorganic, solid, n.o.s.	6.1	UN1588	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	52	
			II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	52	
			III	KEEP AWAY FROM FOOD.	N74, N75	153	213	240	100 kg	200 kg	A	52	
Cyanogen bromide	6.1	UN1889	I	POISON. CORROSIVE ..	25, A6, A8	None	211	242	Forbidden	Forbidden	D	40	
Cyanogen chloride, inhibited	2.3	UN1589		POISON GAS, CORROSIVE.	1	None	192	245	Forbidden	Forbidden	D	40	
Cyanogen, liquefied	2.3	UN1026		POISON GAS, FLAMMABLE GAS.	2	None	192	245	Forbidden	Forbidden	D	40	
Cyanuric chloride	8	UN2670	II	CORROSIVE		None	212	240	15 kg	50 kg	A	12, 40	
Cyanuric triazide	Forbidden												
Cyclobutane	2.1	UN2601		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40	
Cyclobutylchloroformate	6.1	UN2744	II	POISON, CORROSIVE ..	T16	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100	
1,5,9-Cyclododecatriene	6.1	UN2516	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40	
Cycloheptane	3	UN2241	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	40	
Cycloheptatriene	3	UN2603	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	E	40	
Cycloheptene	3	UN2242	II	FLAMMABLE LIQUID	B1, T7	150	202	242	5 L	60 L	B		
Cyclohexane	3	UN1145	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E		
Cyclohexanone	3	UN1915	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Cyclohexene	3	UN2256	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E		
Cyclohexenyltrichlorosilane	6	UN1762	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40	
Cyclohexyl acetate	3	UN2243	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
+ Cyclohexyl isocyanate	6.1	UN2488	II	POISON	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	5 L	60 L	D	40	
Cyclohexyl mercaptan	3	UN3054	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40, 95	
Cyclohexylamine	6	UN2357	II	CORROSIVE, FLAMMABLE LIQUID.	T6, T26	None	202	243	1 L	30 L	A	40	
Cyclohexyltrichlorosilane	6	UN1763	II	CORROSIVE	A7, B2, N34, T6, T26.	None	202	242	Forbidden	30 L	C	40	
Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*ed													
Cyclonite and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*													
Cyclonite and octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*													
Cyclonite, *see* Cyclotrimethylenetrinitramine, *etc.*													
Cyclooctadiene phosphines, *see* 9-Phosphabicyclononanes													
Cyclooctadienes	3	UN2520	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Cyclooctatetraene	3	UN2358	II	FLAMMABLE LIQUID	T6	150	202	242	6 L	60 L	B		
Cyclopentane	3	UN1146	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E		
Cyclopentane, methyl, see Methyl cyclopentane													
Cyclopentanol	3	UN2244	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Cyclopentanone	3	UN2245	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Cyclopentene	3	UN2246	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	E		
Cyclopropane, liquefied	2.1	UN1027		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40	
Cyclotetramethylene tetranitramine (dry or unphlegmatized) (HMX)	Forbidden												
Cyclotetramethylenetetranitramine, desensitized *or* Octogen, desensitized *or* HMX, desensitized	1.1D	UN0484	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Cyclotetramethylenetetranitramine, wetted *or* HMX, wetted *or* Octogen, wetted *with not less than 15 percent water, by mass*	1.1D	UN0226	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	(8) Packaging authorizations (§173.***) Non-bulk packaging	(8) Packaging authorizations (§173.***) Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	(10) Vessel stowage requirements Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cyclotrimethylenenitramine and octogen, mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
	Cyclotrimethylenetrinitramine and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted or desensitized *etc.*												
	Cyclotrimethylenetrinitramine and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
	Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized *or* Hexogen, desensitized *or* RDX, desensitized	1.1D	UN0483	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Cyclotrimethylenetrinitramine, wetted *or* Cyclonite, wetted *or* Hexogen, wetted *or* RDX, wetted *with not less than 15 percent water by mass*	1.1D	UN0072	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Cymenes	3	UN2046	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Decaborane	4.1	UN1868	II	FLAMMABLE SOLID, POISON.	A19, A20	None	212	None	Forbidden	50 kg	A	
	Decahydronaphtheiene	3	UN1147	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	n-Decane	3	UN2247	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Deflagrating metel salts of aromatic nitroderivatives, n.o.s	1.3C	UN0132	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Delay electric igniter, see Igniters												
D	Denatured alcohol	3	NA1986	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	E	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8, T31	150	203	242	60 L	220 L	E	40
D	Denatured alcohol	3	NA1987	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Depth charges, see Charges, depth												
	Detonating relays, see Detonators, *etc.*												
	Detonator assemblies, non-electric *for blasting*	1.1B	UN0360	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonetor assemblies, non-electric, *for blasting*	1.4B	UN0361	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	24E
	Detonators, electric, *for blasting*	1.1B	UN0030	II	EXPLOSIVE 1.1B		63(f), 63(g)	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators, electric, *for blasting*	1.4B	UN0255	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	24E
	Detonators, electric *for blasting*	1.4S	UN0456	II	EXPLOSIVE 1.4S	104	63(f), 63(g)	62	None	25 kg	100 kg	A	
	Detonators for ammunition	1.1B	UN0073	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators for ammunition	1.2B	UN0364	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators for ammunition	1.4B	UN0365	II	EXPLOSIVE 1.4B	103	None	62	None	Forbidden	75 kg	A	24E
	Detonators for ammunition	1.4S	UN0366	II	EXPLOSIVE 1.4S	104	None	62	None	25 kg	100 kg	A	
	Detonators, non-electric, *for blasting*	1.1B	UN0029	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators, non-electric, *for blasting*	1.4B	UN0267	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	24E
	Detonators, non-electric *for blasting*	1.4S	UN0455	II	EXPLOSIVE 1.4S	104	None	62	None	25 kg	100 kg	A	
	Deuterium	2.1	UN1957		FLAMMABLE GAS		306	302	None	Forbidden	150 kg	E	40
	Devices, small, hydrocarbon gas powered *or* Hydrocarbon gas refills for small devices *with release device*	2.1	UN3150		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	B	40
	Di-n-amylamine	3	UN2841	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8	150	203	242	60 L	220 L	A	
	Di-n-butyl peroxydicarbonate, with more than 52 percent in solution	Forbidden											
	Di-n-butylamine	8	UN2248	II	CORROSIVE, FLAMMABLE LIQUID.	T8	None	202	243	1 L	30 L	A	
	2,2-Di-(tert-butylperoxy) butane, with more than 55 percent in solution	Forbidden											
	Di-(tert-butylperoxy) phthalate, with more than 55 percent in solution	Forbidden											
	2,2-Di-(4,4-di-tert-butylperoxycyclohexyl) propane, with more than 42 percent with inert solid	Forbidden											
	Di-2,4-dichlorobenzoyl peroxide, with more than 75 percent with water	Forbidden											
	1,2-Di-(dimethylamino) ethene	3	UN2372	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Di-2-ethylhexyl phosphoric acid, see Diisooctyl acid phosphate												
	Di-(1-hydroxytetrazole) (dry)	Forbidden											

	Di-(1-naphthoyl) peroxide	Forbidden															
	e,e'-Di-(nitroxy) methylether	Forbidden															
	Di-(beta-nitroxyethyl) ammonium nitrate	Forbidden															
	Diacetone alcohol	3	UN1148	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B					
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A					
	Diacetone alcohol peroxides, with more than 57 percent in solution with more than 9 percent hydrogen peroxide, less than 26 percent diacetone alcohol and less than 9 percent water; total active oxygen content more than 9 percent by mass	Forbidden															
	Diacetyl, see Butanedione																
	Diacetyl peroxide, solid, or with more than 25 percent in solution	Forbidden															
	Diallylamine	3	UN2359	II	FLAMMABLE LIQUID, POISON, CORROSIVE.	T8	None	202	243	1 L	5 L	B	21, 40, 100				
	Diallylether	3	UN2360	II	FLAMMABLE LIQUID, POISON.	N12, T8	None	202	243	1 L	60 L	E	40				
	4,4'-Diaminodiphenyl methane	6.1	UN2651	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A					
	p-Diazidobenzene	Forbidden															
	1,2-Diazidoethane	Forbidden															
	1,1'-Diazoaminonaphthalene	Forbidden															
	Diazoaminotetrazole (dry)	Forbidden															
	Diazodinitrophenol (dry)	Forbidden															
	Diazodinitrophenol, wetted *with not less than 40 percent water or mixture of alcohol and water, by mass*	1.1A	UN0074	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E				
	Diazodiphenylmethane	Forbidden															
	Diazonium nitrates (dry)	Forbidden															
	Diazonium perchlorates (dry)	Forbidden															
	1,3-Diazopropane	Forbidden															
	Dibenzyl peroxydicarbonate, with more than 87 percent with water	Forbidden															
	Dibenzyldichlorosilane	8	UN2434	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	40				
	Diborane	2.3	UN1911		POISON GAS, FLAMMABLE GAS.	1	None	302	None	Forbidden	Forbidden	D	40, 57				
	Diborane mixtures	2.1	NA1911		FLAMMABLE GAS	5	None	302	245	Forbidden	Forbidden	D	40, 57				
	Dibromoacetylene	Forbidden															
	Dibromobenzene	3	UN2711	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A					
	1,2-Dibromobutan-3-one	6.1	UN2648	II	POISON		None	202	243	5 L	60 L	B	40				
	Dibromochloropropane	6.1	UN2872	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A					
A	Dibromodifluoromethane, *R12B2*	9	UN1941	III	None	T22	155	203	241	100 L	220 L	A	25				
	1,2-Dibromoethane, see Ethylene dibromide																
	Dibromomethane	6.1	UN2664	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A					
	Dibutyl ethers	3	UN1149	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A					
	Dibutylaminoethanol	6.1	UN2873	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A					
	N,N'-Dichlorazodicarbonamidine (salts of) (dry)	Forbidden															
	1,1-Dichloro-1-nitroethane	6.1	UN2650	II	POISON	T8	None	202	243	5 L	60 L	A	12, 40				
D	3,5-Dichloro-2,4,6-trifluoropyridine	6.1	NA9264	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	40, 95				
	Dichloroacetic acid	8	UN1764	II	CORROSIVE	A3, A8, A7, B2, N34, T9, T27.	154	202	242	1 L	30 L	A					
	1,3-Dichloroacetone	6.1	UN2649	II	POISON		None	212	242	25 kg	100 kg	B	12, 40				
	Dichloroacetyl chloride	8	UN1765	II	CORROSIVE	A3, A6, A7, B2, B6, N34, T8, T26.	154	202	242	1 L	30 L	D	40				
	Dichloroacetylene	Forbidden															
	Dichloroanilines, liquid	6.1	UN1590	II	POISON	T14	None	202	243	5 L	60 L	A	40				
	Dichloroanilines, solid	6.1	UN1590	II	POISON	T14	None	212	242	25 kg	100 kg	A	40				
	o-Dichlorobenzene	6.1	UN1591	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A					
D	Dichlorobutene	8	NA2920	I	CORROSIVE, FLAMMABLE LIQUID.		None	201	243	0.5 L	2.5 L	C	12, 21, 25, 40, 48				
	2,2'-Dichlorodiethyl ether	6.1	UN1916	II	POISON, FLAMMABLE LIQUID.	N33, N34, T8	None	202	243	5 L	60 L	A					
	Dichlorodifluoromethane and difluoroethane azeotropic mixture *with approximately 74 percent dichlorodifluoromethane, R500*	2.2	UN2602		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A					
	Dichlorodifluoromethane, *R12*	2.2	UN1028		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A					
	Dichlorodimethyl ether, symmetrical	6.1	UN2249	I	POISON	T25	None	201	243	Forbidden	Forbidden	D	40				
	1,1-Dichloroethane	3	UN2362	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40				
	1,2-Dichloroethane, see Ethylene dichloride																
	Dichloroethyl sulfide	Forbidden															
	Dichloroethylene	3	UN1150	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B					
	Dichlorofluoromethane, *R21*	2.2	UN1029		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A					

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Dichloroisocyanuric acid, dry *or* Dichloroisocyanuric acid salts	5.1	UN2465	II	OXIDIZER	28	152	212	240	5 kg	25 kg	A	13
	Dichloroisopropyl ether	6.1	UN2490	II	POISON	T8	None	202	243	5 L	60 L	B	
	Dichloromethane	6.1	UN1593	III	KEEP AWAY FROM FOOD.	N36, T13	153	203	241	60 L	220 L	A	
	Dichloropentanes	3	UN1152	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Dichlorophenyl isocyanates	6.1	UN2250	II	POISON		None	212	242	25 kg	100 kg	A	25, 40, 48
	Dichlorophenyltrichlorosilane	8	UN1766	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Dichloropropane, see Propylene dichloride												
	1,3-Dichloropropanol-2	6.1	UN2750	II	POISON	T8	None	202	243	5 L	60 L	A	12, 40
	Dichloropropene and propylene dichloride mixture, see Propylene dichloride												
	Dichloropropenes	3	UN2047	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Dichlorosilane	2.3	UN2189		POISON GAS, FLAMMABLE GAS, CORROSIVE.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	17, 40
	Dichlorotetrafluoroethane, *R114*	2.2	UN1958		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Dichlorovinylchloroarsine	Forbidden											
	Dicycloheptadiene, *see* Norbornadiene												
	Dicyclohexylamine	8	UN2565	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Dicyclohexylammonium nitrite	4.1	UN2687	III	FLAMMABLE SOLID		153	213	240	25 kg	100 kg	A	48
	Dicyclopentadiene	3	UN2048	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Didymium nitrate	5.1	UN1465	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
D	Dieldrin	6.1	NA2761	II	POISON		None	212	242	0.5 kg	5 kg	A	40
D	Diesel fuel	3	NA1993	III	None	B1	150	203	242	60 L	220 L	A	
	Diethanol nitrosamine dinitrate (dry)	Forbidden											
	Diethoxymethane	3	UN2373	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	3,3-Diethoxypropene	3	UN2374	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	N,N-Diethyl aniline	6.1	UN2432	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Diethyl carbonate	3	UN2366	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethyl cellosolve, see Ethylene glycol diethyl ether												
	Diethyl ether *or* Ethyl ether	3	UN1155	I	FLAMMABLE LIQUID	T21	150	201	243	1 L	30 L	E	40
	Diethyl ketone	3	UN1156	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Diethyl peroxydicarbonate, with more than 27 percent in solution	Forbidden											
	Diethyl sulfate	6.1	UN1594	II	POISON	T14	None	202	243	5 L	60 L	C	
	Diethyl sulfide	3	UN2375	II	FLAMMABLE LIQUID	T14	None	202	243	1 L	60 L	E	
	Diethylamine	3	UN1154	II	FLAMMABLE LIQUID, CORROSIVE.	N34, T8	None	202	243	1 L	5 L	E	40
	Diethylaminoethanol	3	UN2686	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethylaminopropylamine	3	UN2684	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	203	242	5 L	60 L	A	
	Diethylbenzene	3	UN2049	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethyldichlorosilane	8	UN1767	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	Diethylene glycol dinitrate	Forbidden											
	Diethyleneglycol dinitrate, desensitized *with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass*	1.1D	UN0075	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Diethylenetriamine	8	UN2079	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	40
	N,N-Diethylethylenediamine	8	UN2685	II	CORROSIVE, FLAMMABLE LIQUID.	T8	None	202	243	1 L	30 L	A	
	Diethylgold bromide	Forbidden											
	Diethylthiophosphoryl chloride	8	UN2751	II	CORROSIVE	B2, T8	None	212	240	15 kg	50 kg	C	40
	Diethylzinc	4.2	UN1366	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T28, T40	None	181	244	Forbidden	Forbidden	D	18
	Difluorochloroethanes, see Chloro-1,1-difluoroethanes												
	1,1-Difluoroethane, *R152a*	2.1	UN1030		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	1,1-Difluoroethylene, *R1132a*	2.1	UN1959		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	E	40
	Difluoromethane	2.1	UN3252		FLAMMABLE GAS		306	302	314, 315	Forbidden	150 kg	D	40

Difluorophosphoric acid, anhydrous	8	UN1768	II	CORROSIVE	A6, A7, B2, N5, N34, T9, T27.	None	202	242	1 L	30 L	A	40
2,3-Dihydropyran	3	UN2376	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
1,8-Dihydroxy-2,4,5,7-tetranitroanthraquinone (chrysamminic acid)	Forbidden											
Diiodoacetylene	Forbidden											
Diisobutyl ketone	3	UN1157	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Diisobutylamine	3	UN2361	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A	
Diisobutylene, isomeric compounds	3	UN2050	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
Diisooctyl acid phosphate	8	UN1902	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
Diisopropyl ether	3	UN1159	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40
Diisopropylamine	3	UN1158	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
Diisopropylbenzene hydroperoxide, with more than 72 percent in solution	Forbidden											
Diketene, inhibited	6.1	UN2521	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 49
1,2-Dimethoxyethane	3	UN2252	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
1,1-Dimethoxyethane	3	UN2377	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	B	
Dimethyl carbonate	3	UN1161	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
Dimethyl chlorothiophosphate, see Dimethyl thiophosphoryl chloride												
2,5-Dimethyl-2,5-dihydroperoxy hexane, with more than 82 percent with water	Forbidden											
Dimethyl disulfide	3	UN2381	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
Dimethyl ether	2.1	UN1033		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
Dimethyl-N-propylamine	3	UN2266	II	FLAMMABLE LIQUID, CORROSIVE.	T14, T26	None	202	243	1 L	5 L	B	40
Dimethyl sulfate	6.1	UN1595	I	POISON, CORROSIVE	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Dimethyl sulfide	3	UN1164	II	FLAMMABLE LIQUID	T14	None	202	242	5 L	60 L	E	40
Dimethyl thiophosphoryl chloride	8.1	UN2267	II	POISON, CORROSIVE	T7	None	202	243	1 L	30 L	B	25
Dimethylamine, anhydrous	2.1	UN1032		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	D	40
Dimethylamine solution	3	UN1160	II	FLAMMABLE LIQUID, CORROSIVE.	T8, T34	None	202	243	1 L	5 L	B	
2-Dimethylaminoacetonitrile	3	UN2378	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	A	28, 40
2-Dimethylaminoethanol	8	UN2051	III	CORROSIVE, FLAMMABLE LIQUID.	B1, T8	154	203	242	60 L	220 L	A	
Dimethylaminoethyl methacrylate	6.1	UN2522	II	POISON	T8	None	202	243	5 L	60 L	B	40
N,N-Dimethylaniline	6.1	UN2253	II	POISON	T8	None	202	243	5 L	60 L	A	
2,3-Dimethylbutane	3	UN2457	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	E	
1,3-Dimethylbutylamine	3	UN2379	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
Dimethylcarbamoyl chloride	8	UN2262	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	40
Dimethylcyclohexanes	3	UN2263	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
Dimethylcyclohexylamine	8	UN2264	II	CORROSIVE, FLAMMABLE LIQUID.	B2, T8	154	202	243	1 L	30 L	A	40
Dimethyldichlorosilane	3	UN1162	II	FLAMMABLE LIQUID, CORROSIVE.	B77, T15, T26	None	202	243	Forbidden	Forbidden	B	40
Dimethyldiethoxysilane	3	UN2380	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
Dimethyldioxanes	3	UN2707	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
N,N-Dimethylformamide	3	UN2265	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Dimethylhexane dihydroperoxide (dry)	Forbidden											
Dimethylhydrazine, symmetrical	6.1	UN2382	I	POISON, FLAMMABLE LIQUID.	2, A7, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Dimethylhydrazine, unsymmetrical	6.1	UN1163	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, B79, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	21, 38, 40, 100
2,2-Dimethylpropane	2.1	UN2044		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
Dimethylzinc	4.2	UN1370	I	SPONTANEOUSLY COMBUSTIBLE.	B11, B18, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	18
Dinitro-o-cresol, *solid*	6.1	UN1598	II	POISON	T14	None	212	242	25 kg	100 kg	A	
Dinitro-o-cresol, *solution*	6.1	UN1598	II	POISON	T14	None	202	243	5 L	60 L	A	
1,3-Dinitro-5,5-dimethyl hydantoin	Forbidden											
Dinitro-7,8-dimethylglycolurit (dry)	Forbidden											
1,3-Dinitro-4,5-dinitrosobenzene	Forbidden											
1,4-Dinitro-1,1,4,4-tetramethylolbutanetetranitrate (dry)	Forbidden											
2,4-Dinitro-1,3,5-trimethylbenzene	Forbidden											
Dinitroanilines	6.1	UN1596	II	POISON	T14	None	212	242	25 kg	100 kg	A	91

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Dinitrobenzenes, *liquid*	6.1	UN1597	II	POISON	11, T14	None	202	243	5 L	60 L	A	91
	Dinitrobenzenes, *solid*	6.1	UN1597	II	POISON	11	None	212	242	25 kg	100 kg	A	91
	Dinitrochlorobenzene, see Chlorodinitrobenzene												
	1,2-Dinitroethane	Forbidden											
	1,1-Dinitroethane (dry)	Forbidden											
	Dinitrogen tetroxide, liquefied	2.3	UN1067		POISON GAS. OXIDIZER, CORROSIVE.	1, B7, B12, B14, B45, B46, B61, B66, B67, B77.	None	336	314	Forbidden	Forbidden	D	40, 89, 90
	Dinitroglycoluril *or* Dingu	1.1D	UN0489	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitromethane	Forbidden											
	Dinitrophenol, *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0076	II	EXPLOSIVE 1.1D, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrophenol solutions	6.1	UN1599	II	POISON	T8	None	202	243	5 L	60 L	A	36
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	36
	Dinitrophenol, wetted *with not less than 15 percent water, by mass*	4.1	UN1320	I	FLAMMABLE SOLID, POISON.	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Dinitrophenolates *alkali metals, dry or wetted with less than 15 percent water, by mass*	1.3C	UN0077	II	EXPLOSIVE 1.3C, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrophenolates, wetted *with not less than 15 percent water, by mass*	4.1	UN1321	I	FLAMMABLE SOLID, POISON.	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Dinitropropylene glycol	Forbidden											
	Dinitroresorcinol, *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0078	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4-Dinitroresorcinol (heavy metal salts of) (dry)	Forbidden											
	4,6-Dinitroresorcinol (heavy metal salts of) (dry)	Forbidden											
	Dinitroresorcinol, wetted *with not less than 15 percent water, by mass*	4.1	UN1322	I	FLAMMABLE SOLID	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	3,5-Dinitrosalicylic acid (lead salt) (dry)	Forbidden											
	Dinitrosobenzene	1.3C	UN0406	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrosobenzylamidine and salts of (dry)	Forbidden											
	2,2-Dinitrostilbene	Forbidden											
	Dinitrotoluenes, *liquid*	6.1	UN2038	II	POISON	T8	None	202	243	5 L	60 L	A	
	Dinitrotoluenes, molten	6.1	UN1600	II	POISON	T14	None	202	243	Forbidden	Forbidden	C	
	Dinitrotoluenes, *solid*	6.1	UN2038	II	POISON	T8	None	212	242	25 kg	100 kg	A	
	1,9-Dinitroxy pentamethylene-2,4, 6,8-tetramine (dry)	Forbidden											
	Dioxane	3	UN1165	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dioxolane	3	UN1166	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Dipentene	3	UN2052	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diphenylamine chloroarsine	6.1	UN1698	I	POISON		None	201	None	Forbidden	Forbidden	D	40
	Diphenylchloroarsine, liquid	6.1	UN1699	I	POISON	A8, B14, B32, N33, N34.	None	201	243	Forbidden	30 L	D	40
	Diphenylchloroarsine, solid	6.1	UN1699	I	POISON	A8, B14, B32, N33, N34.	None	211	242	Forbidden	15 kg	D	40
	Diphenyldichlorosilane	8	UN1769	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Diphenylmethane-4,4'diisocyanate	6.1	UN2489	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	48
	Diphenylmethyl bromide	8	UN1770	II	CORROSIVE		154	212	240	15 kg	50 kg	D	40
	Dipicryl sulfide, *dry or wetted with less than 10 percent water, by mass*	1.1D	UN0401	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dipicryl sulfide, wetted *with not less than 10 percent water, by mass*	4.1	UN2852	I	FLAMMABLE SOLID	A2, N41	None	211	None	Forbidden	0.5 kg	D	28
	Dipicrylamine, *see* Hexanitrodiphenylamine												
	Dipropionyl peroxide, with more than 28 percent in solution	Forbidden											
	Dipropyl ether	3	UN2384	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Dipropylamine	3	UN2383	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
	Dipropylketone	3	UN2710	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Disinfectants, liquid, corrosive n.o.s.	8	UN1903	II	CORROSIVE	B2	154	202	242	1 L	30 L	B	
				III	CORROSIVE		154	203	241	5 L	60 L	A	
	Disinfectants, liquid, toxic, n.o.s	6.1	UN3142	I	POISON	A4, T42	None	201	243	1 L	30 L	A	40
				II	POISON	T14	None	202	243	5 L	60 L	A	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40

	Disinfectants, solid, toxic, n.o.s.	6.1	UN1601	II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Disodium trioxosilicate, pentahydrate	8	UN3253	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Dispersant gases, n.o.s. *see* Refrigerant gases, n.o.s.												
	Dithiocarbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2772	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Dithiocarbamate pesticides, liquid, toxic	6.1	UN3006	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Dithiocarbamate pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3005	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Dithiocarbamate pesticides, solid, toxic	6.1	UN2771	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Divinyl ether, inhibited	3	UN1167	I	FLAMMABLE LIQUID	T14	None	201	243	5 L	60 L	E	40
D	Dodecylbenzenesulfonic acid	8	NA2584	II	CORROSIVE	B2	154	202	242	1 L	30 L	B	9
	Dodecyltrichlorosilane	8	UN1771	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Dry ice, *see* Carbon dioxide, solid												
	Dyes, liquid, corrosive n.o.s. *or* Dye intermedietes, liquid, corrosive, n.o.s.	8	UN2801	II	CORROSIVE	11, B2, T14	154	202	242	1 L	30 L	A	
				III	CORROSIVE	11, T7	154	203	241	5 L	60 L	A	
	Dyes, liquid, toxic, n.o.s *or* Dye Intermediates, liquid, toxic, n.o.s.	6.1	UN1602	II	POISON		None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220	A	
	Dyes, solid, corrosive, n.o.s. *or* Dye intermedietes, solid, corrosive, n.o.s.	8	UN3147	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Dyes, solid, toxic, n.o.s. *or* Dye Intermedietes, solid, toxic, n.o.s.	6.1	UN3143	I	POISON	A5	None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Dynamite, see Explosive, blasting, type A												
	Electrolyte (acid or alkali) for batteries, see Battery fluid, acid *or* Bettery fluid, alkali												
	Elevated temperature liquid, flammable, n.o.s., *with flash point above 37.8 C, at or above its flash point*	3	UN3256	III	FLAMMABLE LIQUID	T1	None	None	247	Forbidden	Forbidden	A	
	Elevated temperature liquid, n.o.s., *at or above 100 C and below its flash point*	9	UN3257	III	CLASS 9	T1	None	None	247	Forbidden	Forbidden	A	85
	Elevated temperature solid, n.o.s., *at or above 240 C, see section 173.247(h)(4)*	9	UN3258	III	CLASS 9		247(h)(4)	None	247	Forbidden	Forbidden	A	85
	Engine starting fluid, *with flammable gas*	2.1	UN1960		FLAMMABLE GAS		None	304	None	Forbidden	150 kg	D	40
	Engines, internal combustion, *including when fitted in machinery or vehicles*	9	UN3166		CLASS 9		220	220	None	Forbidden	No limit	A	
	Engines, internal combustion, *see* Vehicle, self-propelled												
	Environmentally hazardous substances, liquid, n.o.s.	9	UN3082	III	CLASS 9	8, N50, T1	155	203	241	None	None	A	
	Environmentally hazardous substances, solid, n.o.s.	9	UN3077	III	CLASS 9	8, B50, B54	155	213	240	None	None	A	
	Epibromohydrin	6.1	UN2558	I	POISON	T18, T26	None	201	243	Forbidden	Forbidden	D	40
	Epichlorohydrin	6.1	UN2023	II	POISON	T14	None	202	243	5 L	60 L	A	40
	1,2-Epoxy-3-ethoxypropane	3	UN2752	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Esters, n.o.s.	3	UN3272	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Etching acid, liquid, n.o.s., see Hydrofluoric acid, solution *etc.*												
	Ethane, compressed	2.1	UN1035		FLAMMABLE GAS		306	304	302	Forbidden	150 kg	E	40
D	Ethane-Propane mixture, refrigereted liquid	2.1	NA1961		FLAMMABLE GAS		None	316	314, 315	Forbidden	Forbidden	D	40
	Ethane, refrigereted liquid	2.1	UN1961		FLAMMABLE GAS		None	None	315	Forbidden	Forbidden	D	40
	Ethanol amine dinitrate	Forbidden											
	Ethanol *or* Ethyl alcohol *or* Ethanol solùtions *or* Ethyl alcohol solutions	3	UN1170	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	A	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethanolamine *or* Ethanolamine solutions	8	UN2491	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Ether, see Diethyl ether												

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ethers, n.o.s.	3	UN3271	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Ethyl acetate	3	UN1173	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	Ethyl acrylate, inhibited	3	UN1917	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Ethyl alcohol, *see* Ethanol												
	Ethyl aldehyde, *see* Acetaldehyde												
	Ethyl amyl ketone	3	UN2271	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	N-Ethyl-N-benzylaniline	6.1	UN2274	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Ethyl borate	3	UN1176	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Ethyl bromide	6.1	UN1891	II	POISON	T17	None	202	243	5 L	60 L	B	40, 85
	Ethyl bromoacetate	6.1	UN1603	II	POISON	T14	None	202	243	Forbidden	Forbidden	D	40
	Ethyl butyl ether	3	UN1179	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Ethyl butyrate	3	UN1180	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethyl chloride	2.1	UN1037		FLAMMABLE GAS	B63, B77	None	322	314, 315	Forbidden	150 kg	B	40
	Ethyl chloroacetate	6.1	UN1181	II	POISON	T14	None	202	243	5 L	60 L	A	
	Ethyl chloroformate	6.1	UN1182	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, A3, A6, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	21, 40, 100
	Ethyl-2-chloropropionate	3	UN2935	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
+	Ethyl chlorothioformate	8	UN2826	II	CORROSIVE, POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	40
	Ethyl crotonate	3	UN1862	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Ethyl cyanoacetate	6.1	UN2666	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	26
	Ethyl ether, *see* Diethyl ether												
	Ethyl fluoride	2.1	UN2453		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Ethyl formate	3	UN1190	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Ethyl hydroperoxide	Forbidden											
	Ethyl isobutyrate	3	UN2385	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
+	Ethyl isocyanate	3	UN2481	I	FLAMMABLE LIQUID, POISON.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Ethyl lactate	3	UN1192	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethyl mercaptan	3	UN2363	I	FLAMMABLE LIQUID	T21	None	201	243	Forbidden	30 L	E	95, 102
	Ethyl methacrylate	3	UN2277	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Ethyl methyl ether	2.1	UN1039		FLAMMABLE GAS	B63	None	324	314, 315	Forbidden	150 kg	B	40
	Ethyl methyl ketone *or* Methyl ethyl ketone	3	UN1193	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Ethyl nitrite solutions	3	UN1194	I	FLAMMABLE LIQUID, POISON.		None	201	None	Forbidden	Forbidden	E	40, 105
	Ethyl orthoformate	3	UN2524	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Ethyl oxalate	6.1	UN2525	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Ethyl perchlorate	Forbidden											
D	Ethyl phosphonothioic dichloride, anhydrous	6.1	NA2927	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
D	Ethyl phosphonous dichloride, anhydrous *pyrophoric liquid*	6.1	NA2845	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	18
D	Ethyl phosphorodichloridate	6.1	NA2927	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Ethyl propionate	3	UN1195	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Ethyl propyl ether	3	UN2615	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Ethyl silicate, *see* Tetraethyl silicate												
	Ethylacetylene, inhibited	2.1	UN2452		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40

Ethylamine	2.1	UN1036		FLAMMABLE GAS	B77	None	321	314, 315	Forbidden	150 kg	D	40	
Ethylamine, aqueous solution *with not less than 50 percent but not more than 70 percent ethylamine*	3	UN2270	II	FLAMMABLE LIQUID, CORROSIVE.	T14	None	202	243	1 L	5 L	B	40	
N-Ethylaniline	6.1	UN2272	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A		
2-Ethylaniline	6.1	UN2273	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A		
Ethylbenzene	3	UN1175	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
N-Ethylbenzyltoluidines liquid	6.1	UN2753	III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A		
N-Ethylbenzyltoluidines solid	6.1	UN2753	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
2-Ethylbutanol	3	UN2275	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
2-Ethylbutyl acetate	3	UN1177	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
2-Ethylbutyraldehyde	3	UN1178	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B		
Ethyldichloroarsine	6.1	UN1892	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40	
Ethyldichlorosilane	4.3	UN1183	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A2, A3, A7, N34, T18, T26.	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100	
Ethylene, acetylene and propylene in mixtures, refrigerated liquid *with at least 71.5 percent ethylene with not more than 22.5 percent acetylene and not more than 6 percent propylene*	2.1	UN3138		FLAMMABLE GAS		None	304	314, 315	Forbidden	Forbidden	D	40	
Ethylene chlorohydrin	6.1	UN1135	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40	
Ethylene, compressed	2.1	UN1962		FLAMMABLE GAS		306	304	302	Forbidden	150 kg	E	40	
Ethylene diamine diperchlorate	Forbidden												
Ethylene dibromide	6.1	UN1605	I	POISON	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40	
Ethylene dibromide and methyl bromide liquid mixtures, see Methyl bromide and ethylene dibromide, liquid mixtures													
Ethylene dichloride	3	UN1184	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	B	40	
Ethylene glycol diethyl ether	3	UN1153	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Ethylene glycol dinitrate	Forbidden												
Ethylene glycol monobutyl ether	6.1	UN2369	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A		
Ethylene glycol monoethyl ether	3	UN1171	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Ethylene glycol monoethyl ether acetate	3	UN1172	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Ethylene glycol monomethyl ether	3	UN1188	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Ethylene glycol monomethyl ether acetate	3	UN1189	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Ethylene oxide and carbon dioxide mixture *with more than 87 percent ethylene oxide*	2.3	UN3300		POISON GAS, FLAMMABLE GAS.	4	None	304	314, 315	Forbidden	75 kg	D	40	
Ethylene oxide and carbon dioxide mixtures, see Carbon dioxide and ethylene oxide mixtures, *etc.*													
Ethylene oxide and carbon dioxide mixtures *with more than 9 percent but not more than 87 percent ethylene oxide*	2.1	UN1041		FLAMMABLE GAS	25	306	304	314, 315	Forbidden	25 kg	B	40	
Ethylene oxide and carbon dioxide mixtures *with not more than 9 percent ethylene oxide*	2.2	UN1952		NONFLAMMABLE GAS	25	306	304	314, 315	75 kg	150 kg	A		
Ethylene oxide and chlorotetrafluoroethane mixture *with not more than 8.8 percent ethylene oxide*	2.2	UN3297		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
Ethylene oxide and dichlorodifluoromethane mixture, *with not more than 12.5 percent ethylene oxide*	2.2	UN3070		NONFLAMMABLE GAS	25	306	304	314, 315	75 kg	150 kg	A		
Ethylene oxide and pentafluoroethane mixture *with not more than 7.9 percent ethylene oxide*	2.2	UN3298		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
Ethylene oxide and propylene oxide mixtures, *with not more than 30 percent ethylene oxide*	3	UN2983	I	FLAMMABLE LIQUID, POISON.	5, A11, N4, N34, T24, T29.	None	201	243	Forbidden	30 L	E	40	
Ethylene oxide and tetrafluoroethane mixture *with not more than 5.6 percent ethylene oxide*	2.2	UN3299		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ethylene oxide *or* Ethylene oxide with nitrogen *up to a total pressure of 1MPa (10 bar) at 50 degrees C*	2.3	UN1040		POISON GAS, FLAMMABLE GAS.	4, 25	None	323	323	Forbidden	25 kg	D	40
	Ethylene, refrigerated liquid *(cryogenic liquid)*	2.1	UN1038		FLAMMABLE GAS		None	316	318, 319	Forbidden	Forbidden	D	40
	Ethylenediamine	8	UN1604	II	CORROSIVE, FLAMMABLE LIQUID.	T14	154	202	243	1 L	30 L	A	40
	Ethyleneimine, inhibited	6.1	UN1185	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, B77, N25, N32, T38, T43. T44.	None	226	244	Forbidden	Forbidden	D	40
	Ethylhexaldehyde, see Octyl aldehydes *etc.*												
	2-Ethylhexylamine	3	UN2276	III	FLAMMABLE LIQUID, CORROSIVE.	B1. T2	150	203	242	5 L	60 L	A	40
	2-Ethylhexylchloroformate	6.1	UN2748	II	POISON, CORROSIVE	T42	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
	Ethylphenyldichlorosilane	8	UN2435	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	
	1-Ethylpiperidine	3	UN2386	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
	N-Ethyltoluidines	6.1	UN2754	II	POISON	T14	None	202	243	5 L	60 L	A	
	Ethyltrichlorosilane	3	UN1196	II	FLAMMABLE LIQUID, CORROSIVE.	A7, N34, T15, T26	None	202	243	1 L	5 L	B	40
	Etiologic agent, see Infectious substances, *etc.*)												
	Explosive articles, see Articles, explosive , *n.o.s. etc.*												
	Explosive, blasting, type A	1.1D	UN0081	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 21E
	Explosive, blasting, type B	1.1D	UN0082	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type B *or* Agent blasting, Type B	1.5D	UN0331	II	EXPLOSIVE 1.5D	105, 106	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type C	1.1D	UN0083	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type D	1.1D	UN0084	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type E	1.1D	UN0241	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type E *or* Agent blasting, Type E	1.5D	UN0332	II	EXPLOSIVE 1.5D	105, 106	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, forbidden. See Sec. 173.54	Forbidden											
D	Explosive pest control devices	1.1E	NA0006	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	E	
D	Explosive pest control devices	1.4E	NA0412	II	EXPLOSIVE 1.4E		None	62	None	Forbidden	75 kg	A	24E
	Explosive substances, see Substances, explosive, *n.o.s. etc.*												
	Explosives, slurry, see Explosive, blasting, type E												
	Explosives, water gels, see Explosive, blasting, type E												
	Extracts, aromatic, liquid	3	UN1169	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Extracts, flavoring, liquid	3	UN1197	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Fabric with animal or vegetable oil, see Fibers *or* fabrics, *etc.*												
	Ferric arsenate	6.1	UN1606	II	POISON		None	212	242	25 kg	100 kg	A	
	Ferric arsenite	6.1	UN1607	II	POISON		None	212	242	25 kg	100 kg	A	
	Ferric chloride, anhydrous	8	UN1773	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Ferric chloride, solution	8	UN2582	III	CORROSIVE	B15, T8	154	203	241	5 L	60 L	A	
	Ferric nitrate	5.1	UN1466	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Ferrocerium	4.1	UN1323	II	FLAMMABLE SOLID	A19	151	212	240	15 kg	50 kg	A	
	Ferrosilicon, *with 30 percent or more but less than 90 percent silicon*	4.3	UN1408	III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.	A1, A19	None	213	240	25 kg	100 kg	A	13, 40, 85, 103
	Ferrous arsenate	6.1	UN1608	II	POISON		None	212	242	25 kg	100 kg	A	
D	Ferrous chloride, solid	8	NA1759	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
D	Ferrous chloride, solution	8	NA1760	II	CORROSIVE	B3	154	202	242	1 L	30 L	B	40
	Ferrous metal borings *or* Ferrous metal shavings *or* Ferrous metal turnings *or* Ferrous metal cuttings *in a form liable to self-heating*	4.2	UN2793	III	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	213	241	25 kg	100 kg	A	
	Fertilizer ammoniating solution *with free ammonia*	2.2	UN1043		NONFLAMMABLE GAS .		306	304	314, 315	Forbidden	150 kg	E	40
AIW	Fibers *or* Fabrics, animal *or* vegetable *or* Synthetic, *n.o.s. with animal or vegetable oil*	4.2	UN1373	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	

Fibers or Fabrics impregnated with weakly nitrated nitrocellulose, n.o.s.	4.1	UN1353	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	D				
Films, nitrocellulose base, from which gelatine has been removed; film scrap, see Celluloid scrap															
Films, nitrocellulose base, *gelatine coated (except scrap)*	4.1	UN1324	III	FLAMMABLE SOLID		None	183	None	25 kg	100 kg	D		91		
Fire extinguisher charges, *corrosive liquid*	8	UN1774	II	CORROSIVE	N41	None	202	None	1 L	30 L	A				
Fire extinguisher charges, expelling, explosive, see Cartridges, power device															
				NONFLAMMABLE GAS		309	309	None	75 kg	150 kg	A				
Fire extinguishers *containing compressed or liquefied gas*	2.2	UN1044	II	FLAMMABLE SOLID	A19	None	212	None	15 kg	50 kg	A		119		
Firelighters, *solid with flammable liquid*	4.1	UN2623	III	FLAMMABLE SOLID	A1, A19	None	213	None	25 kg	100 kg	A		119		
			II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B				
Fireworks	1.1G	UN0333	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B				
Fireworks	1.2G	UN0334	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B				
Fireworks	1.3G	UN0335	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A		24E		
Fireworks	1.4G	UN0336	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A				
Fireworks	1.4S	UN0337	III	None		155	218	No limit	No limit	No limit	A		88		
Fish meal, *stabilized or* Fish scrap, *stabilized*	9	UN2216	II	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	212	241	15 kg	50 kg	A		119, 120		
Fish meal, *unstabilized or* Fish scrap, *unstabilized*	4.2	UN1374													
Fissile radioactive materials, see Radioactive material, fissile, n.o.s.															
Flammable compressed gas, see Compressed or Liquefied gas, flammable, etc.															
Flammable compressed gas (small receptacles not fitted with a dispersion device, not refillable), see Receptacles, etc.															
Flammable gas in lighters, *see* Lighters for cigars or cigarettes, *with flammable gas*															
Flammable liquid, toxic, corrosive, n.o.s.	3	UN3286	I	FLAMMABLE LIQUID, POISON, CORROSIVE.		None	201	243	Forbidden	2.5 L	E		21, 40, 100		
			II	FLAMMABLE LIQUID, POISON, CORROSIVE.	T14	None	202	243	1 L	5 L	B		21, 40, 100		
Flammable liquids, corrosive, n.o.s.	3	UN2924	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	E		40		
			II	FLAMMABLE LIQUID, CORROSIVE.	T15, T26	None	202	243	1 L	5 L	B		40		
			III	FLAMMABLE LIQUID, CORROSIVE.	Bi, T15, T26	150	203	242	5 L	60 L	A		40		
Flammable liquids, n.o.s.	3	UN1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E				
			II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B				
			III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A		40		
Flammable liquids, toxic, n.o.s.	3	UN1992	I	FLAMMABLE LIQUID, POISON.	T42	None	201	243	Forbidden	30 L	E		40		
			II	FLAMMABLE LIQUID, POISON.	T18	None	202	243	1 L	60 L	B		40		
			III	FLAMMABLE LIQUID, POISON. KEEP AWAY FROM FOOD.	B1, T18	150	203	242	60 L	220 L	A				
Flammable solid, corrosive, inorganic, n.o.s.	4.1	UN3180	II	FLAMMABLE SOLID, CORROSIVE.	A1	151	212	242	15 kg	50 kg	D		40		
			III	FLAMMABLE SOLID, CORROSIVE.	A1	151	213	242	25 kg	100 kg	D		40		
Flammable solid, inorganic, n.o.s.	4.1	UN3178	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	B				
			III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	B				
Flammable solid, organic, molten, n.o.s.	4.1	UN3176	II	FLAMMABLE SOLID	T9	151	212	240	Forbidden	Forbidden	C				
			III	FLAMMABLE SOLID	T9	151	213	240	Forbidden	Forbidden	C				
Flammable solid, toxic, inorganic, n.o.s.	4.1	UN3179	II	FLAMMABLE SOLID, POISON.	A1	151	212	242	15 kg	50 kg	B		40		
			III	FLAMMABLE SOLID, POISON. KEEP AWAY FROM FOOD.	A1	151	213	242	25 kg	100 kg	B		40		
Flammable solids, corrosive, organic, n.o.s.	4.1	UN2925	II	FLAMMABLE SOLID, CORROSIVE.	A1	None	212	242	15 kg	50 kg	D		40		
			III	FLAMMABLE SOLID, CORROSIVE.	A1	151	213	242	25 kg	100 kg	D		40		
Flammable solids, organic, n.o.s.	4.1	UN1325	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	B				
			III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	B				
Flammable solids, toxic, organic, n.o.s.	4.1	UN2926	II	FLAMMABLE SOLID, POISON.	A1	None	212	242	15 kg	50 kg	B		40		
			III	FLAMMABLE SOLID, POISON. KEEP AWAY FROM FOOD.	A1	151	213	242	25 kg	100 kg	B		40		
Flares, aerial	1.3G	UN0093	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B		24E		
Flares, aerial	1.4G	UN0403	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A				
Flares, aerial	1.4S	UN0404	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A				
Flares, aerial	1.1G	UN0420	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B				
Flares, aerial	1.2G	UN0421	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B				
Flares, airplane, see Flares, aerial															

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§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Flares, signal, see Cartridges, signal												
	Flares, surface	1.3G	UN0092	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Flares, surface	1.1G	UN0418	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Flares, surface	1.2G	UN0419	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Flares, water-activated, see Contrivances, water-activated, *etc.*												
	Flash powder	1.1G	UN0094	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	E	1E, 5E
	Flash powder	1.3G	UN0305	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	E	1E, 5E
	Flue dusts, poisonous, see Arsenical dust												
	Fluoric acid, see Hydrofluoric acid, solution, *etc.*												
	Fluorine, compressed	2.3	UN1045		POISON GAS, OXIDIZER, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40, 89, 90
	Fluoroacetic acid	6.1	UN2642	I	POISON		None	211	242	1 kg	15 kg	E	
	Fluoroanilines	6.1	UN2941	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	
	Fluorobenzene	3	UN2387	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Fluoroboric acid	8	UN1775	II	CORROSIVE	A6, A7, B2, B15, N3, N34, T15, T27.	154	202	242	1 L	30 L	A	
	Fluorophosphoric acid anhydrous	8	UN1776	II	CORROSIVE	A6, A7, B2, N3, N34, T9, T27.	None	202	242	1 L	30 L	A	
	Fluorosilicates, n.o.s.	6.1	UN2856	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Fluorosilicic acid	8	UN1778	II	CORROSIVE	A6, A7, B2, B15, N3, N34, T12, T27.	None	202	242	1 L	30 L	A	
	Fluorosulfonic acid	8	UN1777	I	CORROSIVE	A3, A6, A7, A10, B6, B10, B41, N3, T9, T27.	None	201	243	0.5 L	2.5 L	D	40
	Fluorotoluenes	3	UN2388	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Forbidden materials. See 173.21	Forbidden											
	Formaldehyde, solutions, flammable	3	UN1198	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	203	242	1 L	60 L	A	40
	Formaldehyde, solutions, *with not less than 25 percent formaldehyde*	8	UN2209	III	CORROSIVE	T1	154	203	241	5 L	60 L	A	
	Formalin, see Formaldehyde, solutions												
	Formic acid	8	UN1779	II	CORROSIVE	B2, B12, B28, T8	154	202	242	1 L	30 L	A	40
	Fracturing devices, explosive, *without detonators for oil wells*	1.1D	UN0099	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Fuel, aviation, turbine engine	3	UN1863	I	FLAMMABLE LIQUID	T7	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
D	Fuel oil *(No. 1, 2, 4, 5, or 6)*	3	NA1993	III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	A	
	Fulminate of mercury (dry)	Forbidden											
	Fulminate of mercury, wet, see Mercury fulminate, *etc.*												
	Fulminating gold	Forbidden											
	Fulminating mercury	Forbidden											
	Fulminating platinum	Forbidden											
	Fulminating silver	Forbidden											
	Fulminic acid	Forbidden											
	Fumaryl chloride	8	UN1780	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	8, 40
	Furan	3	UN2389	I	FLAMMABLE LIQUID	T18	None	201	243	1 L	30 L	E	40
	Furfural	3	UN1199	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Furfuryl alcohol	6.1	UN2874	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	26, 74
	Furfurylamine	3	UN2526	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A	40
	Fuse, detonating, *metal clad, see* Cord, detonating, *metal clad*												
	Fuse, detonating, mild effect, *metal clad, see* Cord, detonating, mild effect, *metal clad*												
	Fuse, igniter *tubular metal clad*	1.4G	UN0103	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Fuse, instantaneous, non-detonating *or* Quickmatch	1.3G	UN0101	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Fuse, safety	1.4S	UN0105	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
D	Fuses *(railway or highway)*	4.1	NA1325	II	FLAMMABLE SOLID		None	184	None	15 kg	50 kg	B	
	Fusel oil	3	UN1201	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Fuses, tracer, see Tracers for ammunition												

	Fuzes, combination, percussion and time, see Fuzes, detonating *(UN 0257, UN 0367);* Fuzes, igniting (UN 0317, UN 0368)													
	Fuzes, detonating	1.1B	UN0106	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Fuzes, detonating	1.2B	UN0107	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Fuzes, detonating	1.4B	UN0257	II	EXPLOSIVE 1.4B	116	None	62	None	Forbidden	75 kg	A	24E
	Fuzes, detonating	1.4S	UN0367	II	EXPLOSIVE 1.4S	116	None	62	None	25 kg	100 kg	A	
	Fuzes, detonating	1.1D	UN0408	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, *with protective features*	1.2D	UN0409	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, *with protective features*	1.4D	UN0410	II	EXPLOSIVE 1.4D	116	None	62	None	Forbidden	75 kg	A	24E
	Fuzes, detonating, *with protective features*	1.3G	UN0316	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Fuzes, igniting	1.4G	UN0317	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Fuzes, igniting	1.4S	UN0368	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Fuzes, igniting													
	Galactsan trinitrate	Forbidden												
AW	Gallium	6	UN2803	III	CORROSIVE		None	162	240	20 kg	20 kg	B	46
	Gas generator assemblies (aircraft), *containing a non-flammable non-toxic gas and a propellant cartridge*	2.2			NONFLAMMABLE GAS		None	335	None	75 kg	150 kg	A	
D	Gas identification set	2.3	NA9035		POISON GAS	6	None	194	None	Forbidden	Forbidden	D	
	Gas oil *or* Diesel fuel *or* Heating oil, light	3	UN1202	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Gas, refrigerated liquid, n.o.s.	2.2	UN3158		NONFLAMMABLE GAS		306	304	314, 315	50 kg	500 kg	D	
	Gas sample, non-pressurized, flammable, n.o.s., *not refrigerated liquid*	2.1	UN3167		FLAMMABLE GAS	35	306	302, 304	None	1 L	5 L	D	
	Gas sample, non-pressurized, toxic, flammable, n.o.s., *not refrigerated liquid*	2.3	UN3168		POISON GAS, FLAMMABLE GAS.	35	306	302	None	Forbidden	1 L	D	
	Gas sample, non-pressurized, toxic, n.o.s., not *refrigerated liquid*	2.3	UN3169		POISON GAS	35	306	302, 304	None	Forbidden	1 L	D	
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol*	3	NA1203	II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	E	
	Gasoline	3	UN1203	II	FLAMMABLE LIQUID	B33, T6	150	202	242	5 L	60 L	E	
	Gasoline, casinghead, see Natural gasoline												
	Gelatine, blasting, see Explosive, blasting, type A												
	Gelatine dynamites, see Explosive, blasting, type A												
	Germane	2.3	UN2192		POISON GAS, FLAMMABLE GAS.	2, 25	None	192	245	Forbidden	Forbidden	D	40
	Glycerol-1,3-dinitrate	Forbidden											
	Glycerol gluconate trinitrate	Forbidden											
	Glycerol lactete trinitrate	Forbidden											
	Glycerol alpha-monochlorohydrin	6.1	UN2689	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Glyceryl trinitrate, see Nitroglycerin, *etc.*												
	Glycidaldehyde	3	UN2622	II	FLAMMABLE LIQUID, POISON.	T6	150	202	243	1 L	60 L	A	40
D	Grenades, empty primed	1.4S	NA0349	II	None		None	62	None	25 kg	100 kg	A	
	Grenades, *hand or rifle, with bursting charge*	1.1D	UN0284	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	
	Grenades, *hand or rifle, with bursting charge*	1.2D	UN0285	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	
	Grenades, *hand or rifle, with bursting charge*	1.1F	UN0292	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Grenades, *hand or rifle, with bursting charge*	.1.2F	UN0293	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Grenades, illuminating, see Ammunition, Illuminating, *etc.*												
	Grenades, practice, *hand or rifle*	1.4S	UN0110	II	EXPLOSIVE 1.4S			62	None	25 kg	100 kg	A	
	Grenades, practice, *hand or rifle*	1.3G	UN0316	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Grenades, practice, *hand or rifle*	1.2G	UN0372	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Grenades practice *Hand or rifle*	1.4G	UN0452	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
	Grenades, smoke, see Ammunition, smoke, *etc.*												
	Guanidine nitrate	5.1	UN1467	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	73
	Guanyl nitrosaminoguanylidene hydrazine (dry)	Forbidden											
	Guanyl nitrosaminoguanylidene hydrazine, wetted *with not less than 30 percent water, by mass*	1.1A	UN0113	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Guanyl nitrosaminoguanyltetrazene (dry)	Forbidden											
	Guanyl nitrosaminoguanyltetrazene, wetted *or* Tetrazene, wetted *with not less than 30 percent water or mixture of alcohol and water, by mass*	1.1A	UN0114	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Gunpowder, compressed *or* Gunpowder in pellets, *see* Black powder *(UN 0028)*												
	Gunpowder, *granular or as a meal, see* Black powder *(UN 0027)*												
	Hafnium powder, dry	4.2	UN2545	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
				II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	D	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D	
	Hafnium powder, wetted *with not less then 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	4.1	UN1326	II	FLAMMABLE SOLID	A6, A19, A20, N34	None	212	241	15 kg	50 kg	E	
	Halogenated irritating liquids, n.o.s.	6.1	UN1610	I	POISON	T42	None	201	243	Forbidden	Forbidden	D	40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	II	POISON	T14	None	202	243	5 L	60 L	D	40
	.....	.....	.....	III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	D	40
	Hand signal device, see Signal devices, hand	.....	.....		.....	.....				.....	.....	.....	
	Hazardous substances, liquid or solid, n.o.s., see Environmentally hazardous substances, etc.	.....	.....		.....	.....				.....	.....	.....	
D	Hazardous waste, liquid, n.o.s.	9	NA3082	III	CLASS 9	.....	155	203	241	No limit	No limit	A	
D	Hazardous waste, solid, n.o.s.	9	NA3077	III	CLASS 9	B54	155	213	240	No limit	No limit	A	
	Helium, compressed	2.2	UN1046		NONFLAMMABLE GAS	.....	306	302	302, 314	75 kg	150 kg	A	85
	Helium-oxygen mixture, see Rare gases and oxygen mixtures	.....	.....		.....	.....				.....	.....	.....	
	Helium, refrigerated liquid *(cryogenic liquid)*	2.2	UN1963		NONFLAMMABLE GAS	.....	320	316	318	50 kg	500 kg	B	
	Heptafluoropropane	2.2	UN3296		NONFLAMMABLE GAS	.....	306	304	314, 315	75 kg	150 kg	A	
	n-Heptaldehyde	3	UN3056	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Heptanes	3	UN1206	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	n-Heptene	3	UN2278	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Hexachloroacetone	6.1	UN2661	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	B	12, 40
	Hexachlorobenzene	6.1	UN2729	III	KEEP AWAY FROM FOOD.	.....	153	203	241	60 L	220 L	A	
	Hexachlorobutadiene	6.1	UN2279	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Hexachlorocyclopentadiene	6.1	UN2646	I	POISON	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Hexachlorophene	6.1	UN2875	III	KEEP AWAY FROM FOOD.	.....	153	213	240	100 kg	200 kg	A	
	Hexadecyltrichlorosilane	8	UN1781	II	CORROSIVE	A7, B2, B6, N34, T8.	None	202	242	Forbidden	30 L	C	40
	Hexadienes	3	UN2458	II	FLAMMABLE LIQUID	T7	None	202	242	5 L	60 L	B	
	Hexaethyl tetraphosphate and compressed gas mixtures	2.3	UN1612		POISON GAS	3	None	334	None	Forbidden	Forbidden	D	40
	Hexaethyl tetraphosphate *liquid*	6.1	UN1611	I	POISON	A4	None	201	243	1 L	30 L	E	40
	.....	.....	.....	II	POISON	N76	None	202	243	5 L	60 L	E	40
	.....	.....	.....	III	KEEP AWAY FROM FOOD.	N77	None	203	241	60 L	220 L	E	40
	Hexaethyl tetraphosphate, *solid*	6.1	UN1611	I	POISON	.....	None	211	242	Forbidden	15 kg	E	40
	.....	.....	.....	II	POISON	N76	None	212	242	25 kg	100 kg	E	40
	.....	.....	.....	III	KEEP AWAY FROM FOOD.	N77	153	213	240	100 kg	200 kg	E	40
	Hexafluoroacetone	2.3	UN2420		POISON GAS, CORROSIVE.	2, B9, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Hexafluoroacetone hydrate	6.1	UN2552	II	POISON	T14	None	202	243	5 L	60 L	B	40
	Hexafluoroethane, *R116*	2.2	UN2193		NONFLAMMABLE GAS	.....	306	304	314, 315	75 kg	150 kg	A	
	Hexafluorophosphoric acid	8	UN1782	II	CORROSIVE	A6, A7, B2, N3, N34, T9, T27	None	202	242	1 L	30 L	A	
D	Hexafluoropropylene oxide	2.2	NA1956		NONFLAMMABLE GAS	.....	306	304	314, 315	75 kg	150 kg	A	
	Hexafluoropropylene, *R1216*	2.2	UN1858		NONFLAMMABLE GAS	.....	306	304	314, 315	75 kg	150 kg	A	
	Hexaldehyde	3	UN1207	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Hexamethylene diisocyanate	6.1	UN2281	II	POISON	T14	None	202	243	5 L	60 L	B	13, 40
	Hexamethylene triperoxide diamine (dry)	Forbidden	.....		.....	.....				.....	.....	.....	
	Hexamethylenediemine, solid	8	UN2280	III	CORROSIVE	.....	154	213	240	25 kg	100 kg	A	12
	Hexamethylenediamine solution	8	UN1783	II	CORROSIVE	T8	None	202	242	1 L	30 L	A	
	.....	.....	.....	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Hexamethyleneimine	3	UN2493	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40
	Hexamethylenetetramine	4.1	UN1328	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Hexamethylol benzene hexanitrate	Forbidden	.....		.....	.....				.....	.....	.....	
	Hexanes	3	UN1208	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	2,2',4,4',6,6'-Hexanitro-3,3'-dihydroxyazobenzene (dry)	Forbidden	.....		.....	.....				.....	.....	.....	

Hexanitroazoxy benzene	Forbidden													
N,N'-(hexanitrodiphenyl) ethylene dinitramine (dry)	Forbidden													
Hexanitrodiphenyl urea	Forbidden													
2,2',3',4,4',6-Hexanitrodiphenylamine	Forbidden													
Hexanitrodiphenylamine *or* Dipicrylamine *or* Hexyl	1.1D	UN0079	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
2,3',4,4',6,6'-Hexanitrodiphenylether	Forbidden													
Hexanitroethane	Forbidden													
Hexanitrooxanilide	Forbidden													
Hexanitrostilbene	1.1D	UN0392	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
Hexanoic acid, see Corrosive liquids, n.o.s.														
Hexanols	3	UN2282	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
1-Hexene	3	UN2370	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E			
Hexogen and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*														
Hexogen and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*														
Hexogen and octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*														
Hexogen, *see* Cyclotrimethylenetrinitramine, *etc.*														
Hexolite, *or* Hexotol *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0118	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
Hexotonal	1.1D	UN0393	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
Hexyl, *see* Hexanitrodiphenylamine														
Hexyltrichlorosilane	8	UN1784	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40		
High explosives, see individual explosives' entries														
HMX, *see* Cyclotetramethylenetetranitramine, *etc.*														
Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass*	8	UN2029	I	CORROSIVE, FLAMMABLE LIQUID, POISON.	A3, A6, A7, A10, B16, B53, T25.	None	201	243	Forbidden	2.5 L	D	21, 40, 42, 100		
Hydrazine, aqueous solution *with not more than 37 percent hydrazine, by mass*	6.1	UN3293	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A			
Hydrazine azide	Forbidden													
Hydrazine chlorate	Forbidden													
Hydrazine dicarbonic acid diazide	Forbidden													
Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass*	8	UN2030	II	CORROSIVE, POISON	B16, B53, T15	None	202	243	Forbidden	30 L	D	40, 42, 82		
Hydrazine perchlorate	Forbidden													
Hydrazine selenate	Forbidden													
Hydriodic acid, anhydrous, see Hydrogen iodide, anhydrous														
Hydriodic acid, solution	8	UN1787	II	CORROSIVE	A3, A6, B2, N41, T9, T27.	154	202	242	1 L	30 L	C			
			III	CORROSIVE	T8, T26	154	203	241	5 L	60 L	C	8		
Hydrobromic acid, anhydrous, see Hydrogen bromide, anhydrous														
Hydrobromic acid solution, *with more than 49 percent hydrobromic acid*	8	UN1788	II	CORROSIVE	B2, B15, N41, T9, T27.	154	202	242	Forbidden	Forbidden	C			
			III	CORROSIVE	T8, T26	154	203	241	Forbidden	Forbidden	C	8		
Hydrobromic acid solution, *with not more than 49 percent hydrobromic acid*	8	UN1788	II	CORROSIVE	A3, A6, B2, B15, N41, T9, T27.	154	202	242	1 L	30 L	C			
			III	CORROSIVE	T8, T26	154	203	241	5 L	30 L	C	8		
Hydrocarbon gases, compressed, n.o.s. *or* Hydrocarbon gases mixtures, compressed, n.o.s.	2.1	UN1964		FLAMMABLE GAS		306	302	314, 315	Forbidden	150 kg	E	40		
Hydrocarbon gases, liquefied, n.o.s. *or* Hydrocarbon gases mixtures, liquefied, n.o.s.	2.1	UN1965		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40		
Hydrocarbons, liquid, n.o.s.	3	UN3295	I	FLAMMABLE LIQUID		150	201	243	1 L	30 L	E			
			II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B			
			III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
Hydrochloric acid, anhydrous, see Hydrogen chloride, anhydrous														
Hydrochloric acid, solution	8	UN1789	II	CORROSIVE	A3, A6, B3, B15, N41, T9, T27.	154	202	242	1 L	30 L	C			
			III	CORROSIVE	T8, T26	154	203	241	5 L	60 L	C	8		
Hydrocyanic acid, anhydrous, see Hydrogen cyanide *etc.*														
Hydrocyanic acid, aqueous solutions *or* Hydrogen cyanide, aqueous solutions *with not more than 20 percent hydrocyanic acid*	6.1	UN1613	I	POISON	2, B12, B61, B65, B77, B82.	None	195	244	Forbidden	Forbidden	D	40		
D Hydrocyanic acid, aqueous solutions *with less than 5 percent hydrocyanic acid*	6.1	NA1613	II	POISON	B12, T18, T26	None	195	243	Forbidden	5 L	D	40		
Hydrocyanic acid, liquefied, see Hydrogen cyanide, *etc.*														
Hydrocyanic acid (prussic), unstabilized	Forbidden													
Hydrofluoric acid and Sulfuric acid mixtures	8	UN1786	I	CORROSIVE, POISON	A6, A7, B15, B23, N5, N34, T18, T27.	None	201	243	Forbidden	2.5 L	D	40, 95		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hydrofluoric acid, anhydrous, see Hydrogen fluoride, anhydrous												
	Hydrofluoric acid, solution, *with more than 60 percent strength*	8	UN1790	I	CORROSIVE, POISON	A6, A7, B4, B12, B15, B23, N5, N34, T18, T27.	None	201	243	0.5 L	2.5 L	D	12, 40
	Hydrofluoric acid, solution, *with more than 60 percent strength*	8	UN1790	II	CORROSIVE, POISON	A8, A7, B12, B15, N5, N34, T18, T27.	None	202	243	1 L	30 L	D	12, 40
	Hydrofluoroboric acid, see Fluoboric acid												
	Hydrofluorosilicic acid, see Fluorosilicic acid												
	Hydrogen and Methane mixtures, compressed	2.1	UN2034		FLAMMABLE GAS		306	302	302, 314, 315	Forbidden	150 kg	E	40
	Hydrogen bromide, anhydrous	2.3	UN1048		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Hydrogen chloride, anhydrous	2.3	UN1050		POISON GAS, CORROSIVE.	3	None	304	None	Forbidden	Forbidden	D	40
	Hydrogen chloride, refrigerated liquid	2.3	UN2186		POISON GAS, CORROSIVE.	3, B6, B43	None	None	314, 315	Forbidden	Forbidden	B	40
	Hydrogen, compressed	2.1	UN1049		FLAMMABLE GAS		306	302	302, 314	Forbidden	150 kg	E	40, 57
	Hydrogen cyanide, anhydrous, stabilized *with less than 3 percent water*	6.1	UN1051	I	POISON, FLAMMABLE LIQUID.	1, B12, B35, B61, B65, B77, B82.	None	195	244	Forbidden	Forbidden	D	40
	Hydrogen cyanide, solution in alcohol *with not more than 45 percent hydrogen cyanide*	6.1	UN3294	I	POISON	T18, T26	None	201	243	Forbidden	Forbidden	D	40
	Hydrogen cyanide, stabilized, *with less than 3 percent water and absorbed in a porous inert material*	6.1	UN1614	I	POISON	5	None	195	None	Forbidden	Forbidden	D	25, 40
	Hydrogen fluoride, anhydrous	8	UN1052	I	CORROSIVE, POISON	3, B7, B12, B46, B71, B77, T24, T27.	None	163	243	Forbidden	Forbidden	D	40
	Hydrogen iodide, anhydrous	2.3	UN2197		POISON GAS	3, 25, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Hydrogen iodide solution, see Hydriodic acid, solution												
	Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid*	5.1	UN3149	II	OXIDIZER, CORROSIVE	A2, A3, A6, B12, B53, T14.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	OXIDIZER, CORROSIVE	12, A3, A6, B12, B53, B80, B81, B85, T14, T37.	None	202	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2984	III	OXIDIZER	17, A1, T8, T37	152	203	241	2.5 L	30 L	B	25, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	OXIDIZER, CORROSIVE	A2, A3, A6, B12, B53, T14, T37.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide*	5.1	UN2015	I	OXIDIZER, CORROSIVE	12, A3, A6, B12, B53, B80, B81, B85, T15, T37.	None	201	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen, refrigerated liquid *(cryogenic liquid)*	2.1	UN1966		FLAMMABLE GAS		None	316	318, 319	Forbidden	Forbidden	D	40
	Hydrogen selenide, anhydrous	2.3	UN2202		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40
	Hydrogen sulfate, see Sulfuric acid												
	Hydrogen sulfide, liquefied	2.3	UN1053		POISON GAS, FLAMMABLE GAS.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Hydrogendifluorides, n.o.s. *solid*	8	UN1740	II	CORROSIVE	N3, N34	None	212	240	15 kg	50 kg	A	25, 26, 40
				III	CORROSIVE	N3, N34	154	213	240	25 kg	100 kg	A	25, 26, 40
	Hydrogendifluorides, n.o.s. *solutions*	8	UN1740	II	CORROSIVE	N3, N34	None	202	242	1 L	30 L	A	25, 26, 40
				III	CORROSIVE	N3, N34	154	203	241	5 L	60 L	A	25, 26, 40
	Hydroquinone	6.1	UN2662	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Hydrosilicofluoric acid, see Fluorosilicic acid												
	Hydroxyl amine iodide	Forbidden											
	Hydroxylamine sulfate	8	UN2865	III	CORROSIVE		154	213	240	25 kg	100 kg	A	

Hypochlorite solutions *with more than 5 percent but less than 16 percent available chlorine*	8	UN1791	III	CORROSIVE	N34, T7	154	203	241	5 L	60 L	B	26	
Hypochlorite solutions *with 16 percent or more available chlorine*	8	UN1791	II	CORROSIVE	A7, B2, B15, N34, T7.	154	202	242	1 L	30 L	B	26	
Hypochlorites, inorganic, n.o.s.	5.1	UN3212	II	OXIDIZER		152	212	240	5 kg	25 kg	D	48, 56, 58, 69, 106, 116, 118	
Hyponitrous acid	Forbidden												
Igniter fuse, metal clad, see Fuse, igniter, tubular, metal clad													
Igniters	1.1G	UN0121	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B		
Igniters	1.2G	UN0314	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B		
Igniters	1.3G	UN0315	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	A		
Igniters	1.4G	UN0325	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E	
Igniters	1.4S	UN0454	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A		
3,3'-Iminodipropylamine	8	UN2269	III	CORROSIVE	T8	154	203	241	5 L	60 L	A		
Infectious substances, affecting animals *only*	6.2	UN2900		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg	B		
Infectious substances, affecting humans	6.2	UN2814		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg	B		
Inflammable, see Flammable													
Initiating explosives (dry)	Forbidden												
Inositol hexanitrate (dry)	Forbidden												
Insecticide gases *flammable* n.o.s.	2.1	UN1968		FLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	D		
Insecticide gases, n.o.s.	2.2	UN1968		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
Insecticide gases, toxic, n.o.s.	2.3	UN1967		POISON GAS	3	None	193, 334	245	Forbidden	Forbidden	D	40	
Inulin trinitrate (dry)	Forbidden												
Iodine azide (dry)	Forbidden												
Iodine monochloride	8	UN1792	II	CORROSIVE	B6, N41, T8, T26	None	212	240	Forbidden	50 kg	D	40, 66, 74, 89, 90	
Iodine pentafluoride	5.1	UN2495	I	OXIDIZER, POISON, CORROSIVE.		None	205	243	Forbidden	2.5 L	D	25, 40, 66, 90	
2-Iodobutane	3	UN2390	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B		
Iodomethylpropanes	3	UN2391	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B		
Iodopropanes	3	UN2392	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A		
Iodoxy compounds (dry)	Forbidden												
Iridium nitratopentamine iridium nitrate	Forbidden												
Iron chloride, see Ferric chloride													
Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification*	4.2	UN1376	III	SPONTANEOUSLY COMBUSTIBLE.	B18	None	213	240	Forbidden	Forbidden	E		
Iron pentacarbonyl	6.1	UN1994	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, B77, T38, T43, T44.	None	192	244	Forbidden	Forbidden	D	40	
Iron sesquichloride, see Ferric chloride													
Irritating material, see Tear gas substances, *etc.*													
Isobutane *or* Isobutane mixtures *see also* Petroleum gases, liquefied	2.1	UN1969		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40	
Isobutanol *or* Isobutyl alcohol	3	UN1212	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Isobutyl acetate	3	UN1213	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
Isobutyl acrylate	3	UN2527	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Isobutyl alcohol, *see* Isobutanol													
Isobutyl aldehyde, *see* Isobutyraldehyde													
D Isobutyl chloroformate	6.1	NA2742	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100	
Isobutyl formate	3	UN2393	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
Isobutyl isobutyrate	3	UN2528	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
+ Isobutyl isocyanate	3	UN2486	II	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	1 L	60 L	D	40	
Isobutyl methacrylate	3	UN2283	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Isobutyl propionate	3	UN2394	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	B		
Isobutylamine	3	UN1214	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40	
Isobutylene *see also* Petroleum gases, liquefied	2.1	UN1055		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40	
Isobutyraldehyde *or* Isobutyl aldehyde	3	UN2045	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40	
Isobutyric acid	3	UN2529	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A		
Isobutyric anhydride	3	UN2530	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A		
Isobutyronitrile	3	UN2284	II	FLAMMABLE LIQUID, POISON.	T17	None	202	243	1 L	60 L	E	40	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Isobutyryl chloride	3	UN2395	II	FLAMMABLE LIQUID, CORROSIVE.	T9, T26	None	202	243	1 L	5 L	C	40
	Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flashpoint less than 23 degrees C*	3	UN2478	II	FLAMMABLE LIQUID, POISON.	5, A3, A7, T15	None	202	243	1 L	60 L	D	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8	150	203	242	60 L	220 L	A	
	Isocyanates, toxic, flammable, n.o.s. *or* Isocyanate solutions, toxic, flammable, n.o.s., *flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C*	6.1	UN3080	II	POISON, FLAMMABLE LIQUID.	T15	None	202	243	5 L	60 L	D	25, 40, 48
	Isocyanates, toxic, n.o.s. *or* Isocyanate, toxic, solutions, n.o.s., *flash point more than 61 degrees C and boiling point less than 300 degrees C*	6.1	UN2206	II	POISON	T15	None	202	243	5 L	60 L	D	25, 40, 48
				III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	D	25, 40, 48
	Isocyanatobenzotrifluorides	6.1	UN2285	II	POISON	5, T14	None	202	243	5 L	60 L	B	25, 40, 48
	Isoheptenes	3	UN2287	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Isohexenes	3	UN2288	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	Isooctane, see Octanes												
	Isooctenes	3	UN1216	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Isopentane, *see* n-Pentane												
	Isopentanoic acid, see Corrosive liquids, n.o.s.												
	Isopentenes	3	UN2371	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Isophorone diisocyanate	6.1	UN2290	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	B	40
	Isophoronediamine	8	UN2289	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Isoprene, Inhibited	3	UN1218	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Isopropanol *or* Isopropyl alcohol	3	UN1219	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropenyl acetate	3	UN2403	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropenylbenzene	3	UN2303	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl acetate	3	UN1220	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropyl acid phosphate	8	UN1793	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Isopropyl alcohol, *see* Isopropanol												
	Isopropyl butyrate	3	UN2405	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl chloroacetate	3	UN2947	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl chloroformate	6.1	UN2407	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Isopropyl-2-chloropropionate	3	UN2934	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl isobutyrate	3	UN2406	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
+	Isopropyl isocyanate	3	UN2483	I	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Isopropyl mercaptan, see Propanethiols												
	Isopropyl nitrate	3	UN1222	II	FLAMMABLE LIQUID	T25	150	202	None	5 L	60 L	D	
	Isopropyl phosphoric acid, see Isopropyl acid phosphate												
	Isopropyl propionate	3	UN2409	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropylamine	3	UN1221	I	FLAMMABLE LIQUID, CORROSIVE.	T20	None	201	243	0.5 L	2.5 L	E	
	Isopropylbenzene	3	UN1918	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropylcumyl hydroperoxide, with more than 72 percent in solution	Forbidden											
	Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate*	4.1	UN2907	II	FLAMMABLE SOLID		None	212	None	15 kg	50 kg	E	
	Isosorbide-5-mononitrate	4.1	UN3251	III	FLAMMABLE SOLID		151	213	240	Forbidden	Forbidden	D	12
	Isothiocyanic acid	Forbidden											
	Jet fuel, see Fuel aviation, turbine engine												
D	Jet perforating guns, charged *oil well, without detonator*	1.4D	NA0124	II	EXPLOSIVE 1.4D	114	None	62	None	Forbidden	Forbidden	A	24E
	Jet perforating guns, charged *oil well, without detonator*	1.1D	UN0124	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Jet perforating guns, charged, *oil well, without detonator*	1.4D	UN0494		EXPLOSIVE 1.4D		None	62	None	Forbidden	300 kg	A	24E
	Jet perforators, see Charges, shaped, commercial etc.												
	Jet tappers, without detonator, see Charges, shaped commercial, *etc.*												
	Jet thrust igniters, for rocket motors or Jato, see Igniters												

Jet thrust unit (Jato), *see* Rocket motors																
Kerosene		3	UN1223	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
Ketones, liquid, n.o.s.		3	UN1224	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E				
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B				
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A				
Krypton, compressed		2.2	UN1056		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A				
Krypton, refrigerated liquid (cryogenic liquid)		2.2	UN1970		NONFLAMMABLE GAS		320	None	None	50 kg	500 kg	B				
Lacquer base or lacquer chips, nitrocellulose, dry, see Nitrocellulose, *etc. (UN 2557)*																
Lacquer base or lacquer chips, plastic, wet with alcohol or solvent, see Nitrocellulose *(UN 2059, UN 2060, UN 2555, UN2556)* or Paint *etc. (UN1263)*																
Lead acetate		6.1	UN1616	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A				
Lead arsenates		6.1	UN1617	II	POISON		None	212	242	25 kg	100 kg	A				
Lead arsenites		6.1	UN1618	II	POISON		None	212	242	25 kg	100 kg	A				
Lead azide (dry)		Forbidden														
Lead azide, wetted *with not less than 20 percent water or mixture of alcohol and water, by mass*		1.1A	UN0129	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E			
Lead compounds, soluble, n.o.s.		6.1	UN2291	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A				
Lead cyanide		6.1	UN1620	II	POISON		None	212	242	25 kg	100 kg	A	26			
Lead dioxide		5.1	UN1872	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	34			
Lead dross, see Lead sulphate, *with more than 3 percent free acid*																
D Lead mononitroresorcinate		1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E			
Lead nitrate		5.1	UN1469	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A				
Lead nitroresorcinate (dry)		Forbidden														
Lead perchlorate, solid		5.1	UN1470	II	OXIDIZER, POISON	T8	None	212	242	5 kg	25 kg	A	56, 58, 106			
Lead perchlorate, solution		5.1	UN1470	II	OXIDIZER, POISON	T8	None	202	243	1 L	5 L	A	56, 58, 106			
Lead peroxide, see Lead dioxide																
Lead phosphite, dibasic		4.1	UN2989	II	FLAMMABLE SOLID		None	212	240	5 kg	25 kg	B	34			
				III	FLAMMABLE SOLID		151	213	240	15 kg	50 kg	B	34			
Lead picrate (dry)		Forbidden														
Lead styphnate (dry)		Forbidden														
Lead styphnate, wetted *or* Lead trinitroresorcinate, wetted *with not less than 20 percent water or mixture of alcohol and water, by mass*		1.1A	UN0130	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E			
Lead sulfate *with more than 3 percent free acid*		8	UN1794	II	CORROSIVE		154	212	240	15 kg	50 kg	A				
Lead trinitroresorcinate, *see* Lead styphnate, *etc.*																
Life-saving appliances, not self inflating *containing dangerous goods as equipment*		9	UN3072		None		None	219	None	No limit	No limit	A				
Life-saving appliances, self inflating		9	UN2990		None		None	219	None	No limit	No limit	A				
Lighter replacement cartridges containing liquefied petroleum gases (and similar devices, each not exceeding 65 grams), see Lighters for cigars, cigarettes, *etc. with flammable gas*																
D Lighters for cigars, cigarettes, *etc., with lighter fluids*		3	NA1226	II	FLAMMABLE LIQUID	N10	None	21	None	Forbidden	Forbidden	B				
Lighters, fuse		1.4S	UN0131	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A				
Lighters *or* Lighter refills *cigarettes containing flammable gas*		2.1	UN1057		FLAMMABLE GAS	N10	None	21, 306	None	1 kg	15 kg	B	40			
Lime, unslaked, see Calcium oxide																
Liquefied gas, flammable, n.o.s.		2.1	UN3161		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	D	40			
Liquefied gas, n.o.s.		2.2	UN3163		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A				
Liquefied gas, oxidizing, n.o.s.		2.2	UN3157		NONFLAMMABLE GAS, OXIDIZER		306	304	314, 315	75 kg	150 kg	D				
Liquefied gas, toxic, flammable, n.o.s. *Inhalation Hazard Zone A*		2.3	UN3160		POISON GAS, FLAMMABLE GAS	1	None	192	245	Forbidden	Forbidden	D	40			
Liquefied gas, toxic, flammable, n.o.s. *Inhalation Hazard Zone B*		2.3	UN3160		POISON GAS, FLAMMABLE GAS	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40			
Liquefied gas, toxic, flammable, n.o.s. *Inhalation Hazard Zone C*		2.3	UN3160		POISON GAS, FLAMMABLE GAS	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40			
Liquefied gas, toxic, flammable, n.o.s. *Inhalation Hazard Zone D*		2.3	UN3160		POISON GAS, FLAMMABLE GAS	4	None	304	314, 315	Forbidden	Forbidden	D	40			
Liquefied gas, toxic, n.o.s. *Inhalation Hazard Zone A*		2.3	UN3162		POISON GAS	1	None	192	245	Forbidden	Forbidden	D	40			
Liquefied gas, toxic, n.o.s. *Inhalation Hazard Zone B*		2.3	UN3162		POISON GAS	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40			
Liquefied gas, toxic, n.o.s. *Inhalation Hazard Zone C*		2.3	UN3162		POISON GAS	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40			
Liquefied gas, toxic, n.o.s. *Inhalation Hazard Zone D*		2.3	UN3162		POISON GAS	4	None	304	314, 315	Forbidden	Forbidden	D	40			
Liquefied gases, *non-flammable charged with nitrogen, carbon dioxide or air*		2.2	UN1058		NONFLAMMABLE GAS		306	304	None	75 kg	150 kg	A				
Liquefied hydrocarbon gas, see Hydrocarbon gases, liquefied, n.o.s., *etc.*																
Liquefied natural gas, see Methane, *etc. (UN 1972)*																
Liquefied petroleum gas *see* Petroleum gases, liquefied																

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Lithium	4.3	UN1415	I	DANGEROUS WHEN WET.	A7, A19, N45	None	211	244	Forbidden	15 kg	E	
	Lithium acetylide ethylenediamine complex, see Substances which in contact with water emit flammable gases												
	Lithium alkyls	4.2	UN2445	I	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	B11, T28, T40	None	181	244	Forbidden	Forbidden	D	
	Lithium aluminum hydride	4.3	UN1410	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium aluminum hydride, ethereal	4.3	UN1411	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.	A2, A3, A11, N34	None	201	244	Forbidden	1 L	D	40
	Lithium batteries, contained in equipment	9	UN3091	II	CLASS 9	18, 29, A12	185(i)	185	None	Forbidden	See A12	A	
	Lithium battery, liquid cathode	9	UN3090	II	CLASS 9	29	185(i)	185	None	Forbidden	35 kg gross	A	
	Lithium battery, solid cathode	9	UN3090	II	CLASS 9	29	185(i)	185	None	Forbidden	35 kg gross	A	
	Lithium borohydride	4.3	UN1413	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium ferrosilicon	4.3	UN2830	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E	40, 85, 103
	Lithium hydride	4.3	UN1414	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium hydride, fused solid	4.3	UN2805	II	DANGEROUS WHEN WET.	A8, A19, A20	None	212	241	15 kg	50 kg	E	
	Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid	8	UN2680	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Lithium hydroxide, solution	8	UN2679	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T8	154	203	241	5 L	60 L	A	96
	Lithium hypochlorite, dry *or* Lithium hypochlorite mixtures, dry	5.1	UN1471	II	OXIDIZER	A9, N34	152	212	240	5 kg	25 kg	A	48, 56, 58, 69, 106, 116
	Lithium in cartridges, see Lithium												
	Lithium nitrate	5.1	UN2722	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Lithium nitride	4.3	UN2806	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium peroxide	5.1	UN1472	II	OXIDIZER	A9, N34	152	212	None	5 kg	25 kg	A	13, 75, 106
	Lithium silicon	4.3	UN1417	II	DANGEROUS WHEN WET.	A19, A20	None	212	241	15 kg	50 kg	A	85, 103
	LNG, see Methane *etc. (UN 1972)*												
	London purple	6.1	UN1621	II	POISON		None	212	242	25 kg	100 kg	A	
	LPG, see Petroleum gases, liquefied												
	Lye, see Sodium hydroxide, solutions												
	Magnesium alkyls	4.2	UN3053	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	18
	Magnesium aluminum phosphide	4.3	UN1419	I	DANGEROUS WHEN WET, POISON.	A19, N34, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Magnesium arsenate	6.1	UN1622	II	POISON		None	212	242	25 kg	100 kg	A	
	Magnesium bisulfite solution, *see* Bisulfites, inorganic aqueous solutions, n.o.s.												
	Magnesium bromate	5.1	UN1473	II	OXIDIZER	A1	152	212	242	5 kg	25 kg	A	56, 58, 106
	Magnesium chlorate	5.1	UN2723	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Magnesium diamide	4.2	UN2004	II	SPONTANEOUSLY COMBUSTIBLE.	A8, A19, A20	None	212	241	15 kg	50 kg	C	
	Magnesium diphenyl	4.2	UN2005	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	244	Forbidden	Forbidden	C	
	Magnesium dross, wet or hot	Forbidden											
	Magnesium fluorosilicate	6.1	UN2853	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Magnesium granules, coated *particle size not less than 149 microns*	4.3	UN2950	III	DANGEROUS WHEN WET.	A1, A19	None	213	240	25 kg	100 kg	A	
	Magnesium hydride	4.3	UN2010	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Magnesium *or* Magnesium alloys *with more than 50 percent magnesium in pellets, turnings or ribbons*	4.1	UN1869	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	39
	Magnesium nitrate	5.1	UN1474	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Magnesium perchlorate	5.1	UN1475	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106

	Magnesium peroxide	5.1	UN1476	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106
	Magnesium phosphide	4.3	UN2011	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Magnesium, powder *or* Magnesium alloys, powder	4.3	UN1418	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	211	244	Forbidden	15 kg	A	39
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	212	241	15 kg	50 kg	A	39
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	213	241	25 kg	100 kg	A	39
	Magnesium scrap, see Magnesium, *etc. (UN 1869)*												
	Magnesium silicide	4.3	UN2624	II	DANGEROUS WHEN WET.	A19, A20	None	212	241	15 kg	50 kg	B	85, 103
	Magnetized material, see section 173.21												
D	Maleic acid	8	NA2215	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Maleic anhydride	8	UN2215	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Malononitrile	6.1	UN2647	II	POISON		None	212	242	25 kg	100 kg	A	12
	Maneb *or* Maneb preparations *with not less than 60 percent maneb*	4.2	UN2210	III	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	A	34
	Maneb stabilized *or* Maneb preparations, stabilized *against self-heating*	4.3	UN2968	III	DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	B	34
	Manganese nitrate	5.1	UN2724	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Manganese resinate	4.1	UN1330	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Mannitan tetranitrate	Forbidden											
	Mannitol hexanitrate (dry)	Forbidden											
D	Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, by mass or mixture of alcohol and water*	1.1A	NA0133	II	EXPLOSIVE 1.1A	111	None	62	None	Forbidden	Forbidden	E	1E, 5E
	Marine pollutants, liquid or solid, n.o.s., see Environmentally hazardous substances, liquid *or* solid, n.o.s.												
	Matches, block, see Matches, 'strike anywhere'												
	Matches, fusee	4.1	UN2254	III	FLAMMABLE SOLID		186	186	None	Forbidden	Forbidden	A	
	Matches, safety *(book, card or strike on box)*	4.1	UN1944	III	FLAMMABLE SOLID		186	186	None	25 kg	100 kg	A	
	Matches, strike anywhere	4.1	UN1331	III	FLAMMABLE SOLID		186	186	None	Forbidden	Forbidden	B	
	Matches, wax, Vesta	4.1	UN1945	III	FLAMMABLE SOLID		186	186	None	25 kg	100 kg	B	
	Matting acid, see Sulfuric acid												
	Medicine, liquid, flammable, toxic, n.o.s.	3	UN3248	II	FLAMMABLE LIQUID, POISON.	36	None	202	None	1 L	5 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	36	150	203	None	5 L	5 L	A	
	Medicine, liquid, toxic, n.o.s.	6.1	UN1851	II	POISON		None	202	243	5 L	5 L	C	40
				III	KEEP AWAY FROM FOOD.		153	203	241	5 L	5 L	C	40
	Medicine, solid, toxic, n.o.s.	6.1	UN3249	II	POISON	36	None	212	None	5 kg	5 kg	C	40
				III	KEEP AWAY FROM FOOD.	36	153	213	None	5 kg	5 kg	C	40
D	Medicines, *corrosive, liquid*, n.o.s.	8	NA1760	II	CORROSIVE	B3	154	202	242	1 L	30 L	B	40
				III	CORROSIVE		154	203	241	5 L	60 L	A	40
D	Medicines, *corrosive, solid*, n.o.s.	8	NA1759	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
D	Medicines, *flammable, liquid*, n.o.s.	3	NA1993	I	FLAMMABLE LIQUID		150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	A	
D	Medicines, *flammable, solid*, n.o.s.	4.1	NA1325	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	B	
D	Medicines, *oxidizing substance, solid*, n.o.s.	5.1	NA1479	II	OXIDIZER		152	212	242	5 kg	25 kg	B	56, 58, 69, 106
	Memtetrahydrophthalic anhydride, see Corrosive liquids, n.o.s.												
	Mercaptans, liquid, flammable, toxic, n.o.s. *or* Mercaptan mixtures, liquid, flammable, toxic, n.o.s.	3	UN1228	II	FLAMMABLE LIQUID, POISON.	T13	None	202	243	Forbidden	60 L	B	40, 95
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8	150	203	242	5 L	220 L	A	40, 95
	Mercaptans, liquid, toxic, flammable, n.o.s. *or* Mercaptan mixtures, liquid, toxic, flammable, n.o.s., *flash point not less than 23 degrees C*	6.1	UN3071	II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	C	40, 121
	5-Mercaptotetrazol-1-acetic acid	1.4C	UN0448	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	1E, 5E, 24E
	Mercuric arsenate	6.1	UN1623	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercuric chloride	6.1	UN1624	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercuric compounds, see Mercury compounds, *etc.*												
	Mercuric nitrate	6.1	UN1625	II	POISON	N73	None	212	242	25 kg	100 kg	A	
+	Mercuric potassium cyanide	6.1	UN1626	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	26

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Mercuric sulfocyanate, see Mercury thiocyanate												
	Mercurol, see Mercury nucleate												
	Mercurous azide	Forbidden											
	Mercurous compounds, see Mercury compounds, *etc.*												
	Mercurous nitrate	6.1	UN1627	II	POISON		None	212	242	25 kg	100 kg	A	
A, W	Mercury	8	UN2809	III	CORROSIVE		164	164	240	35 kg	35 kg	B	40, 97
	Mercury acetate	6.1	UN1629	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury acetylide	Forbidden											
	Mercury ammonium chloride	6.1	UN1630	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2778	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Mercury based pesticides, liquid, toxic	6.1	UN3012	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Mercury based pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3011	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Mercury based pesticides, solid, toxic	6.1	UN2777	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Mercury benzoate	6.1	UN1631	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury bromides	6.1	UN1634	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury compounds, liquid, n.o.s.	6.1	UN2024	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	B	40
	Mercury compounds, solid, n.o.s.	6.1	UN2025	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
A	Mercury *contained in manufactured articles*	8	UN2809	I	CORROSIVE		None	164	None	No limit	No limit	B	40, 97
	Mercury cyanide	6.1	UN1636	II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	26
	Mercury fulminate, wetted *with not less than 20 percent water, or mixture of alcohol and water, by mass*	1.1A	UN0135	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Mercury gluconate	6.1	UN1637	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury iodide	6.1	UN1638	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury iodide aquabasic ammonobasic (Iodide of Millon's base)	Forbidden											
	Mercury iodide, *solution*	6.1	UN1638	II	POISON		None	202	243	5 L	60 L	A	
	Mercury nitride	Forbidden											
	Mercury nucleate	6.1	UN1639	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oleate	6.1	UN1640	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oxide	6.1	UN1641	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oxycyanide	Forbidden											
	Mercury oxycyanide, desensitized	6.1	UN1642	II	POISON		None	212	242	25 kg	100 kg	A	26, 91
	Mercury potassium iodide	6.1	UN1643	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury salicylate	6.1	UN1644	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury sulfates	6.1	UN1645	II	POISON		None	212	242	25 kg	100 kg	A	
+	Mercury thiocyanate	6.1	UN1646	II	POISON		None	212	242	25 kg	100 kg	A	
	Mesityl oxide	3	UN1229	III	FLAMMABLE LIQUID	B1, T1	None	203	242	60 L	220 L	A	

	Metal alkyl halidas. n.o.s. *or* Metal aryl halides, n.o.s.	4.2	UN3049	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Metal alkyl hydrides, n.o.s. *or* Metal aryl hydrides, n.o.s.	4.2	UN3050	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
D	Metal alkyl, solution, n.o.s.	3	NA9195	II	FLAMMABLE LIQUID		150	202	242	1 L	4 L	B	
	Metal alkyls, n.o.s. *or* Metal aryls, n.o.s.	4.2	UN2003	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D	
	Metal carbonyls, n.o.s.	6.1	UN3281	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40
	Metal catalyst, dry	4.2	UN2881	I	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	Forbidden	Forbidden	C	
				II	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	Forbidden	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	25 kg	100 kg	C	
	Metal catalyst, wetted *with a visible excess of liquid*	4.2	UN1378	II	SPONTANEOUSLY COMBUSTIBLE.	A2, A8, N34	None	212	None	Forbidden	50 kg	C	
	Metal hydrides, flammable, n.o.s.	4.1	UN3182	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	E	
				III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	E	
	Metal hydrides, water reactive, n.o.s.	4.3	UN1409	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D	
				II	DANGEROUS WHEN WET.	A19, N34, N40	None	212	242	15 kg	50 kg	D	
	Metal powder, self-heating, n.o.s.	4.2	UN3189	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	C	
	Metal powders, flammable, n.o.s.	4.1	UN3089	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	B	
				III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	B	
	Metal salts of methyl nitramine (dry)	Forbidden											
	Metal salts of organic compounds, flammable, n.o.s.	4.1	UN3181	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	B	40
				III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	B	40
	Metaldehyde	4.1	UN1332	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Metallic substance, water-reactiva, n.o.s.	4.3	UN3208	I	DANGEROUS WHEN WET.		None	211	242	Forbidden	15 kg	E	40
				II	DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	E	40
				III	DANGEROUS WHEN WET.		None	213	241	25 kg	100 kg	E	40
	Metallic substance, water-reactive, self-heating, n.o.s.	4.3	UN3209	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	15 kg	E	40
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	E	40
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	213	242	25 kg	100 kg	E	40
	Methacrylaldehyda	3	UN2396	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Methacrylic acid, inhibited	8	UN2531	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
+	Methacrylonitrile, inhibited	3	UN3079	I	FLAMMABLE LIQUID, POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	30 L	D	12, 40, 48
	Methallyl alcohol	3	UN2614	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methane and hydrogen, mixtures, see Hydrogen and methane, mixtures, etc.												
	Methane, compressed *or* Natural gas, compressed *(with high methane content)*	2.1	UN1971		FLAMMABLE GAS		306	302	302	Forbidden	150 kg	E	40
	Methane, refrigerated liquid *(cryogenic liquid)* *or* Natural gas, refrigerated liquid *(cryogenic liquid, with high methane content)*	2.1	UN1972		FLAMMABLE GAS		None	None	318	Forbidden	Forbidden	D	40
	Methanesulphonyl chloride	6.1	UN3246	I	POISON, CORROSIVE	T24, T26	None	201	243	0.5 L	2.5 L	D	40
I	Methanol, *or* Methyl alcohol	3	UN1230	II	FLAMMABLE LIQUID, POISON.	T8	150	202	242	1 L	60 L	B	40
D	Methanol, *or* Methyl alcohol	3	UN1230	II	FLAMMABLE LIQUID	T8	150	202	242	1 L	60 L	B	40
	Methazoic acid	Forbidden											
	4-Methoxy-4-methylpentan-2-one	3	UN2293	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1-Methoxy-2-propanol	3	UN3092	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
+	Methoxymethyl isocyanate	3	UN2605	I	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Methyl acetate	3	UN1231	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazerdous meterials descriptions end proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packeging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Methyl acetylene and propadiene mixtures, stabilized	2.1	UN1060		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Methyl acrylete, inhibited	3	UN1919	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyl alcohol, *see* Methenol												
	Methyl allyl chloride	3	UN2554	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Methyl amyl ketone, see Amyl methyl ketone												
	Methyl benzoate	6.1	UN2938	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Methyl bromide	2.3	UN1062		POISON GAS	3, B14	None	193	314, 315	Forbidden	25 kg	D	40
	Methyl bromide and chloropicrin mixtures with more than 2 percent chloropicrin, see Chloropicrin and methyl bromide mixtures												
	Methyl bromide and chloropicrin mixtures with not more than 2 percent chloropicrin, see Methyl bromide												
	Methyl bromide and ethylene dibromide mixtures, liquid	6.1	UN1647	I	POISON	2, B9, B14, B32, B74, N65, T38, T43, T45.	None	227	244	Forbidden	30 L	C	40
	Methyl bromoacetate	6.1	UN2643	II	POISON	T8	None	202	243	5 L	60 L	D	40
	2-Methyl-1-butene	3	UN2459	I	FLAMMABLE LIQUID	T14	None	201	243	1 L	30 L	E	
	2-Methyl-2-butene	3	UN2460	II	FLAMMABLE LIQUID	T14	None	202	242	5 L	60 L	E	
	3-Methyl-1-butene	3	UN2561	I	FLAMMABLE LIQUID	T20	None	201	243	1 L	30 L	E	
	Methyl tert-butyl ether	3	UN2398	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	
	Methyl butyrate	3	UN1237	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl chloride	2.1	UN1063		FLAMMABLE GAS		306	304	314, 315	5 kg	100 kg	D	40
	Methyl chloride and chloropicrin mixtures, see Chloropicrin and methyl chloride mixtures												
	Methyl chloride and methylene chloride mixtures	2.1	UN1912		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	D	40
	Methyl chloroacetate	6.1	UN2295	II	POISON	T11	None	202	243	5 L	60 L	C	
	Methyl chlorocarbonate, see Methyl chloroformate												
	Methyl chloroform, see 1,1,1-Trichloroethane												
	Methyl chloroformate	6.1	UN1238	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, A3, A6, A7, B9, B14, B30, B72, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	21, 40, 100
	Methyl-2-chloropropionete	3	UN2933	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Methyl cyclohexane	3	UN2296	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Methyl cyclohexenone	3	UN2297	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methyl cyclopentane	3	UN2298	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyl dichloroacetate	6.1	UN2299	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Methyl ethyl ether, see Ethyl methyl ether												
	Methyl ethyl ketone, *see* Ethyl methyl ketone												
	Methyl ethyl ketone peroxide, in solution with more than 9 percent by mass active oxygen	Forbidden											
	2-Methyl-5-ethylpyridine	6.1	UN2300	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Methyl fluoride	2.1	UN2454		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Methyl formate	3	UN1243	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Methyl iodide	6.1	UN2644	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	12, 40
	Methyl Isobutyl carbinol	3	UN2053	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methyl Isobutyl ketone	3	UN1245	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl isobutyl ketone peroxide, in solution with more than 9 percent by mass active oxygen	Forbidden											
	Methyl isocyanete	6.1	UN2480	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	26, 40
	Methyl Isopropenyl ketone, Inhibited	3	UN1246	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	

+	Methyl isothiocyanate	3	UN2477	II	FLAMMABLE LIQUID, POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	A	
	Methyl isovalerate	3	UN2400	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl magnesium bromide, in ethyl ether	4.3	UN1928	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.	,	None	201	243	Forbidden	1 L	D	
	Methyl mercaptan	2.3	UN1064		POISON GAS, FLAMMABLE GAS.	3, 25, B7, B9, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Methyl mercaptopropionaldehyde, see Thia-4-pentanal												
	Methyl methacrylate monomer, inhibited	3	UN1247	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Methyl nitramine (dry)	Forbidden											
	Methyl nitrate	Forbidden											
	Methyl nitrite	Forbidden											
	Methyl norbomene dicarboxylic anhydride, see Corrosive liquids, n.o.s.												
	Methyl orthosilicate	6.1	UN2606	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	30 L	E	40
D	Methyl parathion *liquid*	6.1	NA3018	II	POISON	N76, T14	None	202	243	Forbidden	1 L	A	40
D	Methyl parathion *solid*	6.1	NA2783	II	POISON	N77	None	212	242	25 kg	100 kg	A	40
D	Methyl phosphonic dichloride	6.1	NA9206	I	POISON, CORROSIVE	2, A3, B9, B14, B32, B74, N34, N43, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	
	Methyl phosphonothioic dichloride, anhydrous, see Corrosive liquid, n.o.s.												
D	Methyl phosphonous dichloride, *pyrophoric liquid*	6.1	NA2845	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	2, B9, B14, B16, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	18
	Methyl picric acid (heavy metal salts of)	Forbidden											
	Methyl propionate	3	UN1248	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	Methyl propyl ether	3	UN2612	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	40
	Methyl propyl ketone	3	UN1249	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl sulfate, see Dimethyl sulfate												
	Methyl sulfide, see Dimethyl sulfide												
	Methyl trichloroacetate	6.1	UN2533	III	KEEP AWAY FROM FOOD.	45, T1	153	203	241	60 L	220 L	A	
	Methyl trimethylol methane trinitrate	Forbidden											
	Methyl vinyl ketone	3	UN1251	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methylal	3	UN1234	II	FLAMMABLE LIQUID	T14	None	202	242	5 L	60 L	E	
	Methylamine, anhydrous	2.1	UN1061		FLAMMABLE GAS	25	306	304	314, 315	Forbidden	150 kg	B	40
	Methylamine, aqueous solution	3	UN1235	II	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	202	243	1 L	5 L	E	41
	Methylamine dinitramine and dry salts thereof	Forbidden											
	Methylamine nitroform	Forbidden											
	Methylamine perchlorate (dry)	Forbidden											
	Methylamyl acetate	3	UN1233	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	N-Methylaniline	6.1	UN2294	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	alpha-Methylbenzyl alcohol	6.1	UN2937	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	3-Methylbutan-2-one	3	UN2397	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	N-Methylbutylamine	3	UN2945	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40
	Methylchloromethyl ether	6.1	UN1239	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Methylchlorosilane	2.3	UN2534		POISON GAS, FLAMMABLE GAS, CORROSIVE.	2, A2, A3, A7, B9, B14, N34.	None	226	314, 315	Forbidden	Forbidden	D	17, 40
	Methylcyclohexanols, *flammable*	3	UN2617	III	FLAMMABLE LIQUID	B1, T2	150	203	242	60 L	220 L	A	
D	Methyldichloroarsine	6.1	NA1556	I	POISON	2	None	192	None	Forbidden	Forbidden	D	40, 95
	Methyldichlorosilane	4.3	UN1242	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A2, A3, A7, B6, B77, N34, T16, T26.	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
	Methylene chloride, see Dichloromethane												
	Methylene glycol dinitrate	Forbidden											
	2-Methylfuran	3	UN2301	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	a-Methylglucoside tetranitrate	Forbidden											
	a-Methylglycerol trinitrate	Forbidden											
	5-Methylhexan-2-one	3	UN2302	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methylhydrazine	6.1	UN1244	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, B9, B14, B30, B72, B77, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	21, 40, 49, 100
	Methylmorpholine	3	UN2535	II	FLAMMABLE LIQUID, CORROSIVE.	B6, T8	None	202	243	1 L	5 L	B	40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (If not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Methylpentadienes	3	UN2461	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	2-Methylpentan-2-ol	3	UN2560	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methylpentanes, see Hexanes												
	Methylphenyldichlorosilane	8	UN2437	II	CORROSIVE	T8, T26	154	202	242	1 L	30 L	C	40
	1-Methylpiperidine	3	UN2399	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
	Methyltetrahydrofuren	3	UN2536	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Methyltrichlorosilane	3	UN1250	I	FLAMMABLE LIQUID, CORROSIVE.	A7, B6, B77, N34, T14, T26.	None	201	243	Forbidden	2.5 L	B	40
	alpha-Methylvaleraldehyde	3	UN2367	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Mine rescue equipment containing carbon dioxide, see Cerbon dioxide												
	Mines *with bursting charge*	1.1F	UN0136	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Mines *with bursting charge*	1.1D	UN0137	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	3E, 7E
	Mines *with bursting charge*	1.2D	UN0138	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E
	Mines *with bursting charge*	1.2F	UN0294	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Mines *with bursting charge*												
	Mixed acid, see Nitrating acid, mixtures *etc.*												
	Mobility aids, see Wheel chair, electric												
D	Model rocket motor	1.4C	NA0278	II	EXPLOSIVE 1.4C	51	None	62	None	Forbidden	75 kg	A	24E
D	Model rocket motor	1.4S	NA0323	II	EXPLOSIVE 1.4S	51	None	62	None	25 kg	100 kg	A	9E
	Molybdenum pentachloride	8	UN2508	III	CORROSIVE	T8, T26	154	213	240	25 kg	100 kg	C	40
	Monochloroacetone (unstabilized)	Forbidden											
	Monochloroethylene, see Vinyl chloride, inhibited												
	Monoethanolamine, see Ethanolamine, solutions												
	Monoethylamine, see Ethylamine												
	Morpholine	3	UN2054	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Morpholine, aqueous, mixture, see Corrosive liquids, n.o.s.												
	Motor fuel anti-knock compounds *see* Motor fuel anti-knock mixtures												
+	Motor fuel anti-knock mixtures	6.1	UN1649	I	POISON, FLAMMABLE LIQUID.	14, B9, B12, B90, T26, T39.	None	201	244	Forbidden	30 L	D	25, 40
	Motor spirit, *see* Gasoline												
	Motor vehicle, see Vehicles, self-propelled												
	Motorcycles, see Vehicles, self-propelled												
	Muriatic acid, see Hydrochloric acid solution												
	Musk xylene, *see* 5-tert-Butyl2,4,6-trinitro-m-xylene												
	Naphthalene, crude *or* Naphthalene, refined	4.1	UN1334	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Naphthalene diozonide	Forbidden											
	Naphthalene, molten	4.1	UN2304	III	FLAMMABLE SOLID	A1, T8	151	213	241	Forbidden	Forbidden	C	
	Naphthyl amineperchlorate	Forbidden											
	beta-Naphthylamine	6.1	UN1650	II	POISON	T12, T26	None	212	242	25 kg	100 kg	A	
	alpha-Naphthylamine	6.1	UN2077	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Naphthylthiourea	6.1	UN1651	II	POISON		None	212	242	25 kg	100 kg	A	
	Naphthylurea	6.1	UN1652	II	POISON		None	212	242	25 kg	100 kg	A	
	Natural gases (with high methane content), see Methane, *etc. (UN t97t. UN t972)*												
	Neohexane, see Hexanes												
	Neon, compressed	2.2	UN1065		NONFLAMMABLE GAS		306	302	302	75 kg	150 kg	A	
	Neon, refrigerated liquid *(cryogenic liquid)*	2.2	UN1913		NONFLAMMABLE GAS		320	316	None	50 kg	500 kg	B	
	New explosive or explosive device, see sections t73.51 and t73.56												
	Nickel carbonyl	6.1	UN1259	I	POISON, FLAMMABLE LIQUID.	1	None	198	None	Forbidden	Forbidden	D	18, 40
	Nickel cyanide	6.1	UN1653	II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	28
	Nickel nitrate	5.1	UN2725	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Nickel nitrite	5.1	UN2726	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	56, 58
	Nickel picrate	Forbidden											
	Nicotine	6.1	UN1654	II	POISON		None	202	243	5 L	60 L	A	
	Nicotine compounds, liquid, n.o.s. *or* Nicotine preparations, liquid, n.o.s.	6.1	UN3144	I	POISON	A4, T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	B	40
	Nicotine compounds, solid, n.o.s. *or* Nicotine preparations, solid, n.o.s.	6.1	UN1655	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON		None	212	242	25 kg	100 kg	A	

			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Nicotine hydrochloride *or* Nicotine hydrochloride solution	6.1	UN1656	II	POISON		None	202	243	5 L	60 L	A		
Nicotine salicylate	6.1	UN1657	II	POISON		None	212	242	25 kg	100 kg	A		
Nicotine sulfate, *solid*	6.1	UN1658	II	POISON		None	212	242	25 kg	100 kg	A		
Nicotine sulfate, *solution*	6.1	UN1658	II	POISON	T14	None	202	243	5 L	60 L	A		
Nicotine tartrate	6.1	UN1659	II	POISON		None	212	242	25 kg	100 kg	A		
Nitrated paper (unstable)	Forbidden												
Nitrates, inorganic, aqueous solution, n.o.s.	5.1	UN3218	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	46	
			III	OXIDIZER	T8	152	203	241	2.5 L	30 L	B	46	
						152	212	240	5 kg	25 kg	A	46	
Nitrates, inorganic, n.o.s.	5.1	UN1477	II	OXIDIZER		152	212	240	5 kg	25 kg	A	46	
			III	OXIDIZER		152	213	240	25 kg	100 kg	A	46	
Nitrates of diazonium compounds	Forbidden												
Nitrating acid mixtures, spent *with more than 50 percent nitric acid*	8	UN1826	I	CORROSIVE, OXIDIZER	B47, T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66	
Nitrating acid mixtures spent *with not more than 50 percent nitric acid*	8	UN1826	II	CORROSIVE	B2, B47, T12, T27	None	158	242	Forbidden	30 L	D	40	
Nitrating acid mixtures *with more than 50 percent nitric acid*	8	UN1796	I	CORROSIVE, OXIDIZER	B47, T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66	
Nitrating acid mixtures *with not more than 50 percent nitric acid*	8	UN1796	II	CORROSIVE	B2, B47, T12, T27	None	158	242	Forbidden	30 L	D	40	
Nitric acid *other than red fuming, with more than 70 percent nitric acid*	8	UN2031	I	CORROSIVE	B12, B53, T9, T27	None	158	243	Forbidden	2.5 L	D	44, 66, 89, 90, 110, 111	
Nitric acid *other than red fuming, with not more than 70 percent nitric acid*	8	UN2031	II	CORROSIVE	B2, B12, B53, T9, T27.	None	158	242	Forbidden	30 L	D	44, 66, 89, 90, 110, 111	
Nitric acid, red fuming	8	UN2032	I	CORROSIVE, OXIDIZER, POISON.	2, B9, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 66, 74, 89, 90	
Nitric oxide	2.3	UN1660		POISON GAS, OXIDIZER, CORROSIVE.	1, 25, B12, B37, B46, B50, B60, B77.	None	337	None	Forbidden	Forbidden	D	40, 89, 90	
Nitric oxide and dinitrogen tetroxide mixtures *or* Nitric oxide and nitrogen dioxide mixtures	2.3	UN1975		POISON GAS, OXIDIZER, CORROSIVE.	1, 25, B7, B9, B12, B14, B45, B46, B61, B66, B67, B77.	None	337	None	Forbidden	Forbidden	D	40, 89, 90	
Nitriles, flammable, toxic, n.o.s.	3	UN3273	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E	40, 52	
			II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	B	40, 52	
Nitriles, toxic, flammable, n.o.s.	6.1	UN3275	I	POISON, FLAMMABLE LIQUID.		None	201	243	1 L	30 L	B	40	
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
Nitriles, toxic, n.o.s.	6.1	UN3276	I	POISON		None	201	243	1 L	30 L	B		
			II	POISON	T14	None	202	243	5 L	60 L	B		
			III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
Nitrites, inorganic, aqueous solution, n.o.s.	5.1	UN3219	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	46, 56, 58	
			III	OXIDIZER	T8	152	203	241	2.5 L	30 L	B	46, 56, 58	
Nitrites, inorganic, n.o.s.	5.1	UN2627	II	OXIDIZER	33	152	212	None	5 kg	25 kg	A	46, 56, 58	
3-Nitro-4-chlorobenzotrifluoride	6.1	UN2307	II	POISON	T8	None	202	243	5 L	60 L	A	40	
6-Nitro-4-diazotoluene-3-sulfonic acid (dry)	Forbidden												
Nitro isobutane triol trinitrate	Forbidden												
N-Nitro-N-methylglycolamide nitrate	Forbidden												
2-Nitro-2-methylpropanol nitrate	Forbidden												
Nitro urea	1.1D	UN0147	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
N-Nitroaniline	Forbidden												
Nitroanilines *(o-; m-; p-)*	6.1	UN1661	II	POISON	T14	None	212	242	25 kg	100 kg	A		
Nitroanisole	6.1	UN2730	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A		
Nitrobenzene	6.1	UN1662	II	POISON	T14	None	202	243	5 L	60 L	A	40	
m-Nitrobenzene diazonium perchlorate	Forbidden												
Nitrobenzenesulfonic acid	8	UN2305	II	CORROSIVE		154	202	242	1 L	30 L	A		
Nitrobenzol, see Nitrobenzene													
5-Nitrobenzotriazol	1.1D	UN0385	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E	
Nitrobenzotrifluorides	6.1	UN2306	II	POISON	T8	None	202	243	5 L	60 L	A	40	
Nitrobromobenzenes *liquid*	6.1	UN2732	III	KEEP AWAY FROM FOOD.	T8, T38	153	203	241	60 L	220 L	A		
Nitrobromobenzenes *solid*	6.1	UN2732	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Nitrocellulose, *dry or wetted with less than 25 percent water (or alcohol), by mass*	1.1D	UN0340	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	4E, 27E	
Nitrocellulose membrane filters	4.1	UN3270	II	FLAMMABLE SOLID	43, A1	151	212	240	1 kg	15 kg	D		
Nitrocellulose, plasticized *with not less than 18 percent plasticizing substance, by mass*	1.3C	UN0343	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Nitrocellulose, solution, flammable *with not more than 12.6 percent nitrogen, by mass, and not more than 55 percent nitrocellulose*	3	UN2059	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B		
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A		
Nitrocellulose, *unmodified or plasticized with less than 18 percent plasticizing substance, by mass*	1.1D	UN0341	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	4E, 27E	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Nitrocellulose, wetted *with not less than 25 percent alcohol, by mass*	1.3C	UN0342	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass*	4.1	UN2556	II	FLAMMABLE SOLID		151	212	None	1 kg	15 kg	D	28
	Nitrocellulose with plasticizer *or* Nitrocellulose without plasticizer *or* Nitrocellulose with pigment *or* Nitrocellulose without pigmnet *with not more than 12.6 percent nitrogen, by dry mass*	4.1	UN2557	II	FLAMMABLE SOLID	44	151	212	None	1 kg	15 kg	D	28
	Nitrocellulose with water *with not less than 25 percent water, by mass*	4.1	UN2555	II	FLAMMABLE SOLID		151	212	None	15 kg	50 kg	E	28
	Nitrochlorobenzene, see Chloronitrobenzenes *etc.*												
	Nitrocresols	6.1	UN2446	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Nitroethane	3	UN2842	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Nitroethyl nitrate	Forbidden											
	Nitroethylene polymer	Forbidden											
	Nitrogen, compressed	2.2	UN1066		NONFLAMMABLE GAS		306	302	314, 315	75 kg	150 kg	A	
	Nitrogen dioxide, liquefied *see* Dinitrogen tetroxide, liquefied												
	Nitrogen fertilizer solution, see Fertilizer ammoniating solution *etc.*												
	Nitrogen, mixtures with rare gases, see Rare gases and nitrogen mixtures												
	Nitrogen peroxide, see Dinitrogen tetroxide, liquefied												
	Nitrogen, refrigerated liquid *cryogenic liquid*	2.2	UN1977		NONFLAMMABLE GAS		320	316	318	50 kg	500 kg	D	
	Nitrogen tetroxide and nitric oxide mixtures, see Nitric oxide and nitrogen tetroxide mixtures												
	Nitrogen tetroxide, see Dinitrogen tetroxide, liquefied												
	Nitrogen trichloride	Forbidden											
D	Nitrogen trifluoride	2.2	UN2451		NONFLAMMABLE GAS, OXIDIZER.		None	302	None	Forbidden	25 kg	D	40
I	Nitrogen trifluoride	2.3	UN2451		POISON GAS, OXIDIZER.		None	302	None	Forbidden	25 kg	D	40
	Nitrogen triiodide	Forbidden											
	Nitrogen triiodide monoamine	Forbidden											
	Nitrogen trioxide	2.3	UN2421		POISON GAS, OXIDIZER, CORROSIVE.	1	None	336	245	Forbidden	Forbidden	D	40, 89, 90
	Nitroglycerin, desensitized *with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass*	1.1D	UN0143	II	EXPLOSIVE 1.1D, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Nitroglycerin, liquid, not desensitized	Forbidden											
	Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 5 percent nitroglycerin*	3	UN3064	II	FLAMMABLE LIQUID	N8	None	202	None	Forbidden	5 L	E	
	Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 10 percent nitroglycerin*	1.1D	UN0144	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 21E
	Nitroglycerin solution in alcohol *with not more than 1 percent nitroglycerin*	3	UN1204	II	FLAMMABLE LIQUID	N34, T25	None	202	None	5 L	60 L	B	
	Nitroguanidine nitrate	Forbidden											
	Nitroguanidine *or* Picrite, *dry or wetted with less than 20 percent water, by mass*	1.1D	UN0282	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Nitroguanidine, wetted *or* Picrite, wetted *with not less than 20 percent water, by mass*	4.1	UN1336	I	FLAMMABLE SOLID	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28
	Nitrohydantoin	Forbidden											
	Nitrohydrochloric acid	8	UN1798	I	CORROSIVE	A3, B10, N41, T18, T27.	None	201	243	Forbidden	2.5 L	D	40, 66, 74, 89, 90
	Nitromannite (dry)	Forbidden											
	Nitromannite, wetted, *see* Mannitol hexanitrate, *etc.*												
	Nitromethane	3	UN1261	II	FLAMMABLE LIQUID	T25	150	202	None	Forbidden	60 L	A	
	Nitromuriatic acid, see Nitrohydrochloric acid												
	Nitronaphthalene	4.1	UN2538	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Nitrophenols (*o-, m-; p-*)	6.1	UN1663	III	KEEP AWAY FROM FOOD.	T8, T38	153	213	240	100 kg	200 kg	A	
	m-Nitrophenyldinitromethane	Forbidden											
	Nitropropanes	3	UN2608	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	p-Nitrosodimethylaniline	4.2	UN1369	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	D	34
D	Nitrosoguanidine	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Nitrostarch, *dry or wetted with less than 20 percent water, by mass*	1.1D	UN0146	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E

Nitrostarch, wetted *with not less than 20 percent water, by mass*	4.1	UN1337	I	FLAMMABLE SOLID	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	D	28
Nitrosugars (dry)	Forbidden											
Nitrosyl chloride	2.3	UN1069		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40
Nitrosylsulfuric acid	8	UN2308	II	CORROSIVE	A3, A6, A7, B2, N34, T9, T27.	154	202	242	1 L	30 L	D	40, 66, 74, 89, 90
Nitrotoluenes, *liquid o-; m-; p-*	6.1	UN1664	II	POISON	T14	None	202	243	5 L	60 L	A	
Nitrotoluenes, *solid m-, or p-*	6.1	UN1664	II	POISON	T14	None	212	242	25 kg	100 kg	A	
Nitrotoluidines (mono)	6.1	UN2660	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Nitrotriazolone *or* NTO	1.1D	UN0490	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
Nitrous oxide and carbon dioxide mixtures, see Carbon dioxide and nitrous oxide mixtures												
Nitrous oxide, compressed	2.2	UN1070		NONFLAMMABLE GAS, OXIDIZER.		306	304	314, 315	75 kg	150 kg	A	40
Nitrous oxide, refrigerated liquid	2.2	UN2201		NONFLAMMABLE GAS	B6	None	304	314, 315	75 kg	150 kg	B	40
Nitroxylenes, (o-; m-; p-)	6.1	UN1665	II	POISON	T14	None	202	243	5 L	60 L	A	
Nitroxylol, see Nitroxylenes												
Nonanes	3	UN1920	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Nonflammable gas, n.o.s., see Compressed *or* Liquefied gases, *etc. (UN 1955, UN 1956)*												
Nonliquefied gases, see Compressed gases, *etc.*												
Nonliquefied hydrocarbon gas, see Hydrocarbon gases, compressed, n.o.s.												
Nonyltrichlorosilane	8	UN1799	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
2,5 Norbornadiene *or* Dicycloheptadiene	3	UN2251	II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	D	
Nordhausen acid, see Sulfuric acid, fuming *etc.*												
Octadecyltrichlorosilane	8	UN1800	II	CORROSIVE	A7, B2, B6 N34, T8.	None	202	242	Forbidden	30 L	C	40
Octadiene	3	UN2309	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
1,7-Octadine-3,5-diyne-1,8-dimethoxy-9-octadecynoic acid	Forbidden											
Octafluorobut-2-ene	2.2	UN2422		NONFLAMMABLE GAS		None	304	314, 315	75 kg	150 kg	A	
Octafluorocyclobutane, *RC318*	2.2	UN1976		NONFLAMMABLE GAS		None	304	314, 315	75 kg	150 kg	A	
Octafluoropropane, *R218*	2.2	UN2424		NONFLAMMABLE GAS		None	304	314, 315	75 kg	150 kg	A	
Octanes	3	UN1262	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
Octogen, *see* Cyclotetramethylene tetranitramine, *etc.*												
Octolite *or* Octol, *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0266	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
Octonal	1.1D	UN0496		EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
Octyl aldehydes, *flammable*	3	UN1191	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
+ tert-Octylmercaptan	6.1	UN3023	II	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	B	40, 102
Octyltrichlorosilane	8	UN1801	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
Oil gas	2.3	UN1071		POISON GAS, FLAMMABLE GAS.	6	None	304	314, 315	Forbidden	150 kg	D	40
Oleum, see Sulfuric acid, fuming												
Organic peroxide type A, liquid or solid	Forbidden											
Organic peroxide type B, liquid	5.2	UN3101	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	152	225	None	Forbidden	Forbidden	D	12, 40
Organic peroxide type B, liquid, temperature controlled	5.2	UN3111	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type B, solid	5.2	UN3102	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	152	225	None	Forbidden	Forbidden	D	12, 40
Organic peroxide type B, solid, temperature controlled	5.2	UN3112	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type C, liquid	5.2	UN3103	II	ORGANIC PEROXIDE		152	225	None	5 L	10 L	D	12, 40
Organic peroxide type C, liquid, temperature controlled	5.2	UN3113	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type C, solid	5.2	UN3104	II	ORGANIC PEROXIDE		152	225	None	5 kg	10 kg	D	12, 40
Organic peroxide type C, solid, temperature controlled	5.2	UN3114	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type D, liquid	5.2	UN3105	II	ORGANIC PEROXIDE		152	225	None	5 L	10 L	D	12, 40
Organic peroxide type D, liquid, temperature controlled	5.2	UN3115	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type D, solid	5.2	UN3106	II	ORGANIC PEROXIDE		152	225	None	5 kg	10 kg	D	12, 40
Organic peroxide type D, solid, temperature controlled	5.2	UN3116	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type E, liquid	5.2	UN3107	II	ORGANIC PEROXIDE		152	225	None	10 L	25 L	D	12, 40
Organic peroxide type E, liquid, temperature controlled	5.2	UN3117	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type E, solid	5.2	UN3108	II	ORGANIC PEROXIDE		152	225	None	10 kg	25 kg	D	12, 40
Organic peroxide type E, solid, temperature controlled	5.2	UN3118	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40
Organic peroxide type F, liquid	5.2	UN3109	II	ORGANIC PEROXIDE		152	225	225	10 L	25 L	D	12, 40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Organic peroxide type F, liquid, temperature controlled	5.2	UN3119	II	ORGANIC PEROXIDE		225	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type F, solid	5.2	UN3110	II	ORGANIC PEROXIDE	T42	152	225	None	10 kg	25 kg	D	12, 40
	Organic peroxide type F, solid, temperature controlled	5.2	UN3120	II	ORGANIC PEROXIDE		225	225	None	Forbidden	Forbidden	D	2, 40
D	Organic phosphate, mixed with compressed gas *or* Organic phosphate compound, mixed with compressed gas *or* Organic phosphorus compound, mixed with compressed gas	2.3	NA1955		POISON GAS	3	None	334	None	Forbidden	Forbidden	D	40
	Organoarsenic compound, n.o.s.	6.1	UN3280	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Organochlorine pesticides liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2762	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Organochlorine pesticides, liquid, toxic	6.1	UN2996	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Organochlorine pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN2995	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Organochlorine pesticides, solid toxic	6.1	UN2761	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Organometallic compound *or* Compound solution *or* Compound dispersion, water-reactive, flammable, n.o.s.	4.3	UN3207	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	201	244	Forbidden	1 L	E	40
				II	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	202	243	1 L	5 L	E	40
				III	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	203	242	5 L	60 L	E	40
	Organometallic compound, toxic n.o.s.	6.1	UN3282	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Organophosphorus compound, toxic, flammable, n.o.s.	6.1	UN3279	I	POISON, FLAMMABLE LIQUID.		None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
	Organophosphorus compound, toxic n.o.s.	6.1	UN3278	I	POISON		None	201	243	1 L	30 L	B	
				II	POISON	T14	None	202	243	5 L	60 L	B	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Organophosphorus pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2784	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40

			III	FLAMMABLE LIQUID. KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A		
Organophosphorus pesticides, liquid, toxic	6.1	UN3018	I	POISON	N76, T42	None	201	243	1 L	30 L	B		40
			II	POISON	N76, T14	None	202	243	5 L	60 L	B		40
			III	KEEP AWAY FROM FOOD.	N76, T14	153	203	241	60 L	220 L	A		40
Organophosphorus pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3017	I	POISON, FLAMMABLE LIQUID.	N76, T42	None	201	243	1 L	30 L	B		40
			II	POISON, FLAMMABLE LIQUID.	N76, T14	None	202	243	5 L	60 L	B		40
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, N76, T14	153	203	242	60 L	220 L	A		40
Organophosphorus pesticides, solid, toxic	6.1	UN2783	I	POISON	N77	None	211	242	5 kg	50 kg	A		40
			II	POISON	N77	None	212	242	25 kg	100 kg	A		40
			III	KEEP AWAY FROM FOOD.	N77	153	213	240	100 kg	200 kg	A		40
Organotin compounds, liquid, n.o.s.	6.1	UN2788	I	POISON	A3, N33, N34, T42	None	201	243	1 L	30 L	B		40
			II	POISON	A3, N33, N34, T14	None	202	243	5 L	60 L	A		40
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A		40
Organotin compounds, solid, n.o.s.	6.1	UN3146	I	POISON	A5	None	211	242	5 kg	50 kg	B		40
			II	POISON		None	212	242	25 kg	100 kg	A		40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		40
Organotin pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2787	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B		40
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B		40
Organotin pesticides, liquid, toxic	6.1	UN3020	I	POISON	T42	None	201	243	1 L	30 L	B		40
			II	POISON	T14	None	202	243	5 L	60 L	B		40
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A		40
Organotin pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3019	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B		40
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B		40
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A		40
Organotin pesticides, solid, toxic	6.1	UN2786	I	POISON		None	211	242	5 kg	50 kg	A		40
			II	POISON		None	212	242	25 kg	100 kg	A		40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		40
Orthonitroaniline, see Nitroanilines *etc.*													
Osmium tetroxide	6.1	UN2471	I	POISON	A8, N33, N34	None	211	242	5 kg	50 kg	B		40
AD Other regulated substances, liquid, n.o.s.	9	NA3082	III	CLASS 9		155	203	241	No limit	No limit	A		
AD Other regulated substances, solid, n.o.s.	9	NA3077	III	CLASS 9	B54	155	213	240	No limit	No limit	A		
Oxidizing, liquid, corrosive, n.o.s.	5.1	UN3098	I	OXIDIZER, CORROSIVE		None	201	244	Forbidden	2.5 L	B		34, 56, 58, 69, 106
			II	OXIDIZER, CORROSIVE		None	202	243	1 L	5 L	D		34, 56, 58, 69, 106
			III	OXIDIZER, CORROSIVE		152	203	242	2.5 L	30 L	B		34, 56, 58, 69, 106
Oxidizing, liquid, n.o.s.	5.1	UN3139	II	OXIDIZER	A2	152	202	242	1 L	5 L	B		56, 58, 69, 106
			III	OXIDIZER	A2	152	203	241	2.5 L	30 L	B		56, 58, 69, 106
Oxidizing, liquid, toxic, n.o.s.	5.1	UN3099	I	OXIDIZER, POISON		None	201	244	Forbidden	2.5 L	D		56, 58, 95, 106
			II	OXIDIZER, POISON		None	202	243	1 L	5 L	B		56, 58, 95, 106
			III	OXIDIZER, KEEP AWAY FROM FOOD.		152	203	242	2.5 L	30 L	B		56, 58, 95, 106
Oxidizing, solid, corrosive, n.o.s.	5.1	UN3085	I	OXIDIZER, CORROSIVE		None	211	242	1 kg	15 kg	D		13, 34, 56, 58, 69, 106
			II	OXIDIZER, CORROSIVE		None	212	242	5 kg	25 kg	B		13, 34, 56, 58, 69, 106
			III	OXIDIZER, CORROSIVE		152	213	240	25 kg	100 kg	B		13, 34, 56, 58, 69, 106

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Oxidizing, solid, flammable, n.o.s.	5.1	UN3137	I	OXIDIZER, FLAMMABLE SOLID.		None	214	214	Forbidden	Forbidden		
	Oxidizing, solid, self heating, n.o.s.	5.1	UN3100		OXIDIZER, SPONTANEOUSLY COMBUSTIBLE.		None	214	214	Forbidden	Forbidden		
	Oxidizing solid, toxic, n.o.s.	5.1	UN3087	I	OXIDIZER, POISON		None	211	242	1 kg	15 kg	D	56, 58, 69, 95, 106
				II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	B	56, 58, 69, 95, 106
				III	OXIDIZER, KEEP AWAY FROM FOOD.		152	213	240	25 kg	100 kg	B	56, 58, 69, 95, 106
	Oxidizing, solid, water-reactive, n.o.s.	5.1	UN3121		OXIDIZER, DANGEROUS WHEN WET.		None	214	214	Forbidden	Forbidden		
	Oxidizing solid, n.o.s.	5.1	UN1479	I	OXIDIZER		152	211	242	1 kg	15 kg	D	56, 58, 69, 106
				II	OXIDIZER		152	212	240	5 kg	25 kg	B	56, 58, 69, 106
				III	OXIDIZER		152	213	240	25 kg	100 kg	B	56, 58, 69, 106
	Oxygen and carbon dioxide mixtures, see Carbon dioxide and oxygen mixtures												
	Oxygen, compressed	2.2	UN1072		NONFLAMMABLE GAS, OXIDIZER.		306	302	314, 315	75 kg	150 kg	A	
	Oxygen difluoride	2.3	UN2190		POISON GAS, OXIDIZER, CORROSIVE.	1	None	304	None	Forbidden	Forbidden	D	13, 40, 89, 90
	Oxygen, mixtures with rare gases, see Rare gases and oxygen mixtures												
	Oxygen, refrigerated liquid *(cryogenic liquid)*	2.2	UN1073		NONFLAMMABLE GAS, OXIDIZER.		320	316	318	Forbidden	Forbidden	D	
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base*	3	UN1263	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	173	242	60 L	220 L	A	
	Paint *or* Paint related material	8	UN3066	II	CORROSIVE	B2, N71, T14	154	202	242	1 L	30 L	A	
				III	CORROSIVE	B52, N71, T7	154	203	241	5 L	60 L	A	
	Paint related material *including paint thinning, drying, removing, or reducing compound*	3	UN1263	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	173	242	60 L	220 L	A	
	Paper, unsaturated oil treated *incompletely dried (including carbon paper)*	4.2	UN1379	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	
	Paraformaldehyde	4.1	UN2213	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Paraldehyde	3	UN1264	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Paranitroaniline, solid, see Nitroanilines *etc.*												
D	Parathion	6.1	NA2783	I	POISON	T42	None	201	243	Forbidden	1 L	A	40
				II	POISON	T14	None	202	243	Forbidden	5 L	A	40
D	Parathion and compressed gas mixture	2.3	NA1967		POISON GAS	3	None	334	245	Forbidden	Forbidden	E	40
	Paris green, solid, see Copper acetoarsenite												
A,W	PCB, *see* Polychlorinated biphenyls												
+	Pentaborane	4.2	UN1380	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	1	None	205	245	Forbidden	Forbidden	D	
	Pentachloroethane	6.1	UN1669	II	POISON	T14	None	202	243	5 L	60 L	A	40
	Pentachlorophenol	6.1	UN3155	II	POISON		None	212	242	25 kg	100 kg	A	
	Pentaerythrite tetranitrate (dry)	Forbidden											
	Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, *with not less than 7 percent wax by mass*	1.1D	UN0411	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
D	Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass, or* Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass*	1.1D	UN0150	II	EXPLOSIVE 1.1D	25	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Pentaerythritol tetranitrate, *see* Pentaerythrite tetranitrate, *etc.*												
	Pentafluoroethane	2.2	UN3220		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Pentamethylheptane	3	UN2286	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Pentan-2,4-dione	3	UN2310	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Pentanes	3	UN1265	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	

			II	FLAMMABLE LIQUID	T20	150	202	242	5 L	60 L	E	
Pentanitroaniline (dry)	Forbidden											
1-Pentol	8	UN2705	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	B	38
Pentolite, *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0151	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
Percarbonates, inorganic, n.o.s.	5.1	UN3217	III	OXIDIZER		152	213	240	25 kg	100 kg	A	13
Perchlorates, inorganic, aqueous solution, n.o.s.	5.1	UN3211	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	46, 56, 58
Perchlorates, inorganic, n.o.s.	5.1	UN1481	II	OXIDIZER		152	212	242	5 kg	25 kg	A	46, 56
			III	OXIDIZER		152	213	240	25 kg	100 kg	A	46, 56
Perchloric acid, with more than 72 percent acid by mass	Forbidden											
Perchloric acid *with more than 50 percent but not more than 72 percent acid, by mass*	5.1	UN1873	I	OXIDIZER, CORROSIVE	A2, A3, N41, T9, T27.	None	201	243	Forbidden	2.5 L	D	66
Perchloric acid *with not more than 50 percent acid by mass*	8	UN1802	II	CORROSIVE, OXIDIZER	N41, T9	None	202	243	Forbidden	30 L	C	66
Perchloroethylene, see Tetrachloroethylene												
Perchloromethylmercaptan	6.1	UN1670	I	POISON	2, A3, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Perchloryl fluoride	2.3	UN3083		POISON GAS, OXIDIZER.	2, 25, B9, B12, B14.	None	302	314, 315	Forbidden	Forbidden	D	40
Percussion caps, see Primers, cap type												
Perfluoro-2-butene, see Octafluorobut-2-ene												
Perfluoroethylvinyl ether	2.1	UN3154		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg	E	40
Perfluoromethylvinyl ether	2.1	UN3153		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg	E	40
Perfumery products *with flammable solvents*	3	UN1266	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Permanganates, inorganic, aqueous solution, n.o.s.	5.1	UN3214	II	OXIDIZER	26, T8	152	202	242	1 L	5 L	D	56, 58, 69, 106, 107
Permanganates, inorganic, n.o.s.	5.1	UN1482	II	OXIDIZER	26, A30	152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
			III	OXIDIZER	26, A30	152	213	240	25 kg	100 kg	D	56, 58, 69, 106, 107
Peroxides, inorganic, n.o.s.	5.1	UN1483	II	OXIDIZER	A7, A20, N34	None	212	242	5 kg	25 kg	A	13, 75, 106
			III	OXIDIZER	A7, A20, N34	152	213	240	25 kg	100 kg	A	13, 75, 106
Peroxyacetic acid, with more than 43 percent and with more than 6 percent hydrogen peroxide	Forbidden											
Persulphates, inorganic, aqueous solution, n.o.s.	5.1	UN3216	III	OXIDIZER	T2	152	203	241	2.5 L	30 L	A	
Persulphates, inorganic, n.o.s.	5.1	UN3215	III	OXIDIZER		152	213	240	25 kg	100 kg	A	
Pesticides, liquid, flammable, toxic, (flashpoint less than 23 degrees C)	3	UN3021	I	FLAMMABLE LIQUID, POISON.	B5	None	201	243	Forbidden	30 L	B	
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	
Pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C*	6.1	UN2903	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
Pesticides, liquid, toxic, n.o.s.	6.1	UN2902	I	POISON	T42	None	201	243	1 L	30 L	B	40
			II	POISON	T14	None	202	243	5 L	60 L	B	40
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
Pesticides, solid, toxic, n.o.s.	6.1	UN2588	I	POISON		None	211	242	5 kg	50 kg	A	40
			II	POISON		None	212	242	25 kg	100 kg	A	40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
PETN, *see* Pentaerythrite tetranitrate												
PETN/TNT, *see* Pentolite, *etc.*												
Petrol, *see* Gasoline												
Petroleum crude oil	3	UN1267	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
			II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Petroleum distillates, n.o.s. *or* Petroleum products, n.o.s.	3	UN1268	I	FLAMMABLE LIQUID	T8, T31	150	201	243	1 L	30 L	E	
			II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Petroleum ether, see Petroleum spirit												

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Petroleum gases, liquefied *or* Liquefied petroleum gas	2.1	UN1075		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Petroleum naphtha, see Naphtha, *petroleum*												
	Phenacyl bromide	6.1	UN2645	II	POISON		None	212	242	25 kg	100 kg	B	40
	Phenetidines	6.1	UN2311	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Phenol, molten	6.1	UN2312	II	POISON	B14, T8	None	202	243	Forbidden	Forbidden	B	40
+	Phenol, solid	6.1	UN1671	II	POISON	N78, T14	None	212	242	25 kg	100 kg	A	
	Phenol solutions	6.1	UN2821	II	POISON	T14	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Phenolsulfonic acid, liquid	8	UN1803	II	CORROSIVE	B2, N41, T8	154	202	242	1 L	30 L	C	14
	Phenoxy pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2766	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phenoxy pesticides, liquid, toxic	6.1	UN3000	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phenoxy pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN2999	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Phenoxy pesticides, solid, toxic	6.1	UN2765	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
+	Phenyl isocyanate	6.1	UN2487	II	POISON	2, A3, B9, B14, B32, B74, B77, N33, N34, T38, T43, T45.	None	227	244	5 L	60 L	D	40
	Phenyl mercaptan	6.1	UN2337	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	26, 40
	Phenyl phosphorus dichloride	8	UN2798	II	CORROSIVE	B2, B15, T8, T26	154	202	242	Forbidden	30 L	B	40
	Phenyl phosphorus thiodichloride	8	UN2799	II	CORROSIVE	B2, B15, T8, T26	154	202	242	Forbidden	30 L	B	40
	Phenyl urea pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2768	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phenyl urea pesticides, liquid, toxic	6.1	UN3002	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phenyl urea pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C*	6.1	UN3001	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40

			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
Phenyl urea pesticides, solid, toxic	6.1	UN2787	I	POISON		None	211	242	5 kg	50 kg	A	40
			II	POISON		None	212	242	25 kg	100 kg	A	40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
Phenylacetonitrile, liquid	6.1	UN2470	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	26
Phenylacetyl chloride	8	UN2577	II	CORROSIVE	B2, T8, T28	154	202	242	1 L	30 L	C	40
Phenylcarbylamine chloride	6.1	UN1672	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Phenylchloroformate	8.1	UN2746	II	POISON, CORROSIVE	T12	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
m-Phenylene diaminediperchlorate (dry)	Forbidden											
Phenylenediamines (*o*-; *m*-; *p*-;)	6.1	UN1673	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Phenylhydrazine	6.1	UN2572	II	POISON	T8	None	202	243	5 L	60 L	A	40
Phenylmercuric acetate	6.1	UN1674	II	POISON		None	212	242	25 kg	100 kg	A	
Phenylmercuric compounds, n.o.s.	6.1	UN2026	I	POISON		None	211	242	5 kg	50 kg	A	
			II	POISON		None	212	242	25 kg	100 kg	A	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Phenylmercuric hydroxide	6.1	UN1894	II	POISON		None	212	242	25 kg	100 kg	A	
Phenylmercuric nitrate	6.1	UN1895	II	POISON		None	212	242	25 kg	100 kg	A	
Phenytrichlorosilane	8	UN1804	II	CORROSIVE	A7, B6, N34, T8	None	202	242	Forbidden	30 L	C	40
Phosgene	2.3	UN1076		POISON GAS, CORROSIVE.	1, B7, B48	None	192	314	Forbidden	Forbidden	D	40
9-Phosphabicyclononanes *or* Cyclooctadiene phosphines	4.2	UN2940	II	SPONTANEOUSLY COMBUSTIBLE.	A19	None	212	241	15 kg	50 kg	A	
Phosphine	2.3	UN2199		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40
Phosphoric acid	8	UN1805	III	CORROSIVE	A7, N34, T7	154	203	241	5 L	60 L	A	
Phosphoric acid triethyleneimine, see Tri-(1-aziridiyl) phosphine oxide, solution												
Phosphoric anhydride, see Phosphorus pentoxide												
Phosphorous acid	8	UN2834	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	48
Phosphorus, amorphous	4.1	UN1338	III	FLAMMABLE SOLID	A1, A19, B1, B9, B12, B26.	None	213	243	25 kg	100 kg	A	74
Phosphorus bromide, see Phosphorus tribromide												
Phosphorus chloride, see Phosphorus trichloride												
Phosphorus heptasulfide, *free from yellow or white phosphorus*	4.1	UN1339	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74
Phosphorus oxybromide	8	UN1939	II	CORROSIVE	B8, N41, N43	None	212	240	Forbidden	50 kg	C	12, 40
Phosphorus oxybromide, *molten*	8	UN2578	II	CORROSIVE	B2, B8, N41, N43, T8, T27.	None	202	242	Forbidden	Forbidden	C	40
+ Phosphorus oxychloride	8	UN1810	II	CORROSIVE, POISON	2, A7, B9, B14, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	30 L	C	40
Phosphorus pentabromide	8	UN2691	II	CORROSIVE	A7, N34	154	212	240	Forbidden	50 kg	B	12, 40
Phosphorus pentachloride	8	UN1806	II	CORROSIVE	A7, N34	None	212	240	Forbidden	50 kg	C	40
Phosphorus pentafluoride	2.3	UN2198		POISON GAS, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40
Phosphorus pentasulfide, *free from yellow or white phosphorus*	4.3	UN1340	II	DANGEROUS WHEN WET.	A20, B59	None	212	242	15 kg	50 kg	B	74
Phosphorus pentoxide	8	UN1807	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	
Phosphorus sesquisulfide, *free from yellow or white phosphorus*	4.1	UN1341	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74
Phosphorus tribromide	8	UN1808	II	CORROSIVE	A3, A6, A7, B2, B25, N34, N43, T8.	None	202	242	Forbidden	30 L	C	40
+ Phosphorus trichloride	8	UN1809	I	CORROSIVE, POISON	2, A3, A7, B9, B14, B15, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	C	40
Phosphorus trioxide	8	UN2578	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12
Phosphorus trisulfide, *free from yellow or white phosphorus*	4.1	UN1343	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution	4.2	UN1381	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	B9, B12, B26, N34, T15, T28, T33.	None	188	243	Forbidden	Forbidden	E	
Phosphorus white, *molten*	4.2	UN2447	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	B9, B12, B26, N34, T15, T26, T29.	None	188	243	Forbidden	Forbidden	D	
Phosphorus (white or red) and a chlorate, mixtures of	Forbidden											

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Phosphoryl chloride, see Phosphorus oxychloride												
	Phthalic anhydride *with more than .05 percent maleic anhydride*	8	UN2214	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Phthalimide derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2774	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phthalimide derivative pesticides, liquid, toxic	6.1	UN3008	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phthalimide derivative pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN3007	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Phthalimide derivative pesticides, solid, toxic	6.1	UN2773	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Picolines	3	UN2313	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	40
	Picric acid, *see* Trinitrophenol, *etc.*												
D	Picric acid, wet, *with not less than 10 percent water*	4.1	NA1344	I	FLAMMABLE SOLID	A19, A20, N41	None	211	None	Forbidden	Forbidden	D	
	Picrite, *see* Nitroguanidine, *etc.*												
	Picryl chloride, *see* Trinitrochlorobenzene												
	Pine oil	3	UN1272	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	alpha-Pinene	3	UN2368	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Piperazine	8	UN2579	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	12
	Piperidine	3	UN2401	II	FLAMMABLE LIQUID, CORROSIVE.	T2	None	202	243	1 L	5 L	B	
	Pivaloyl chloride, see Trimethyl acetyl chloride												
A	Plastic molding material *in dough, sheet or extruded rope form*	9		III	CLASS 9		155	213	None	100 kg	200 kg	A	
	Plastic solvent, n.o.s., see Flammable liquids, n.o.s.												
	Plastics, nitrocellulose-based, self-heating, n.o.s.	4.2	UN2006	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	None	Forbidden	Forbidden	C	
	Poisonous gases, n.o.s., see Compressed *or* liquefied gases, flammable *or* toxic, n.o.s.												
	Polyalkylamines, n.o.s., *see* Alkylamines, *etc.*												
AW	Polychlorinated biphenyls	9	UN2315	II	CLASS 9	9, 81	155	202	241	100 L	220 L	A	34
	Polyester resin kit	3	UN3269		FLAMMABLE LIQUID	40	None	225	None	5 kg	5 kg	B	
	Polyhalogenated biphenyls, liquid *or* Polyhalogenated terphenyls liquid	9	UN3151	II	CLASS 9		155	204	241	100 L	220 L	A	34
	Polyhalogenated biphenyls, solid *or* Polyhalogenated terphenyls, solid	9	UN3152	II	CLASS 9		155	204	241	100 kg	200 kg	A	34
	Polymeric beads, expandable, *evolving flammable vapor.*	9	UN2211	III	None	32	155	221	240	100 kg	200 kg	A	85, 87
	Potassium	4.3	UN2257	I	DANGEROUS WHEN WET.	A19, A20, B27, N6, N34, T16, T26.	None	211	244	1 kg	15 kg	D	
	Potassium arsenate	6.1	UN1677	II	POISON		None	212	242	25 kg	100 kg	A	
	Potassium arsenite	6.1	UN1678	II	POISON		None	212	242	26 kg	100 kg	A	
	Potassium bisulfite solution, *see* Bisulfites, inorganic, aqueous solutions, n.o.s.												
	Potassium borohydride	4.3	UN1870	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Potassium bromate	5.1	UN1484	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Potassium carbonyl	Forbidden											
	Potassium chlorate	5.1	UN1485	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Potassium chlorate, aqueous solution	5.1	UN2427	II	OXIDIZER	A2, T8	152	202	241	1 L	5 L	B	56, 58, 106
	Potassium chlorate mixed with mineral oil, see Explosive, blasting, type C												
	Potassium cuprocyanide	6.1	UN1679	II	POISON		None	212	242	25 kg	100 kg	A	26

Potassium cyanide	6.1	UN1680	I	POISON	B69, B77, N74, N75, T18, T26.	None	211	242	5 kg	50 kg	B	52
Potassium dichloro isocyanurate or Potassium dichloro-s-triazinetrione, see Dichloroisocyenuric acid, dry or Dichloroisocyanuric acid salts *etc*												
Potassium dithionite *or* Potassium hydrosulfite	4.2	UN1929	II	SPONTANEOUSLY COMBUSTIBLE.	A8, A19, A20	None	212	241	15 kg	50 kg	E	13
Potassium fluoride	6.1	UN1812	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	26
Potassium fluoroacetate	6.1	UN2628	I	POISON		None	211	242	5 kg	50 kg	E	
Potassium fluorosilicate	6.1	UN2655	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
Potassium hydrate, see Potassium hydroxide, solid												
Potassium hydrogen fluoride, see Potassium bifluoride												
Potassium hydrogen fluoride solution, see Corrosive liquid, n.o.s.												
Potassium hydrogen sulfate	8	UN2509	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	
Potassium hydrogendifluoride, *solid*	8	UN1811	II	CORROSIVE, POISON	N3, N34, T8	154	212	240	15 kg	50 kg	A	25, 26, 40
Potassium hydrogendifluoride, *solution*	8	UN1811	II	CORROSIVE, POISON	N3, N34, T8	154	202	243	1 L	30 L	A	26, 40, 95
Potassium hydrosulfite, *see* Potassium dithionite												
Potassium hydroxide, liquid, see Potassium hydroxide solution												
Potassium hydroxide, solid	8	UN1813	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
Potassium hydroxide, solution	8	UN1814	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
Potassium hypochlorite, solution, see Hypochlorite solutions, *etc.*												
Potassium, metal alloys	4.3	UN1420	I	DANGEROUS WHEN WET.	A19, A20, B27	None	211	244	1 kg	15 kg	D	
Potassium metal, liquid alloy, see Alkali metal alloys, liquid												
Potassium metevanadate	6.1	UN2864	II	POISON		None	212	242	25 kg	100 kg	A	
Potassium monoxide	8	UN2033	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
Potassium nitrate	5.1	UN1486	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
Potassium nitrate and sodium nitrite mixtures	5.1	UN1487	II	OXIDIZER	B12, B78	152	212	240	5 kg	25 kg	A	56, 58
Potassium nitrite	5.1	UN1488	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58
Potassium perchlorate, solid	5.1	UN1489	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
Potassium perchlorate, solution	5.1	UN1489	II	OXIDIZER		152	202	242	1 L	5 L	A	56, 58, 106
Potassium permanganate	5.1	UN1490	II	OXIDIZER	B12	152	212	240	5 kg	25 kg	D	56, 58, 69, 106, 107
Potassium peroxide	5.1	UN1491	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	B	13, 75, 106
Potassium persulfate	5.1	UN1492	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
Potassium phosphide	4.3	UN2012	I	DANGEROUS WHEN WET. POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
Potassium salts of aromatic nitro-derivetives, *explosive*	1.3C	UN0158	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
Potassium selenate, *see* Selenates *or* Selenites												
Potassium selenite, *see* Selenates *or* Selenites												
Potassium sodium alloys	4.3	UN1422	I	DANGEROUS WHEN WET.	A19, B27, N34, N40, T15, T26.	None	211	244	Forbidden	15 kg	D	
Potassium sulfide, anhydrous *or* Potassium sulfide *with less than 30 percent water of crystallization*	4.2	UN1382	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, B16, N34.	None	212	241	15 kg	50 kg	A	
Potassium sulfide, hydrated *with not less than 30 percent water of crystallization*	8	UN1847	II	CORROSIVE		154	212	240	15 kg	50 kg	A	26
Potassium superoxide	5.1	UN2466	I	OXIDIZER	A20	None	211	None	Forbidden	15 kg	B	13, 75, 106
Powder cake, wetted *or* Powder paste, wetted *with not less than 17 percent alcohol by mass*	1.1C	UN0433	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E
Powder cake, wetted *or* Powder paste, wetted *with not less than 25 percent water, by mass*	1.3C	UN0159	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
Powder paste, *see* Powder cake, *etc.*												
Powder, smokeless	1.1C	UN0160	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	10E, 26E
Powder, smokeless	1.3C	UN0161	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	10E, 26E
Power device, explosive, see Cartridges, power device												
Primers, cap type	1.4S	UN0044	II	None		None	62	None	25 kg	100 kg	A	
Primers, cap type	1.1B	UN0377	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
Primers, cap type	1.4B	UN0378	II	EXPLOSIVE 1.4B		None	62	None	Forbidden	75 kg	A	24E
Primers, small arms, see Primers, cap type												
Primers, tubular	1.3G	UN0319	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
Primers, tubular	1.4G	UN0320	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
Primers, tubular	1.4S	UN0378	II	None		None	62	None	25 kg	100 kg	A	
Printing ink, *flammable*	3	UN1210	I	FLAMMABLE LIQUID	T8, T31	150	173	243	1 L	30 L	E	
			II	FLAMMABLE LIQUID	T7, T30	150	173	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	173	242	60 L	220 L	A	
Projectiles, illuminating, see Ammunition, illumineting, *etc.*												
Projectiles, *inert with tracer*	1.4S	UN0345	II	EXPLOSIVE 1.4S			62	None	25 kg	100 kg	A	3E, 7E, 9E
Projectiles, *inert, with tracer*	1.3G	UN0424	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	3E, 7E
Projectiles, *inert, with tracer*	1.4G	UN0425	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	3E, 7E, 24E
Projectiles, *with burster or expelling charge*	1.2D	UN0346	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E
Projectiles, *with burster or expelling charge*	1.4D	UN0347	II	EXPLOSIVE 1.4D			62	None	Forbidden	75 kg	A	3E, 7E, 24E
Projectiles, *with burster or expelling charge*	1.2F	UN0426	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Projectiles, *with burster or expelling charge*	1.4F	UN0427	II	EXPLOSIVE 1.4F			62	None	Forbidden	Forbidden	E	
	Projectiles, *with burster or expelling charge*	1.2G	UN0434	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, *with burster or expelling charge*	1.4G	UN0435	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	3E, 7E, 24E
	Projectiles, *with bursting charge*	1.1F	UN0167	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Projectiles, *with bursting charge*	1.1D	UN0168	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, *with bursting charge*	1.2D	UN0169	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, *with bursting charge*	1.2F	UN0324	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Projectiles, *with bursting charge*	1.4D	UN0344	II	EXPLOSIVE 1.4D			62	None	Forbidden	75 kg	A	3E, 7E, 24E
	Propadiene, inhibited	2.1	UN2200		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40
	Propadiene mixed with methyl acetylene, see Methyl acetylene and propadiene mixtures, stabilized												
	Propane *or* Propane mixtures *see also* Petroleum gases, liquefied	2.1	UN1978		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40
	Propanethiols	3	UN2402	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	95, 102
	n-Propanol *or* Propyl alcohol normal	3	UN1274	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
D	Propargyl alcohol	3	NA1986	II	FLAMMABLE LIQUID, POISON.		None	202	243	Forbidden	1 L	B	40
D	Propellant explosive, liquid	1.1C	NA0474	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E
D	Propellant explosive, liquid	1.3C	NA0477	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Propellant, liquid	1.3C	UN0495		EXPLOSIVE 1.3C	37	None	62	None	Forbidden	Forbidden	B	
	Propellant, liquid	1.1C	UN0497		EXPLOSIVE 1.1C	37	None	62	None	Forbidden	Forbidden	B	
	Propellant, solid	1.1C	UN0498		EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	A	
	Propellant, solid	1.3C	UN0499		EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	A	
	Propionaldehyde	3	UN1275	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	
	Propionic acid	8	UN1848	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Propionic anhydride	8	UN2496	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Propionitrile	3	UN2404	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	Forbidden	60 L	E	40
	Propionyl chloride	3	UN1815	II	FLAMMABLE LIQUID, CORROSIVE.	T8, T26	None	202	243	1 L	5 L	B	40
	n-Propyl acetate	3	UN1276	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Propyl alcohol, *see* Propanol												
	n-Propyl benzene	3	UN2364	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Propyl chloride	3	UN1278	II	FLAMMABLE LIQUID	N34, T14	None	202	242	Forbidden	60 L	E	
	n-Propyl chloroformate	6.1	UN2740	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, A3, A6, A7, B9, B14, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	B	21, 40, 100
	Propyl formates	3	UN1281	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	n-Propyl isocyanate	6.1	UN2482	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Propyl mercaptan, see Propanethiols												
	n-Propyl nitrate	3	UN1865	II	FLAMMABLE LIQUID	T25	150	202	None	5 L	60 L	D	
	Propylamine	3	UN1277	II	FLAMMABLE LIQUID, CORROSIVE.	N34, T14	None	202	243	1 L	5 L	E	40
	Propylene *see also* Petroleum gases, liquefied	2.1	UN1077		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40
	Propylene chlorohydrin	6.1	UN2611	II	POISON	T9	None	202	243	5 L	60 L	A	12, 40, 48
	Propylene dichloride	3	UN1279	II	FLAMMABLE LIQUID	N36, T1	150	202	242	5 L	60 L	B	
	Propylene oxide	3	UN1280	I	FLAMMABLE LIQUID	A3, N34, T20, T29	None	201	243	1 L	30 L	E	40
	Propylene tetramer	3	UN2850	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1,2-Propylenediamine	8	UN2258	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, N34, T8	None	202	243	1 L	30 L	A	40
	Propyleneimine, inhibited	3	UN1921	I	FLAMMABLE LIQUID	A3, N34, T25	None	201	243	1 L	30 L	B	40
	Propyltrichlorosilane	8	UN1816	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B2, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	Prussic acid, see Hydrogen cyanide												
	Pyridine	3	UN1282	II	FLAMMABLE LIQUID	T8	None	202	242	5 L	60 L	B	21, 100
	Pyridine perchlorate	Forbidden											

Pyrophoric liquid, inorganic, n.o.s.	4.2	UN3194	I	SPONTANEOUSLY COMBUSTIBLE.		None	181	244	Forbidden	Forbidden	D	18	
Pyrophoric liquids, organic, n.o.s.	4.2	UN2845	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D	18	
Pyrophoric metals, n.o.s., *or* Pyrophoric alloys, n.o.s.	4.2	UN1383	I	SPONTANEOUSLY COMBUSTIBLE.	B11	None	187	242	Forbidden	Forbidden	D		
Pyrophoric organometallic compound, n.o.s.	4.2	UN3203	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D		
Pyrophoric solid, inorganic, n.o.s.	4.2	UN3200	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D		
Pyrophoric solids, organic, n.o.s.	4.2	UN2846	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D		
Pyrosulfuryl chloride	8	UN1817	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	40	
Pyroxylin solution or solvent, see Nitrocellulose													
Pyrrolidine	3	UN1922	II	FLAMMABLE LIQUID, CORROSIVE.	T1	None	202	243	1 L	5 L	B	40	
Quebrachitol pentanitrate	Forbidden												
Quicklime, see Calcium oxide													
Quinoline	6.1	UN2656	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	12	
R 114, see Dichlorotetrafluoroethane													
R 115, see Chloropentafluoroethane													
R 116, see Hexafluoroethane													
R 124, see Chlorotetrafluoroethane													
R 133a, see Chlorotrifluoroethane													
R 152a, see Difluoroethane													
R 500, see Dichlorodifluoromethane and difluorethane, *etc.*													
R 502, see Chlorodifluoromethene and chloropentafluoroethane mixture, *etc.*													
R 503, see Chlorotrifluoromethane and trifluoromethane, *etc.*													
R 12, see Dichlorodifluoromethane													
R 12B1, see Chlorodifluorobromomethane													
R 13, see Chlorotrifluoromethane													
R 13B1, see Bromotrifluoromethane													
R 14, see Tetrafluoromethane													
R 21, see Dichlorofluoromethane													
R 22, see Chlorodifluoromethane													
Radioactive material, excepted package-articles manufactured from natural *or* depleted uranium *or* natural thorium	7	UN2910		None		421-1, 424	421-1, 424	421-1, 424			A		
Radioactive material, excepted package-empty packaging	7	UN2910		EMPTY		427	427	427			A		
Radioactive material, excepted package-instruments *or* articles	7	UN2910		None		421-1, 422	421-1, 422	421-1, 422			A		
Radioactive material, excepted package-limited quantity of material	7	UN2910		None		421, 421-1	421, 421-1	421, 421-1			A		
Radioactive material, fissile, n.o.s.	7	UN2918		RADIOACTIVE		453	417	417			A	40, 95	
Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.	7	UN2912		RADIOACTIVE		421, 422, 424	425	425			A		
Radioactive material, n.o.s.	7	UN2982		RADIOACTIVE		421, 422, 424	415, 416	415, 416			A	40, 95	
Radioactive material, special form, n.o.s.	7	UN2974		RADIOACTIVE		421, 422	415, 416	415, 416			A		
Railway torpedo, see Signals, railway track, explosive													
Rare gases and nitrogen mixtures	2.2	UN1981		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A		
Rare gases and oxygen mixtures	2.2	UN1980		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A		
Rare gases, mixtures	2.2	UN1979		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A		
RC 318, see Octafluorocyclobutane													
RDX and cyclotetramethylenetetranitramine, wetted *or* desensitized *see* RDX and HMX mixtures, wetted or desensitized													
RDX and HMX mixtures, wetted *with not less than 15 percent water by mass or* RDX and HMX mixtures, desensitized *with not less than 10 percent phlegmatizer by mass*	1.1D	UN0391	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
RDX and Octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*													
RDX, see Cyclotrimethylene trinitramine, etc.													
Receptacles, small, containing gas *flammable, without release device, not refillable and not exceeding 1 L capacity*	2.1	UN2037		FLAMMABLE GAS		306	304	None	1 kg	15 kg	B	40	
Receptacles, small, containing gas *non-flammable, without release device, not refillable and not exceeding 1 L capacity*	2.2	UN2037		NONFLAMMABLE GAS		306	304	None	1 kg	15 kg	B	40	
Red phosphorus, see Phosphorus, amorphous													
Refrigerant gases, n.o.s.	2.2	UN1078		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Refrigerant gases, n.o.s. *or* Dispersant gases, n.o.s.	2.1	NA1954		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	D	40
D	Refrigerating machine	3	NA1993	III	FLAMMABLE LIQUID		174	174	None	10 L	10 L	A	
D	Refrigerating machines, *containing flammable, non-poisonous, liquefied gas*	2.1	NA1954		FLAMMABLE GAS		306	306	306	Forbidden	25 kg	C	40
	Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solutions (UN2073)*	2.2	UN2857		NONFLAMMABLE GAS		306, 307	306	306, 307	Forbidden	450 kg	A	
D	Regulated medical waste	6.2	NA9275	II	INFECTIOUS SUBSTANCE.		197	197	None	Forbidden	Forbidden	E	
	Release devices, explosive	1.4S	UN0173	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Resin solution, *flammable*	3	UN1866	II	FLAMMABLE LIQUID	B52, T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A	
	Resorcinol	6.1	UN2876	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Rifle grenade, see Grenades, *hand or rifle, etc.*												
	Rifle powder, see Powder, *smokeless (UN 0160)*												
	Rivets, explosive	1.4S	UN0174	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Road asphalt or tar liquid, see Tars, liquid, *etc.*												
	Rocket motors	1.3C	UN0186	II	EXPLOSIVE 1.3C	109	None	62	None	Forbidden	220 kg	B	
	Rocket motors	1.1C	UN0280	II	EXPLOSIVE 1.1C	109	None	62	None	Forbidden	Forbidden	B	
	Rocket motors	1.2C	UN0281	II	EXPLOSIVE 1.2C	109	None	62	None	Forbidden	Forbidden	B	
	Rocket motors, liquid fueled	1.2J	UN0395	II	EXPLOSIVE 1.2J	109	None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors, liquid fueled	1.3J	UN0396	II	EXPLOSIVE 1.3J	109	None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors with hypergolic liquids *with or without an expelling charge*	1.3L	UN0250	II	EXPLOSIVE 1.3L	109	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rocket motors with hypergolic liquids *with or without an expelling charge*	1.2L	UN0322	II	EXPLOSIVE 1.2L	109	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rockets, line-throwing	1.2G	UN0238	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Rockets, line-throwing	1.3G	UN0240	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Rockets, line-throwing	1.4G	UN0453	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Rockets, liquid fueled *with bursting charge*	1.1J	UN0397	II	EXPLOSIVE 1.1J		None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, liquid fueled *with bursting charge*	1.2J	UN0398	II	EXPLOSIVE 1.2J		None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, *with bursting charge*	1.1F	UN0180	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Rockets, *with bursting charge*	1.1E	UN0181	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with bursting charge*	1.2E	UN0182	II	EXPLOSIVE 1.2E		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with bursting charge*	1.2F	UN0295	II	EXPLOSIVE 1.2F		None	62	None	Forbidden	Forbidden	E	
	Rockets, *with expelling charge*	1.2C	UN0436	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with expelling charge*	1.3C	UN0437	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with expelling charge*	1.4C	UN0438	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Rockets, *with inert head*	1.3C	UN0183	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Rosin oil	3	UN1286	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Rubber solution	3	UN1287	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Rubidium	4.3	UN1423	I	DANGEROUS WHEN WET.	22, A7, A19, N34, N40, N45.	None	211	242	Forbidden	15 kg	D	
	Rubidium hydroxide	8	UN2678	II	CORROSIVE	T8	154	212	240	15 kg	50 kg	A	
	Rubidium hydroxide solution	8	UN2677	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Safety fuse, see Fuse, safety												
	Samples, explosive, *other than initiating explosives*		UN0190	II		113	None	62	None	Forbidden	Forbidden	E	12E
	Sand acid, see Fluorosilicic acid												
	Seed cake, *containing vegetable oil solvent extractions and expelled seeds, with not more than 10 percent of oil and when the amount of moisture is higher than 11 percent, with not more than 20 percent of oil and moisture combined.*	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	A	13
I	Seed cake *with more than 1.5 percent oil and not more than 11 percent moisture*	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	E	13

I	Seed cake *with not more than 1.5 percent oil and not more than 11 percent moisture*	4.2	UN2217	III	None	N7	None	213	241	Forbidden	Forbidden	A	13
	Selenates *or* Selenites	6.1	UN2630	I	POISON		None	211	242	5 kg	50 kg	E	
	Selenic acid	8	UN1905	I	CORROSIVE	N34	None	211	242	Forbidden	25 kg	A	
	Selenites, *see* Selenates *or* Selenites												
	Selenium compound, n.o.s.	6.1	UN3283	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Selenium disulfide	6.1	UN2657	II	POISON		None	212	242	25 kg	100 kg	A	
	Selenium hexafluoride	2.3	UN2194		POISON GAS. CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40
	Selenium nitride	Forbidden											
		6.1	NA2811	I	POISON		None	211	242	5 kg	50 kg	B	
D	Selenium oxide	8	UN2879	I	CORROSIVE, POISON	A3, A6, A7, N34, T12, T27.	None	201	243	0.5 L	2.5 L	E	40
	Selenium oxychloride												
	Selenium powder	6.1	UN2658	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Self-heating liquid, corrosive, inorganic, n.o.s.	4.2	UN3188	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	202	243	1 L	5 L	C	
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	203	241	5 L	60 L	C	
	Self-heating liquid, corrosive, organic, n.o.s.	4.2	UN3185	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	202	243	1 L	5 L	C	
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	203	241	5 L	60 L	C	
	Self-heating liquid, inorganic, n.o.s.	4.2	UN3186	II	SPONTANEOUSLY COMBUSTIBLE.		None	202	242	1 L	5 L	C	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	203	241	5 L	60 L	C	
	Self-heating liquid, organic, n.o.s.	4.2	UN3183	II	SPONTANEOUSLY COMBUSTIBLE.		None	202	242	1 L	5 L	C	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	203	241	5 L	60 L	C	
	Self-heating liquid, toxic, inorganic, n.o.s.	4.2	UN3187	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	202	243	1 L	5 L	C	
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	203	241	5 L	60 L	C	
	Self-heating liquid, toxic, organic, n.o.s.	4.2	UN3184	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	202	243	1 L	5 L	C	
				III	SPONTANEOUSLY COMBUSTIBLE. KEEP AWAY FROM FOOD.		None	203	241	5 L	60 L	C	
	Self-heating solid, corrosive, inorganic, n.o.s.	4.2	UN3192	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	213	242	25 kg	100 kg	C	
	Self-heating, solid, corrosive, organic, n.o.s.	4.2	UN3126	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	213	242	25 kg	100 kg	C	
	Self-heating solid, inorganic, n.o.s.	4.2	UN3190	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	C	
	Self-heating, solid, organic, n.o.s.	4.2	UN3088	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	C	
	Self-heating, solid, oxidizing, n.o.s.	4.2	UN3127		SPONTANEOUSLY COMBUSTIBLE, OXIDIZER.		None	214	214	Forbidden	Forbidden		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Self-heating solid, toxic, inorganic, n.o.s.	4.2	UN3191	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	213	242	25 kg	100 kg	C	
	Self-heating, solid, toxic, organic, n.o.s.	4.2	UN3128	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	213	242	25 kg	100 kg	C	
	Self-propelled vehicle, see Vehicles, self-propelled												
	Self-reactive liquid type B	4.1	UN3221	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	61
	Self-reactive liquid type B, temperature controlled	4.1	UN3231	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type C	4.1	UN3223	II	FLAMMABLE SOLID		None	224	None	5 L	10 L	D	61
	Self-reactive liquid type C, temperature controlled	4.1	UN3233	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type D	4.1	UN3225	II	FLAMMABLE SOLID		None	224	None	5 L	10 L	D	61
	Self-reactive liquid type D, temperature controlled	4.1	UN3235	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type E	4.1	UN3227	II	FLAMMABLE SOLID		None	224	None	10 L	25 L	D	61
	Self-reactive liquid type E, temperature controlled	4.1	UN3237	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type F	4.1	UN3229	II	FLAMMABLE SOLID		None	224	None	10 L	25 L	D	61
	Self-reactive liquid type F, temperature controlled	4.1	UN3239	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type B	4.1	UN3222	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	61
	Self-reactive solid type B, temperature controlled	4.1	UN3232	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type C	4.1	UN3224	II	FLAMMABLE SOLID		None	224	None	5 kg	10 kg	D	61
	Self-reactive solid type C, temperature controlled	4.1	UN3234	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type D	4.1	UN3226	II	FLAMMABLE SOLID		None	224	None	5 kg	10 kg	D	61
	Self-reactive solid type D, temperature controlled	4.1	UN3236	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type E	4.1	UN3228	II	FLAMMABLE SOLID		None	224	None	10 kg	25 kg	D	61
	Self-reactive solid type E, temperature controlled	4.1	UN3238	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type F	4.1	UN3230	II	FLAMMABLE SOLID		None	224	None	10 kg	25 kg	D	61
	Self-reactive solid type F, temperature controlled	4.1	UN3240	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Shale oil	3	UN1288	I	FLAMMABLE LIQUID	T7	None	201	243	1 L	30 L	B	
				II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Shaped charges, commercial, see Charges, shaped, commercial *etc.*												
	Signal devices, hand	1.4G	UN0191	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Signal devices, hand	1.4S	UN0373	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Signals, distress, *ship*	1.1G	UN0194	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, distress, *ship*	1.3G	UN0195	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Signals, highway, see Signal devices, hand; Fireworks, type D												
	Signals, railway track, explosive	1.1G	UN0192	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, railway track, explosive	1.4S	UN0193	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Signals, railway track, explosive	1.3G	UN0492		EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	E	1E, 8E
	Signals, railway track, explosive	1.4G	UN0493		EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Signals, ship distress, water-activated, see Contrivances, water-activated, *etc.*												
	Signals, smoke	1.1G	UN0196	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.4G	UN0197	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Signals, smoke	1.2G	UN0313	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.3G	UN0487	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Silane	2.1	UN2203		FLAMMABLE GAS		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicofluoric acid, see Fluorosilicic acid												
	Silicon chloride, see Silicon tetrachloride												
	Silicon powder, amorphous	4.1	UN1346	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
	Silicon tetrachloride	8	UN1818	II	CORROSIVE	A3, A6, B2, B6, T18, T26, T29.	154	202	242	1 L	30 L	C	40
	Silicon tetrafluoride	2.3	UN1859		POISON GAS, CORROSIVE.	2, 25	None	302	None	Forbidden	25 kg	D	40
	Silver acetylide (dry)	Forbidden											
	Silver arsenite	6.1	UN1683	II	POISON		None	212	242	25 kg	100 kg	A	
	Silver azide (dry)	Forbidden											

	Silver chlorite (dry)	Forbidden	.....		.....	.....					.....	.....	.....		
	Silver cyanide	6.1	UN1684	II	POISON	.....	None	212	242	25 kg	100 kg	A	26, 40
	Silver fulminate (dry)	Forbidden	.....		.....	.....					.....	.....	.....		
	Silver nitrate	5.1	UN1493	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	
	Silver oxalate (dry)	Forbidden	.....		.....	.....					.....	.....	.....		
	Silver picrate (dry)	Forbidden	.....		.....	.....					.....	.....	.....		
	Silver picrate, wetted *with not less than 30 percent water, by mass*	4.1	UN1347	I	FLAMMABLE SOLID	.....	None	211	None	Forbidden	Forbidden	D	28, 36
	Sludge, acid	8	UN1906	II	CORROSIVE	A3, A7, B2, N34, T9, T27.	None	202	242	Forbidden	30 L	C	14
D	Smokeless powder for small arms (*100 pounds or less*)	4.1	NA3178	I	FLAMMABLE SOLID	16	None	171	None	Forbidden	Forbidden	A	
	Soda lime *with more than 4 percent sodium hydroxide*	8	UN1907	III	CORROSIVE	.....	154	213	240	25 kg	100 kg	A	
	Sodium	4.3	UN1428	I	DANGEROUS WHEN WET.	A7, A8, A19, A20, B9, B28, B48, B68, N34, T15, T29, T46.	None	211	244	1 kg	15 kg	D	
	Sodium aluminate, solid	8	UN2812	III	CORROSIVE	.....	154	213	240	25 kg	100 kg	A	
	Sodium aluminate, solution	8	UN1819	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	.....	.....	.....	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Sodium aluminum hydride	4.3	UN2835	II	DANGEROUS WHEN WET.	A8, A19, A20	None	212	242	Forbidden	50 kg	E	
	Sodium ammonium vanadate	6.1	UN2863	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Sodium arsanilate	6.1	UN2473	III	KEEP AWAY FROM FOOD.	.....	153	213	240	100 kg	200 kg	A	
	Sodium arsenate	8.1	UN1685	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Sodium arsenite, aqueous solutions	8.1	UN1686	II	POISON	T15	None	202	243	5 L	60 L	A	
	.....	.....	.....	III	KEEP AWAY FROM FOOD.	T15	153	203	241	60 L	220 L	A	
	Sodium arsenite, solid	6.1	UN2027	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Sodium azide	6.1	UN1687	II	POISON	B28	None	212	242	25 kg	100 kg	A	36, 52, 91
	Sodium bifluoride, see Sodium hydrogen fluoride	.....	.....		.....	.....				.....	.....	.....	
	Sodium bisulfate, solution, see Sodium hydrogen sulfate, solution	.....	.....		.....	.....				.....	.....	.....	
	Sodium bisulfite, solution, see Bisulfites, Inorganic, aqueous solutions, n.o.s.	.....	.....		.....	.....				.....	.....	.....	
	Sodium borohydride	4.3	UN1426	I	DANGEROUS WHEN WET.	N40	None	211	242	Forbidden	15 kg	E	
	Sodium bromate	5.1	UN1494	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	56, 58, 106
	Sodium cacodylate	6.1	UN1688	II	POISON	.....	None	212	242	25 kg	100 kg	A	28
	Sodium chlorate	5.1	UN1495	II	OXIDIZER	A9, N34, T8	152	212	240	5 kg	25 kg	A	56, 58, 106
	Sodium chlorate, aqueous solution	5.1	UN2428	II	OXIDIZER	A2, B6, T8	152	202	241	1 L	5 L	B	56, 58, 106
	Sodium chlorate mixed with dinitrotoluene, see Explosive blasting, type C	.....	.....		.....	.....				.....	.....	.....	
	Sodium chlorite	5.1	UN1496	II	OXIDIZER	A9, N34, T8	None	212	242	5 kg	25 kg	A	56, 58, 106
	Sodium chloroacetate	6.1	UN2659	III	KEEP AWAY FROM FOOD.	.....	153	213	240	100 kg	200 kg	A	
	Sodium cuprocyanide, solid	6.1	UN2318	I	POISON	.....	None	211	242	5 kg	50 kg	A	28
	Sodium cuprocyanide, solution	6.1	UN2317	I	POISON	T8, T26	None	201	243	1 L	30 L	B	28, 40
	Sodium cyanide	6.1	UN1689	I	POISON	B69, B77, N74, N75, T42.	None	211	242	5 kg	50 kg	B	52
	Sodium dichloroisocyanurate or Sodium dichloro-s-triazinetrione, see Dichloroisocyanuric acid *etc.*	.....	.....		.....	.....				.....	.....	.....	
	Sodium dinitro-o-cresolate, *dry or wetted with less than 15 percent water, by mass*	1.3C	UN0234	II	EXPLOSIVE 1.3C	.....	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium dinitro-o-cresolate, wetted *with not less than 15 percent water, by mass*	4.1	UN1348	I	FLAMMABLE SOLID. POISON.	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Sodium dithionite *or* Sodium hydrosulfite	4.2	UN1384	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20	None	212	241	15 kg	50 kg	E	13
	Sodium fluoride	6.1	UN1690	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	28
	Sodium fluoroacetate	8.1	UN2629	I	POISON	.....	None	211	242	5 kg	50 kg	E	
	Sodium fluorosilicate	8.1	UN2674	III	KEEP AWAY FROM FOOD.	.....	153	213	240	100 kg	200 kg	A	26
	Sodium hydrate, see Sodium hydroxide, solid	.....	.....		.....	.....				.....	.....	.....	
	Sodium hydride	4.3	UN1427	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Sodium hydrogendifluoride	8	UN2439	II	CORROSIVE	N3, N34	154	212	240	15 kg	50 kg	A	12, 25, 26, 40
	Sodium hydrogendifluoride *solution*	8	UN2439	II	CORROSIVE	N3, N34	154	202	242	1 L	30 L	A	12, 25, 26, 40
D	Sodium hydrosulfide, solution	8	NA2922	II	CORROSIVE, POISON	B2	154	202	243	1 L	30 L	B	40, 95
	Sodium hydrosulfide, *with less than 25 percent water of crystallization*	4.2	UN2318	II	SPONTANEOUSLY COMBUSTIBLE.	A7, A19, A20	None	212	241	15 kg	50 kg	A	
	Sodium hydrosulfide *with not less than 25 percent water of crystallization*	8	UN2949	II	CORROSIVE	A7	154	212	240	15 kg	50 kg	A	26
	Sodium hydrosulfite, *see* Sodium dithionite	.....	.....		.....	.....				.....	.....	.....	
	Sodium hydroxide, solid	8	UN1823	II	CORROSIVE	.....	154	212	240	15 kg	50 kg	A	
	Sodium hydroxide solution	8	UN1824	II	CORROSIVE	B2, N34, T8	154	202	242	1 L	30 L	A	

§172.101 Hazardous Materials Table—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	CORROSIVE	N34, T7	154	203	241	5 L	60 L	A	
	Sodium hypochlorite, solution, see Hypochlorite solutions *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium metal, liquid alloy, see Alkali metal alloys, liquid, n.o.s.	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium methylate	4.2	UN1431	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.	A19	None	212	242	15 kg	50 kg	B	
	Sodium methylate solutions *in alcohol*	3	UN1289	II	FLAMMABLE LIQUID. CORROSIVE.	T8; T31	None	202	243	1 L	5 L	B	
	.....	.....	.....	III	FLAMMABLE LIQUID. CORROSIVE.	B1, T7; T30	150	203	242	5 L	60 L	A	
	Sodium monoxide	8	UN1825	II	CORROSIVE	.....	154	212	240	15 kg	50 kg	A	
	Sodium nitrate	5.1	UN1498	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Sodium nitrate and potassium nitrate mixtures	5.1	UN1499	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Sodium nitrite	5.1	UN1500	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	56, 58
	Sodium pentachlorophenate	6.1	UN2567	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Sodium percarbonate	5.1	UN2467	III	OXIDIZER	27, A1, A29	152	213	240	25 kg	100 kg	A	13
	Sodium perchlorate	5.1	UN1502	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	56, 58, 106
	Sodium permanganate	5.1	UN1503	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Sodium peroxide	5.1	UN1504	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	B	13, 75, 106
	Sodium peroxoborate, anhydrous	5.1	UN3247	II	OXIDIZER	.....	152	212	240	5 kg	25 kg	A	13, 25, 106
	Sodium persulfate	5.1	UN1505	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Sodium phosphide	4.3	UN1432	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Sodium picramete, *dry or wetted with less than 20 percent water, by mass*	1.3C	UN0235	II	EXPLOSIVE 1.3C	.....	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium picramete, wetted *with not less than 20 percent water, by mass*	4.1	UN1349	I	FLAMMABLE SOLID	23, A8, A19, N41	None	211	None	Forbidden	15 kg	E	28, 36
	Sodium picryl peroxide	Forbidden	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium potassium alloys, see Potassium sodium alloys	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium salts of aromatic nitro-derivatives, n.o.s. *explosive*	1.3C	UN0203	II	EXPLOSIVE 1.3C	.....	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium selenate, see Selenates *or* Selenites	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
D	Sodium selenite	6.1	NA2630	II	POISON	.....	None	212	242	25 kg	100 kg	E	
	Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30 percent water of crystallization*	4.2	UN1385	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	A	
	Sodium sulfide, hydrated *with at least 30 percent water*	8	UN1849	II	CORROSIVE	T8	154	212	240	15 kg	50 kg	A	26
	Sodium superoxide	5.1	UN2547	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	E	13, 75, 106
	Sodium tetranitride	Forbidden	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Solids containing corrosive liquid, n.o.s.	8	UN3244	II	CORROSIVE	49	154	212	240	15 kg	50 kg	B	40
	Solids containing flammable liquid, n.o.s.	4.1	UN3175	II	FLAMMABLE SOLID	47	151	212	240	15 kg	50 kg	B	
	Solids containing toxic liquid, n.o.s.	6.1	UN3243	II	POISON	48	None	212	240	25 kg	100 kg	B	40
	Sounding devices, explosive	1.2F	UN0204	II	EXPLOSIVE 1.2F	.....	None	62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1F	UN0296	II	EXPLOSIVE 1.1F	.....	None	62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1D	UN0374	II	EXPLOSIVE 1.1D	.....	None	62	None	Forbidden	Forbidden	B	
	Sounding devices, explosive	1.2D	UN0375	II	EXPLOSIVE 1.2D	.....	None	62	None	Forbidden	Forbidden	B	
	Spirits of salt, see Hydrochloric acid	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Squibs, see Igniters *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Stannic chloride, anhydrous	8	UN1827	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	
	Stannic chloride, pentahydrate	8	UN2440	III	CORROSIVE	.....	154	213	240	25 kg	100 kg	A	
	Stannic phosphide	4.3	UN1433	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Steel swarf, *see* Ferrous metal borings, *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Stibine	2.3	UN2676		POISON GAS, FLAMMABLE GAS.	1	None	304	None	Forbidden	Forbidden	D	40
	Storage batteries, wet, see Batteries, *wet etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Strontium arsenite	6.1	UN1691	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Strontium chlorate, solid	5.1	UN1506	II	OXIDIZER	A1, A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Strontium chlorate, solution	5.1	UN1506	II	OXIDIZER	A1, A9, N34	152	202	242	1 L	5 L	A	56, 58, 106
	Strontium nitrate	5.1	UN1507	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Strontium perchlorate	5.1	UN1508	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	56, 58, 106
	Strontium peroxide	5.1	UN1509	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	13, 75, 106
	Strontium phosphide	4.3	UN2013	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Strychnine *or* Strychnine salts	6.1	UN1692	I	POISON	.....	None	211	242	5 kg	50 kg	A	40

	Styphnic acid, *see* Trinitroresorcinol, *etc.*														
	Styrene monomer, Inhibited	3	UN2055	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Substances, explosive, n.o.s.	1.1L	UN0357	II	EXPLOSIVE 1.1L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.2L	UN0358	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.3L	UN0359	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.1A	UN0473	II	EXPLOSIVE 1.1A	101, 111	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Substances, explosive, n.o.s.	1.1C	UN0474	II	EXPLOSIVE 1.1C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.1D	UN0475	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.1G	UN0476	II	EXPLOSIVE 1.1G	101	None	62	None	Forbidden	Forbidden	E	1E, 8E
	Substances, explosive, n.o.s.	1.3C	UN0477	II	EXPLOSIVE 1.3C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.3G	UN0478	II	EXPLOSIVE 1.3G	101	None	62	None	Forbidden	Forbidden	E	1E, 8E
	Substances, explosive, n.o.s.	1.4C	UN0479	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	75 kg	A	1E, 5E
	Substances, explosive, n.o.s.	1.4D	UN0480	II	EXPLOSIVE 1.4D	101	None	62	None	Forbidden	75 kg	A	1E, 5E, 24E
	Substances, explosive, n.o.s.	1.4S	UN0481	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	75 kg	A	
	Substances, explosive, n.o.s.	1.4G	UN0485	II	EXPLOSIVE 1.4G	101	None	62	None	Forbidden	75 kg	E	1E, 8E
	Substances, explosive, very insensitive, n.o.s., *or* Substances, EVI, n.o.s.	1.5D	UN0482	II	EXPLOSIVE 1.5D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substituted nitrophenol pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2780	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Substituted nitrophenol pesticides, liquid, toxic	6.1	UN3014	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Substituted nitrophenol pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN3013	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Substituted nitrophenol pesticides, solid, toxic	6.1	UN2779	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Sucrose octanitrate (dry)	Forbidden											
	Sulfamic acid	8	UN2967	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
D	Sulfur	9	NA1350	III	CLASS 9	30, A1	None	None	240	25 kg	100 kg	A	19, 74
I	Sulfur	4.1	UN1350	III	FLAMMABLE SOLID	A1, N20, T1	151	213	240	25 kg	100 kg	A	19, 74
	Sulfur and chlorate, loose mixtures of	Forbidden											
	Sulfur chlorides	8	UN1828	I	CORROSIVE	5, A3, B10, B77, N34.	None	201	243	Forbidden	2.5 L	C	40
	Sulfur dichloride, see Sulfur chlorides												
	Sulfur dioxide, liquefied	2.3	UN1079		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Sulfur dioxide solution, see Sulfurous acid												
	Sulfur hexafluoride	2.2	UN1080		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
D	Sulfur, molten	9	NA2448	III	CLASS 9	T9, T38	None	213	247	Forbidden	Forbidden	C	61
I	Sulfur, molten	4.1	UN2448	III	FLAMMABLE SOLID	T9, T38	None	213	247	Forbidden	Forbidden	C	61
	Sulfur tetrafluoride	2.3	UN2418		POISON GAS, CORROSIVE.	1	None	302	245	Forbidden	25 kg	D	40
+	Sulfur trioxide, Inhibited	8	UN1829	I	CORROSIVE, POISON	2, A7, B9, B12, B14, B32, B49, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	25 kg	A	40
+, D	Sulfur trioxide, uninhibited	8	NA1829	I	CORROSIVE, POISON	2, A7, B9, B12, B14, B32, B49, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	25 kg	C	10, 40
	Sulfuretted hydrogen, see Hydrogen sulfide, liquefied												
	Sulfuric acid, fuming *with less than 30 percent free sulfur trioxide*	8	UN1831	I	CORROSIVE	A3, A7, B84, N34, T18, T27.	None	201	243	Forbidden	2.5 L	C	14, 40
+	Sulfuric acid, fuming *with 30 percent or more free sulfur trioxide*	8	UN1831	I	CORROSIVE, POISON	2, A3, A8, A7, B9, B14, B32, B74, B77, B84, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	14, 40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Sulfuric acid, spent	8	UN1832	II	CORROSIVE	A3; A7; B2; B83, B84, N34, T9, T27.	None	202	242	Forbidden	30 L	C	14
	Sulfuric acid *with more than 51 percent acid*	8	UN1830	II	CORROSIVE	A3, A7, B3, B83, B84, N34, T9, T27.	154	202	242	1 L	30 L	C	14
	Sulfuric acid *with not more than 51% acid, or* Battery fluid, acid	8	UN2796	II	CORROSIVE	A3, A7, B2, B15, N6, N34, T9, T27.	154	202	242	1 L	30 L	B	
	Sulfuric and hydrofluoric acid mixtures, *see* Hydrofluoric and sulfuric acid mixtures												
	Sulfuric anhydride, see Sulfur trioxide, inhibited												
	Sulfurous acid	8	UN1833	II	CORROSIVE	B3, T8	154	202	242	1 L	30 L	B	40
+	Sulfuryl chloride	8	UN1834	I	CORROSIVE, POISON	1, A3; B6, B9, B10, B14, B30, B74; B77; N34; T38, T43, T44.	None	226	244	Forbidden	Forbidden	C	40
	Sulfuryl fluoride	2.3	UN2191		POISON GAS	4	None	304	314, 315	Forbidden	25 kg	B	40
	Tars, liquid *including road asphalt and oils, bitumen and cut backs*	3	UN1999	II	FLAMMABLE LIQUID	B13, T7; T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B13; T7, T30	150	203	242	60 L	220 L	A	
	Tear gas candles	6.1	UN1700	II	POISON, FLAMMABLE SOLID.		None	340	None	Forbidden	50 kg	D	40
	Tear gas cartridges, see Ammunition, tear-producing, etc.												
D	Tear gas devices *with more than 2 percent tear gas substances, by mass*	6.1	NA1693	I	POISON		None	340	None	Forbidden	Forbidden	D	40
				II	POISON		None	340	None	Forbidden	Forbidden	D	40
	Tear gas devices, with not more than 2 percent tear gas substances, by mass, see Aerosols, etc.												
	Tear gas grenades, see Tear gas candles												
	Tear gas substances, liquid, n.o.s.	6.1	UN1693	I	POISON		None	201	None	Forbidden	Forbidden	D	40
				II	POISON		None	202	None	Forbidden	5 L	D	40
	Tear gas substances, solid, n.o.s.	6.1	UN1693	I	POISON		None	211	None	Forbidden	Forbidden	D	40
				II	POISON		None	212	None	Forbidden	25 kg	D	40
	Tellurium compound, n.o.s.	6.1	UN3284	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Tellurium hexafluoride	2.3	UN2195		POISON GAS, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40
	Terpene hydrocarbons, n.o.s.	3	UN2319	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Terpinolene	3	UN2541	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetraazido benzene quinone	Forbidden											
	Tetrabromoethane	6.1	UN2504	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Tetrachloroethane	6.1	UN1702	II	POISON	N36, T14	None	202	243	5 L	60 L	A	40
	Tetrachloroethylene	6.1	UN1897	III	KEEP AWAY FROM FOOD.	N36, T1	153	203	241	60 L	220 L	A	40
	Tetraethyl dithiopyrophosphate	6.1	UN1704	II	POISON		None	212	242	25 kg	100 kg	D	40
D	Tetraethyl lead, liquid	6.1	NA1649	I	POISON, FLAMMABLE LIQUID.		None	201	None	Forbidden	Forbidden	E	40
D	Tetraethyl pyrophosphate, liquid	6.1	NA3018	I	POISON		None	201	243	Forbidden	1 L	A	40
D	Tetraethyl pyrophosphate solid	6.1	NA2783	I	POISON	N77	None	211	242	Forbidden	50 kg	A	40
	Tetraethyl silicate	3	UN1292	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetraethylammonium perchlorate (dry)	Forbidden											
	Tetraethylenepentamine	8	UN2320	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	1,1,1,2-Tetrafluoroethane	2.2	UN3159		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Tetrafluoroethylene, inhibited	2.1	UN1081		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	E	40
	Tetrafluoromethane, *R14*	2.2	UN1982		NONFLAMMABLE GAS		None	302	None	75 kg	150 kg	A	
	1,2,3,6-Tetrahydrobenzaldehyde	3	UN2498	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetrahydrofuran	3	UN2056	II	FLAMMABLE LIQUID	T8	None	202	242	5 L	60 L	B	
	Tetrahydrofurfurylamine	3	UN2943	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetrahydrophthalic anhydrides *with more than 0.05 percent of maleic anhydride*	8	UN2698	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	1,2,3,6-Tetrahydropyridine	3	UN2410	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Tetrahydrothiophene	3	UN2412	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	

	Tetramethylammonium hydroxide	8	UN1835	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Tetramethylene diperoxide dicarbamide	Forbidden											
	Tetramethylsilane	3	UN2749	I	FLAMMABLE LIQUID	T21, T26	None	201	243	Forbidden	30 L	D	
	Tetranitro diglycerin	Forbidden											
	Tetranitroaniline	1.1D	UN0207	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
+	Tetranitromethane	5.1	UN1510	I	OXIDIZER, POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	None	Forbidden	Forbidden	D	40, 66, 106
	2,3,4,6-Tetranitrophenol	Forbidden											
	2,3,4,6-Tetranitrophenyl methyl nitramine	Forbidden											
	2,3,4,6-Tetranitrophenylnitramine	Forbidden											
	Tetranitroresorcinol (dry)	Forbidden											
	2,3,5,6-Tetranitroso-1,4-dinitrobenzene	Forbidden											
	2,3,5,6-Tetranitroso nitrobenzene (dry)	Forbidden											
	Tetrapropylorthotitanate	3	UN2413	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Tetrazene, *see* Guanyl nitrosaminoguanyltetrazene												
	Tetrazine (dry)	Forbidden											
	Tetrazol-1-acetic acid	1.4C	UN0407	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	1E, 5E, 24E
	Tetrazolyl azide (dry)	Forbidden											
	Tetryl, *see* Trinitrophenylmethylnitramine												
	Thallium chlorate	5.1	UN2573	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	56, 58, 106
	Thallium compounds, n.o.s.	6.1	UN1707	II	POISON		None	212	242	25 kg	100 kg	A	
	Thallium nitrate	6.1	UN2727	II	POISON, OXIDIZER		None	212	242	5 kg	25 kg	A	
D	Thallium sulfate, solid	6.1	NA1707	II	POISON		None	212	242	5 kg	50 kg	A	
	4-Thiapentanal	6.1	UN2785	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	D	25, 49
	Thioacetic acid	3	UN2436	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Thiocarbonylchloride, see Thiophosgene												
	Thioglycol	6.1	UN2966	II	POISON	T8	None	202	243	5 L	60 L	A	
	Thioglycolic acid	8	UN1940	II	CORROSIVE	A7, B2, N34, T8	154	202	242	1 L	30 L	A	
	Thiolactic acid	6.1	UN2936	II	POISON	T8	None	212	242	25 kg	100 kg	A	
	Thionyl chloride	8	UN1836	I	CORROSIVE	25, A7, B6, B10, N34, T42.	None	201	243	Forbidden	Forbidden	C	40
	Thiophene	3	UN2414	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	40
+	Thiophosgene	6.1	UN2474	II	POISON	2, A7, B9, B14, B32, B74, N33, N34, T38, T43, T45.	None	227	244	Forbidden	60 L	B	26, 40
	Thiophosphoryl chloride	8	UN1837	II	CORROSIVE	A3, A7, B2, B8, B25, N34, T12.	None	202	242	Forbidden	30 L	C	40
	Thorium metal, pyrophoric	7	UN2975		RADIOACTIVE, SPONTANEOUSLY COMBUSTIBLE.		None	418	None	Forbidden	Forbidden	D	
	Thorium nitrate, solid	7	UN2976		RADIOACTIVE, OXIDIZER.		None	419	None	Forbidden	15 kg	A	
	Tin chloride, fuming, see Stannic chloride, anhydrous												
	Tin perchloride or Tin tetrachloride, see Stannic chloride, anhydrous												
	Tinctures, medicinal	3	UN1293	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Tinning flux, see Zinc chloride												
	Titanium disulphide	4.2	UN3174	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	A	
	Titanium hydride	4.1	UN1871	II	FLAMMABLE SOLID	A19, A20, N34	None	212	241	15 kg	50 kg	E	
	Titanium powder, dry	4.2	UN2546	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
				II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N5, N34	None	212	241	15 kg	50 kg	D	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D	
	Titanium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	4.1	UN1352	II	FLAMMABLE SOLID	A19, A20, N34	None	212	240	15 kg	50 kg	E	
	Titanium sponge granules or Titanium sponge powders	4.1	UN2878	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	D	
D	Titanium sulfate solution	8	NA1760	II	CORROSIVE	B2, B15	None	202	242	1 L	30 L	B	40
+	Titanium tetrachloride	8	UN1838	II	CORROSIVE, POISON	2, A3, A6, B7, B9, B14, B32, B41, B74, B77, N41, T38, T43, T45.	None	227	244	Forbidden	30 L	C	40
	Titanium trichloride mixtures	8	UN2869	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	40
				III	CORROSIVE	A7, N34	154	213	240	25 kg	100 kg	A	40
	Titanium trichloride, pyrophoric *or* Titanium trichloride mixtures, pyrophoric	4.2	UN2441	I	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.	A7, A8, A19, A20, N34.	None	181	244	Forbidden	Forbidden	D	40
	TNT mixed with aluminum, see Tritonal												

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	TNT, *see* Trinitrotoluene, *etc.*												
	Toluene	3	UN1294	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Toluene diisocyanate	6.1	UN2078	II	POISON	T14	None	202	243	5 L	60 L	D	25, 40
	Toluene sulfonic acid, *see* Alkyl, Aryl *or* Toluene sulfonic acid *etc.*												
	Toluidines *liquid*	6.1	UN1708	II	POISON	T14	None	202	243	5 L	60 L	A	
	Toluidines *solid*	6.1	UN1708	II	POISON		None	212	242	25 kg	100 kg	A	
	2,4-Toluylenediamine or 2,4-Toluenediamine	6.1	UN1709	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Torpedoes, liquid fueled, *with inert head*	1.3J	UN0450	II	EXPLOSIVE 1.3J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes, liquid fueled, *with or without bursting charge*	1.1J	UN0449	II	EXPLOSIVE 1.1J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes *with bursting charge*	1.1E	UN0329	II	EXPLOSIVE 1.1E			62	None	Forbidden	Forbidden	B	
	Torpedoes *with bursting charge*	1.1F	UN0330	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	B	
	Torpedoes *with bursting charge*	1.1D	UN0451	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	
	Toxic liquid, corrosive, inorganic, n.o.s.	6.1	UN3289	I	POISON, CORROSIVE		None	201	243	0.5 L	2.5 L	A	
				II	POISON, CORROSIVE	T14	None	202	243	1 L	30 L	A	
	Toxic liquid, corrosive, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone A*	6.1	UN3289	I	POISON, CORROSIVE	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	B	40
	Toxic liquid, corrosive, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone B*	6.1	UN3289	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Toxic liquid, inorganic, n.o.s.	6.1	UN3287	I	POISON		None	201	243	1 L	30 L	A	
				II	POISON	T14	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Toxic liquid, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone A*	6.1	UN3287	I	POISON	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	B	40
	Toxic liquid, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone B*	6.1	UN3287	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Toxic liquids, corrosive, organic, n.o.s.	6.1	UN2927	I	POISON, CORROSIVE	T42	None	201	243	0.5 L	2.5 L	B	40
				II	POISON, CORROSIVE		None	202	243	1 L	30 L	B	40
	Toxic liquids, corrosive, organic, n.o.s., *inhalation hazard, Packing Group I, Zone A*	6.1	UN2927	I	POISON, CORROSIVE	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic liquids, corrosive, organic, n.o.s., *inhalation hazard, Packing Group I, Zone B*	6.1	UN2927	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic liquids, flammable, organic, n.o.s.	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T15	None	202	243	5 L	60 L	B	40
	Toxic liquids, flammable, organic, n.o.s., *inhalation hazard, Packing Group I, Zone A*	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic liquids, flammable, organic, n.o.s., *inhalation hazard, Packing Group I, Zone B*	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic, liquids, organic, n.o.s.	6.1	UN2810	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40

Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone A* ..	6.1	UN2810	I	POISON	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden ...	Forbidden ...	D	20, 40, 95
Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone B* ..	6.1	UN2810	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden ...	Forbidden ...	D	20, 40, 95
Toxic liquids, oxidizing, n.o.s.	6.1	UN3122	I	POISON, OXIDIZER	A4	None	201	243	Forbidden ...	2.5 L	C	
			II	POISON, OXIDIZER		None	202	243	1 L	5 L	C	
Toxic liquids, oxidizing, n.o.s. *Inhalation hazard, Packing Group I, Zone A* .	6.1	UN3122	I	POISON, OXIDIZER	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden ...	2.5 L	C	
Toxic liquids, oxidizing, n.o.s. *Inhalation Hazard, Packing Group I, Zone B*	6.1	UN3122	I	POISON, OXIDIZER	2, B9, B14, B32, T38, T43, T45.	None	227	244	Forbidden ...	Forbidden ...	C	
Toxic liquids, water-reative, n.o.s.	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	A4	one	201	243	Forbidden ...	1 L	E	40
			II	POISON, DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	40
Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone A*	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden ...	Forbidden ...	E	40
Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone B*	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden ...	Forbidden ...	E	40
Toxic solid, corrosive, inorganic, n.o.s.	6.1	UN3290	I	POISON, CORROSIVE ..		None	211	242	1 kg	25 kg	A	
			II	POISON, CORROSIVE ..		None	212	242	15 kg	50 kg	A	
Toxic solid, inorganic, n.o.s.	6.1	UN3288	I	POISON		None	211	242	5 kg	50 kg	A	
			II	POISON		None	212	242	25 kg	100 kg	A	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Toxic solids, corrosive, organic, n.o.s.	6.1	UN2928	I	POISON, CORROSIVE ..		None	211	242	1 kg	25 kg	B	40
			II	POISON, CORROSIVE ..		None	212	242	15 kg	50 kg	B	40
Toxic solids, flammable, organic, n.o.s.	6.1	UN2930	I	POISON, FLAMMABLE SOLID.		None	211	242	1 kg	15 kg	B	
			II	POISON, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	B	
Toxic solids, organic, n.o.s.	6.1	UN2811	I	POISON		None	211	242	5 kg	50 kg	B	
			II	POISON		None	212	242	25 kg	100 kg	B	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Toxic solids, oxidizing, n.o.s.	6.1	UN3086	I	POISON, OXIDIZER		None	211	242	1 kg	15 kg	C	
			II	POISON, OXIDIZER		None	212	242	15 kg	50 kg	C	
Toxic solids, self heating, n.o.s.	6.1	UN3124	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	A5	None	211	242	5 kg	15 kg	D	40
			II	POISON, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	D	40
Toxic solids, water-reative, n.o.s.	6.1	UN3125	I	POISON, DANGEROUS WHEN WET.	A5	None	211	242	5 kg	15 kg	D	40
			II	POISON, DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	D	40
D Toy Caps	1.4S	NA0337	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
Tracers for ammunition	1.3G	UN0212	II	EXPLOSIVE 1.3G		None	62	None	Forbidden ...	Forbidden ...	B	
Tracers for ammunition	1.4G	UN0306	II	EXPLOSIVE 1.4G		None	62	None	Forbidden ...	75 kg	A	24E
Tractors, see Vehicles, self propelled												
Tri-(b-nitroxyethyl) ammonium nitrate	Forbidden											
Triallyl borate	6.1	UN2609	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	13
Triallylamine	3	UN2610	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	None	203	242	5 L	60 L	A	40
Triazine pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2764	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden ...	30 L	B	40
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
Triazine pesticides, liquid, toxic	6.1	UN2998	I	POISON	T42	None	201	243	1 L	30 L	B	40
			II	POISON	T14	None	202	243	5 L	60 L	B	40
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
Triazine pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN2997	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Triazine pesticides, solid, toxic	6.1	UN2763	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Tributylamine	8	UN2542	III	CORROSIVE	T2	None	203	241	5 L	60 L	A	
	Tributylphosphane	4.2	UN3254	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
D	mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*with more than 39 percent available chlorine*)	5.1	NA2468	II	OXIDIZER		152	212	240	5 kg	25 kg	A	13
	Trichloro-s-triazinetrione dry, with more than 39 percent available chlorine, see Trichloroisocyanuric acid, dry												
	Trichloroacetic acid	8	UN1839	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	
	Trichloroacetic acid, solution	8	UN2564	II	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	B	
				III	CORROSIVE	A3, A6, A7, N34, T7.	154	203	241	5 L	60 L	B	8
+	Trichloroacetyl chloride	8	UN2442	II	CORROSIVE, POISON	1, A3, A7, B9, B14, B30, B72, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Trichlorobenzenes, liquid	6.1	UN2321	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Trichlorobutene	6.1	UN2322	II	POISON	T8	None	202	243	5 L	60 L	A	25, 40
	1,1,1-Trichloroethane	6.1	UN2831	III	KEEP AWAY FROM FOOD.	N36, T7	153	203	241	60 L	220 L	A	40
	Trichloroethylene	6.1	UN1710	III	KEEP AWAY FROM FOOD.	N38, T1	153	203	241	60 L	220 L	A	40
	Trichloroisocyanuric acid, dry	5.1	UN2468	II	OXIDIZER		152	212	240	5 kg	25 kg	A	13
	Trichloromethyl perchlorate	Forbidden											
	Trichlorosilane	4.3	UN1295	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID, CORROSIVE.	A7, N34, T24, T26	None	201	244	Forbidden	Forbidden	D	21, 28, 40, 49, 100
	Tricresyl phosphate *with more than 3 percent ortho isomer*	6.1	UN2574	II	POISON	A3, N33, N34, T8	None	202	243	5 L	60 L	A	
	Triethyl phosphite	3	UN2323	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Triethylamine	3	UN1296	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40
	Triethylenetetramine	8	UN2259	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	B	40
	Trifluoroacetic acid	8	UN2699	I	CORROSIVE	A3, A6, A7, B4, N3, N34, T18, T27.	None	201	243	0.5 L	2.5 L	B	12, 40
	Trifluoroacetylchloride	2.3	UN3057		POISON GAS	2, 25, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Trifluorochloroethylene, Inhibited, *R1113*	2.3	UN1082		POISON GAS	3, 25, B14	None	304	314, 315	Forbidden	150 kg	B	40
	Trifluoroethane, compressed, *R143*	2.1	UN2035		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Trifluoromethane	2.2	UN1984		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
D	Trifluoromethane and chlorotrifluoromethane mixture (*constant boiling mixture) (R-503*). *See* Refrigerant gases, n.o.s.												
	Trifluoromethane, refrigerated liquid	2.2	UN3136		NONFLAMMABLE GAS		306	None	314, 315	50 kg	500 kg	D	
	2-Trifluoromethylaniline	6.1	UN2942	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	
	3-Trifluoromethylaniline	6.1	UN2948	II	POISON	T14	None	202	243	5 L	60 L	A	40
	Triformoxime trinitrate	Forbidden											
	Triisobutylene	3	UN2324	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Triisocyanatoisocyanurate of isophoronediisocyanate, solution, *with 70 percent, by mass*	3	UN2906	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	

	Triisopropyl borate	3	UN2616	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	A	
				III	FLAMMABLE LIQUID	B1, T8, T31	150	203	242	60 L	220 L	A	
D	Trimethoxysilane	6.1	NA9269	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40
	Trimethyl borate	3	UN2416	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B	
	Trimethyl phosphite	3	UN2329	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1,3,5-Trimethyl-2,4,6-trinitrobenzene	Forbidden											
	Trimethylacetyl chloride	6.1	UN2438	I	POISON, CORROSIVE, FLAMMABLE LIQUID.	2, A3, A6, A7, B3, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	25, 40
	Trimethylamine, anhydrous	2.1	UN1083		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Trimethylamine, aqueous solutions *with not more than 50 percent trimethylamine by mass*	3	UN1297	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	D	40, 41
				II	FLAMMABLE LIQUID, CORROSIVE.	B1, T14	None	202	243	1 L	5 L	B	40, 41
				III	FLAMMABLE LIQUID, CORROSIVE.	B1	150	203	242	5 L	60 L	A	40, 41
	1,3,5-Trimethylbenzene	3	UN2325	III	FLAMMABLE LIQUID	B1, T1	None	203	242	60 L	220 L	A	
	Trimethylchlorosilane	3	UN1298	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B77, N34, T14, T26.	None	202	243	1 L	5 L	E	40
	Trimethylcyclohexylamine	8	UN2326	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Trimethylene glycol diperchlorate	Forbidden											
	Trimethylhexamethylene diisocyanate	6.1	UN2328	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	B	
	Trimethylhexamethylenediamines	8	UN2327	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Trimethylol nitromethane trinitrate	Forbidden											
	Trinitro-meta-cresol	1.1D	UN0216	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4,6-Trinitro-1,3-diazobenzene	Forbidden											
	2,4,6-Trinitro-1,3,5-triazido benzene (dry)	Forbidden											
	Trinitroacetic acid	Forbidden											
	Trinitroacetonitrile	Forbidden											
	Trinitroamine cobalt	Forbidden											
	Trinitroaniline *or* Picramide	1.1D	UN0153	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroanisole	1.1D	UN0213	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrobenzene, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0214	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrobenzene, wetted *with not less than 30 percent water, by mass*	4.1	UN1354	I	FLAMMABLE SOLID	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28
	Trinitrobenzenesulfonic acid	1.1D	UN0386	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	E	1E, 5E
	Trinitrobenzoic acid, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0215	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrobenzoic acid, wetted *with not less than 30 percent water, by mass*	4.1	UN1355	I	FLAMMABLE SOLID	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28
	Trinitrochlorobenzene *or* Picryl chloride	1.1D	UN0155	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroethanol	Forbidden											
	Trinitroethylnitrate	Forbidden											
	Trinitrofluorenone	1.1D	UN0387	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitromethane	Forbidden											
	1,3,5-Trinitronaphthalene	Forbidden											
	Trinitronaphthalene	1.1D	UN0217	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrophenetole	1.1D	UN0218	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrophenol *or* Picric acid, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0154	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrophenol, wetted *with not less than 30 percent water, by mass*	4.1	UN1344	I	FLAMMABLE SOLID	23, A8, A19, N41	None	211	None	1 kg	15 kg	E	28, 36
	2,4,6-Trinitrophenyl guanidine (dry)	Forbidden											
	2,4,6-Trinitrophenyl nitramine	Forbidden											
	2,4,6-Trinitrophenyl trimethylol methyl nitramine trinitrate (dry)	Forbidden											
	Trinitrophenylmethylnitramine *or* Tetryl	1.1D	UN0208	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroresorcinol *or* Styphnic acid, *dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass*	1.1D	UN0219	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass*	1.1D	UN0394	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4,6-Trinitroso-3-methyl nitraminoanisole	Forbidden											
	Trinitrotetramine cobalt nitrate	Forbidden											
	Trinitrotoluene and Trinitrobenzene mixtures *or* TNT and trinitrobenzene mixtures *or* TNT and hexanitrostilbene mixtures *or* Trinitrotoluene and hexanitrostilnene mixtures	1.1D	UN0388	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene *or* TNT mixtures containing trinitrobenzene and hexanitrostilbene	1.1D	UN0389	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene *or* TNT, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0209	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene, wetted *with not less than 30 percent water, by mass*	4.1	UN1356	I	FLAMMABLE SOLID	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Tripropylamine	3	UN2260	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	203	242	5 L	60 L	A	40
	Tripropylene	3	UN2057	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tris-(1-aziridinyl) phosphine oxide, solution	6.1	UN2501	II	POISON	T8	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Tris, bis-difluoroamino diethoxy propane (TVOPA)	Forbidden											
	Tritonal	1.1D	UN0390	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Tungsten hexafluoride	2.3	UN2196		POISON GAS, CORROSIVE.	3	None	338	None	Forbidden	Forbidden	D	40
	Turpentine	3	UN1299	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Turpentine substitute	3	UN1300	I	FLAMMABLE LIQUID	T1	None	201	243	1 L	30 L	B	
				II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Undecane	3	UN2330	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Uranium hexafluoride, *fissile excepted or non-fissile*	7	UN2978		RADIOACTIVE, CORROSIVE.		421-2	420, 425	420, 425				
	Uranium hexafluoride, fissile (*with more than 1 percent U-235*)	7	UN2977		RADIOACTIVE, CORROSIVE.		453	417, 420	417, 420			A	
	Uranium metal, pyrophoric	7	UN2979		RADIOACTIVE, SPONTANEOUSLY COMBUSTIBLE.		None	418	None			D	
	Uranyl nitrate hexahydrate solution	7	UN2980		RADIOACTIVE, CORROSIVE.		421, 425	415, 416, 417	415, 416, 417			D	
	Uranyl nitrate, solid	7	UN2981		RADIOACTIVE, OXIDIZER.		None	419	None	Forbidden	15 kg	A	
	Urea hydrogen peroxide	5.1	UN1511	III	OXIDIZER, CORROSIVE	A1, A7, A29	152	213	240	25 kg	100 kg	A	13
	Urea nitrate, *dry or wetted with less than 20 percent water, by mass*	1.1D	UN0220	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Urea nitrate, wetted *with not less than 20 percent water, by mass*	4.1	UN1357	I	FLAMMABLE SOLID	39, A8, A19, N41	None	211	None	1 kg	15 kg	A	28
	Urea peroxide, see Urea hydrogen peroxide												
	Valeraldehyde	3	UN2058	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Valeric acid, see Corrosive liquids, n.o.s.												
	Valeryl chloride	8	UN2502	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, A7, B2, N34, T8.	154	202	243	1 L	30 L	C	40
	Vanadium compound, n.o.s.	6.1	UN3285	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Vanadium oxytrichloride	8	UN2443	II	CORROSIVE	A3, A6, A7, B2, B16, N34, T8, T26.	154	202	242	Forbidden	30 L	C	40
	Vanadium pentoxide, *non-fused form*	6.1	UN2862	II	POISON		None	212	242	25 kg	100 kg	A	
	Vanadium tetrachloride	8	UN2444	I	CORROSIVE	A3, A6, A7, B4, N34, T8, T26.	None	201	243	Forbidden	2.5 L	C	40
	Vanadium trichloride	8	UN2475	III	CORROSIVE		154	213	240	25 kg	100 kg	A	40
	Vanadyl sulfate	6.1	UN2931	II	POISON		None	212	242	25 kg	100 kg	A	
D	*Vehicles, self-propelled including internal combustion engines or other apparatus containing an internal combustion Engine or electric storage battery, see* Engines etc. *or* Battery powered etc. *or* Wheel chair, electric)												
	Very signal cartridge, see Cartridges, signal												
	Vinyl acetate, inhibited	3	UN1301	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Vinyl bromide, inhibited	2.1	UN1085		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Vinyl butyrate, inhibited	3	UN2838	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Vinyl chloride, inhibited *or* Vinyl chloride, stabilized	2.1	UN1086		FLAMMABLE GAS	B44	306	304	314, 315	Forbidden	150 kg	B	40
	Vinyl chloroacetate	6.1	UN2589	II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	A	
	Vinyl ethyl ether, inhibited	3	UN1302	I	FLAMMABLE LIQUID	A3, T14	None	201	243	1 L	30 L	D	
	Vinyl fluoride, inhibited	2.1	UN1860		FLAMMABLE GAS	B43	306	304	314, 315	Forbidden	150 kg	E	40
	Vinyl isobutyl ether, inhibited	3	UN1304	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	

Vinyl methyl ether, inhibited	2.1	UN1087		FLAMMABLE GAS	B44	306	304	314, 315	Forbidden	150 kg	B	40	
Vinyl nitrate polymer	Forbidden												
Vinyl toluene, inhibited *mixed isomers*	3	UN2618	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Vinylidene chloride, inhibited	3	UN1303	I	FLAMMABLE LIQUID	T23, T29	150	201	243	1 L	30 L	E	40	
Vinylpyridines, inhibited	6.1	UN3073	II	POISON, FLAMMABLE LIQUID.	T8	None	202	243	5 L	60 L	B	40	
Vinyltrichlorosilane	3	UN1305	I	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B6, N34, T14, T26.	None	201	243	Forbidden	2.5 L	B	40	
Warheads, rocket *with burster or expelling charge*	1.4D	UN0370	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	3E, 7E. 24F	
Warheads, rocket *with burster or expelling charge*	1.4F	UN0371	II	EXPLOSIVE 1.4F		None	62	None	Forbidden	Forbidden	E		
Warheads, rocket *with bursting charge*	1.1D	UN0286	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E	
Warheads, rocket *with bursting charge*	1.2D	UN0287	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	3E, 7E	
Warheads, rocket *with bursting charge*	1.1F	UN0369	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E		
Warheads, torpedo *with bursting charge*	1.1D	UN0221	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E	
Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	DANGEROUS WHEN WET, CORROSIVE.		None	201	243	Forbidden	1 L	D		
			II	DANGEROUS WHEN WET, CORROSIVE.		None	202	243	1 L	5 L	E	85	
			III	DANGEROUS WHEN WET, CORROSIVE.		None	203	242	5 L	60 L	E		
Water-reactive liquid, n.o.s.	4.3	UN3148	I	DANGEROUS WHEN WET.		None	201	244	Forbidden	1 L	E	40	
			II	DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	40	
			III	DANGEROUS WHEN WET.		None	203	242	5 L	60 L	E	40	
Water-reactive liquid, toxic, n.o.s.	4.3	UN3130	I	DANGEROUS WHEN WET, POISON.	A4	None	201	243	Forbidden	1 L	D		
			II	DANGEROUS WHEN WET, POISON.		None	202	243	1 L	5 L	E	85	
			III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.		None	203	242	5 L	60 L	E	85	
Water-reactive solid, corrosive, n.o.s.	4.3	UN3131	I	DANGEROUS WHEN WET, CORROSIVE.	N40	None	211	242	Forbidden	15 kg	D		
			II	DANGEROUS WHEN WET, CORROSIVE.		None	212	242	15 kg	50 kg	E	85	
			III	DANGEROUS WHEN WET, CORROSIVE.		None	213	241	25 kg	100 kg	E	85	
Water-reactive solid, flammable, n.o.s.	4.3	UN3132	I	DANGEROUS WHEN WET, FLAMMABLE SOLID.	N40	None	211	242	Forbidden	15 kg	E		
			II	DANGEROUS WHEN WET, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	E		
			III	DANGEROUS WHEN WET, FLAMMABLE SOLID.		None	213	241	25 kg	100 kg	E		
Water-reactive solid, n.o.s.	4.3	UN2813	I	DANGEROUS WHEN WET.	N40	None	211	242	Forbidden	15 kg	E	40	
			II	DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	E	40	
			III	DANGEROUS WHEN WET.		None	213	241	25 kg	100 kg	E	40	
Water-reactive solid, oxidizing, n.o.s.	4.3	UN3133		DANGEROUS WHEN WET, OXIDIZER.		None	214	214	Forbidden	Forbidden			
Water-reactive solid, self-heating, n.o.s.	4.3	UN3135	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	N40	None	211	242	Forbidden	15 kg	E		
			II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	E		
			III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	E		
Water-reactive solid, toxic, n.o.s.	4.3	UN3134	I	DANGEROUS WHEN WET, POISON.	A5, N40	None	211	242	Forbidden	15 kg	D		
			II	DANGEROUS WHEN WET, POISON.		None	212	242	15 kg	50 kg	E	85	
			III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.		None	213	241	25 kg	100 kg	E	85	
Water reactive substances, n.o.s., see Substances which in contact with water, etc.													

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
AD	Wheel chair, electric (*spillable or non-spillable type batteries)*	9	.....	III	CLASS 9	.....	222	222	None	No limit	No limit	A	
	White acid, see Hydrofluoric acid mixtures	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
I	White asbestos *(chrysotile, actinolite, anthophyllite, tremolite)*	9	UN2590	III	CLASS 9	.....	155	216	240	200 kg	200 kg	A	34, 40
	Wood preservatives, liquid	3	UN1306	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	40
		.....	.....	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	40
	Xenon	2.2	UN2036		NONFLAMMABLE GAS	.....	306	302	None	75 kg	150 kg	A	
	Xenon, refrigerated liquid *(cryogenic liquids)*	2.2	UN2591		NONFLAMMABLE GAS	.....	320	None	None	50 kg	500 kg	B	
	Xylenes	3	UN1307	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
		.....	.....	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Xylenols	6.1	UN2261	II	POISON	T8	None	212	242	25 kg	100 kg	A	
	Xylidines, solid	6.1	UN1711	II	POISON	T14	None	212	242	25 kg	100 kg	A	
	Xylidines, solution	6.1	UN1711	II	POISON	T14	None	202	243	5 L	60 L	A	
	Xylyl bromide	6.1	UN1701	II	POISON	A3, A6, A7, N33	None	340	None	Forbidden	60 L	D	40
	p-Xylyl diazide	Forbidden	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc ammonium nitrite	5.1	UN1512	II	OXIDIZER	.....	None	212	242	5 kg	25 kg	E	
	Zinc arsenate *or* Zinc arsenite *or* Zinc arsenate and zinc arsenite mixtures	6.1	UN1712	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Zinc ashes	4.3	UN1435	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	
		.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc bisulfite solution *see* Bisulfites, inorganic aqueous solutions, n.o.s.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc bromate	5.1	UN2469	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	56, 58, 106
	Zinc chlorate	5.1	UN1513	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Zinc chloride, anhydrous	8	UN2331	III	CORROSIVE	.....	None	213	240	25 kg	100 kg	A	
	Zinc chloride, solution	8	UN1840	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Zinc cyanide	6.1	UN1713	I	POISON	.....	None	211	242	5 kg	50 kg	A	26
	Zinc dithionite *or* Zinc hydrosulfite	9	UN1931	III	None	.....	155	204	240	100 kg	200 kg	A	49
	Zinc ethyl, see Diethylzinc	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc fluorosilicate	6.1	UN2855	III	KEEP AWAY FROM FOOD.	.....	153	213	240	100 kg	200 kg	A	26
		.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc hydrosulfite, *see* Zinc dithionite	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc muriate solution, see Zinc chloride, solution	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc nitrate	5.1	UN1514	II	OXIDIZER	.....	152	212	240	5 kg	25 kg	A	
	Zinc permanganate	5.1	UN1515	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Zinc peroxide	5.1	UN1516	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	13, 75, 106
	Zinc phosphide	4.3	UN1714	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Zinc powder *or* Zinc dust	4.3	UN1436	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, N40	None	211	242	Forbidden	15 kg	A	
		.....	.....	II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19	None	212	242	15 kg	50 kg	A	
		.....	.....	III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	.....	None	213	242	25 kg	100 kg	A	
	Zinc resinate	4.1	UN2714	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Zinc selenate, *see* Selenates *or* Selenites	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc selenite, *see* Selenates *or* Selenites	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zinc silicofluoride, see Zinc fluorosilicate	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Zirconium, dry, *coiled wire, finished metal sheets, strip (thinner than 254 microns but not thinner than 18 microns)*	4.1	UN2858	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Zirconium, dry, *finished sheets, strip or coiled wire*	4.2	UN2009	III	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	213	240	25 kg	100 kg	D	
	Zirconium hydride	4.1	UN1437	II	FLAMMABLE SOLID	A19, A20, N34	None	212	240	15 kg	50 kg	E	
	Zirconium nitrate	5.1	UN2728	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Zirconium picramate, *dry or wetted with less than 20 percent water, by mass*	1.3C	UN0236	II	EXPLOSIVE 1.3C	.....	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Zirconium picramate, wetted *with not less than 20 percent water, by mass*	4.1	UN1517	I	FLAMMABLE SOLID	23, N41	None	211	None	1 kg	15 kg	D	28, 3E
	Zirconium powder, dry	4.2	UN2008	I	SPONTANEOUSLY COMBUSTIBLE.	.....	None	211	242	Forbidden	Forbidden	D	
		.....	.....	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N5, N34	None	212	241	15 kg	50 kg	D	

Zirconium powder, wetted with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns		4.1	UN1358	II	FLAMMABLE SOLID	A19, A20, N34	None	212	241	15 kg	50 kg	E	
Zirconium scrap		4.2	UN1932	III	SPONTANEOUSLY COMBUSTIBLE.	N34	None	213	240	Forbidden	Forbidden	D	
D Zirconium sulfate		8	NA9163	III	CORROSIVE	N34	None	213	240	50 kg	No limit	A	
Zirconium suspended in a liquid		3	UN1308	I	FLAMMABLE LIQUID		None	201	243	Forbidden	Forbidden	B	
				II	FLAMMABLE LIQUID		None	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	B	
Zirconium tetrachloride		8	UN2503	III	CORROSIVE		154	213	240	25 kg	100 kg	A	

12. In Appendix B to § 172.101, two notes would be added to the notes preceding the List of Marine Pollutants to read as follows:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

4. If a material not listed in this appendix meets the criteria for a marine pollutant, as provided in the General Introduction of the IMDG Code, Guidelines for the Identification of Harmful Substances in Packaged Form, the material may be transported as a marine pollutant in accordance with the applicable requirements of this subchapter.

5. If approved by the Associate Administrator for Hazardous Materials Safety, a material listed in this appendix which does not meet the criteria for a marine pollutant, as provided in the General Introduction of the IMDG Code, Guidelines for the Identification of Harmful Substances in Packaged Form, is excepted from the requirements of this subchapter as a marine pollutant.

* * * * *

13. In addition, in Appendix B to § 172.101, the List of Marine Pollutants would be amended by removing the entry "Ammonium arsenate" and adding the following materials to the List of Marine Pollutants in appropriate alphabetical order:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

S.M.P.	Marine pollutant
[ADD]	
(1)	(2)
	Acetal
	Alkyl (C12–C14)dimethylamine
	Alkyl (C7–C9)nitrates
	n-Amylbenzene
	Benomyl
	Bromoacetone
	1–Butanethiol
	n-Butyl butyrate
	Carbendazim
	Chloroacetone, stabilized
	2–Chloro-6-nitrotoluene
	alpha-Chloropropylene
	Copper arsenate
PP	Copper chloride (solution)
	Copper metal powder
	Cupric sulfate
PP	1,5,9–Cyclododecatriene
	Decyloxytetrahydrothiophene dioxide
	Diethylbenzenes (mixed isomers)
	Diisopropylnaphthalene
	Dimethyl glyoxal (butanedione)
	Dimethyl sulphide
	4,4°-Diaminodiphenylmethane
	1,4–Di-tert-butylbenzene
	Dinoseb acetate
	Dodecyl diphenyl oxide disulphonate
	Dodecyl hydroxypropyl sulfide
	1–Dodecylamine
	Epibromohydrin
	Epichlorohydrin
	Estenvalerate
	Ethyl mercaptan
	1–Ethyl-2-methylbenzene
	2–Ethylhexyl nitrate
	Fenbutatin oxide
	n-Heptylbenzene
	n-Hexylbenzene
	Iron oxide, spent
	Isobenzan
	Isobutyl propionate
	Isobutyl isobutyrate
	Isobutyl butyrate
	Isobutylbenzene
	Isopropyltoluene
	1–Methyl-2-ethylbenzene
	3–Methylpyradine
	Mononitrobenzene (nitro benzene)
	Nitrotoluenes (o-: m-: p-)
	Oleylamine
	n-Pentylbenzene
	d-Phenothrin
	Propachlor
	n-Propylbenzene
	Propanethiols
	Quizalofop
	Quizalofop-p-ethyl
	Tetrachlorvinphos
	Tetramethrin
	Tetramethylbenzenes
	Triisopropylated phenyl phosphates
	1,2,3-Trimethylbenzene
	1,2,4-Trimethylbenzene
	1,3,5-Trimethylbenzene

* * * * *

14. In § 172.102, in paragraph (c)(1), Special Provision 41 would be removed, Special Provision 16 would be revised, and Special Provisions 23 (Note: Since Special Provision 23 was already added at 59 FR 28493, this proposed 23 will be renumbered 38 in the final rule), 24, 26, 32, 34, 35, 36, 37, 39, 40, 43, 44, 45, 46, 47, 48, 49, 50, 51 would be added and in paragraph (c)(2), Special Provision A33 would be removed, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * * *

16 This description applies to smokeless powder and other solid propellants that are used as powder for small arms and have been classed as Division 1.3 and 4.1 in accordance with § 173.56 of this subchapter.

* * * * *

23 This material may be transported under the provisions of Division 4.1 only if it is so packed that the percentage of diluent will not fall below that stated in the shipping description at any time during transport.

24 Alcoholic beverages containing more than 70 percent alcohol by volume must be transported as materials in Packing Group II. Alcoholic beverages containing more than 24 percent but not more than 70 percent alcohol by volume must be transported as materials in Packing Group III.

* * * * *

26 This entry does not include ammonium permanganate, the transport of which is prohibited except when approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

32 These beads are made from polystyrene, poly(methyl methacrylate) or other polymeric material.

* * * * *

34 The commercial grade of calcium nitrate fertilizer, when consisting mainly of a double salt (calcium nitrate and ammonium nitrate) containing not more than 10 percent ammonium nitrate and at least 12 percent water of crystallization, is not subject to the requirements of this subchapter.

35 The gas must be at a pressure corresponding to an ambient atmospheric pressure at the time the containment system is closed and not to exceed 105 kPa absolute (15.22 psig). The gas must be contained in hermetically sealed glass or metal inner packagings and with a maximum net quantity per package of 5 liters (1 gallon) or, in the case of a toxic gas, a maximum net quantity per package of 1 liter (0.3 gallons).

36 The maximum net quantity per package is 5 liters (1 gallon) or 5 kg (11 pounds).

37 Unless it can be demonstrated by testing that the sensitivity of the substance in its frozen state is no greater than in its liquid state, the substance must remain liquid during normal transport conditions. It must not freeze at temperatures above -15°C (5°F).

39 This substance may be carried under provisions other than those of Class 1 only if it is so packed that the percentage of water will not fall below that stated at any time during transport. When phlegmatized with water and inorganic inert material, the content of urea nitrate must not exceed 75 percent by mass and the mixture should not be capable of being detonated by test 1(a)(i) or test 1(a) (ii) in the UN Recommendations Tests and Criteria.

40 Polyester resin kits consist of two components: a base material (Class 3, Packing Group II or III) and an activator (organic peroxide), each separately packed in an inner packaging. The organic peroxide must be type D, E, or F, not requiring temperature control, and be limited to a quantity of 125 ml (4.22 ounces) per inner packaging if liquid, and 500 g (1 pound) if solid. The components may be placed in the same outer packaging provided they will not

interact dangerously in the event of leakage. Packing group will be II or III, according to the criteria for Class 3, applied to the base material.

* * * * *

43 The nitrogen content of the nitrocellulose must not exceed 11.5 percent. Each single filter sheet must be packed between sheets of glazed paper. The portion of glazed paper between the filter sheets must not be less than 65 percent, by mass. The membrane filters/paper arrangement must not be liable to propagate a detonation as tested by one of the tests described in the UN Recommendations, Tests and Criteria, Part I, Test series 1 (a).

44 The formulation must be prepared so that it remains homogeneous and does not separate during transport. Formulations with low nitrocellulose contents and neither showing dangerous properties when tested for their ability to detonate, deflagrate or explode when heated under defined confinement by the appropriate test methods and criteria in the UN Recommendations, Tests and Criteria, nor being a flammable solid when tested in accordance with Appendix E to Part 173 of this subchapter (chips, if necessary, crushed and sieved to a particle size of less than 1.25 mm) are not subject to this subchapter.

45 Temperature should be maintained between 18°C (64.4°F) and 40°C (104°F). Tanks containing solidified methacrylic acid must not be reheated during transport.

46 This material must be packed in accordance with packing method OP6B (see § 173.225 of this subchapter). During transport, it must be protected from direct sunshine and stored (or kept) in a cool and well-ventilated place, away from all sources of heat.

47 Mixtures of solids which are not subject to this subchapter and flammable liquids may be transported under this entry without first applying the classification criteria of Division 4.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level.

48 Mixtures of solids which are not subject to this subchapter and toxic liquids may be transported under this entry without first applying the classification criteria of Division 6.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. This entry may not be used for solids containing a Packing Group I liquid.

49 Mixtures of solids which are not subject to this subchapter and corrosive liquids may be transported under this entry without first applying the classification criteria of Class 8, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level.

50 Cases, cartridge, empty with primer which are made of metallic casings and meeting the classification criteria of Division 1.4 are not regulated for domestic transportation.

51 This description applies to items previously described as "Toy propellant devices, Class C" and includes reloadable kits.

* * * * *

15. In § 172.203, the list of shipping names in paragraph (k)(3) would be revised and a new paragraph (o) would be added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) * * *

(3) * * *

Alcoholates solution, n.o.s., *in alcohol*
Alcohols, toxic, n.o.s.
Aldehydes, toxic, n.o.s.
Alkali metal alcoholates, self-heating, corrosive, n.o.s.
Alkaline earth metal alcoholates, n.o.s.
Amines, liquid, corrosive, flammable, n.o.s. or Polyamines, liquid, corrosive, flammable, n.o.s.
Amines, liquid, flammable, corrosive, n.o.s. or Polyamines, liquid, flammable, corrosive, n.o.s.
Articles, explosive, n.o.s.
Caustic alkali liquids, n.o.s.
Charges, propelling
Chloroformates, toxic, corrosive, n.o.s.
Combustible liquid, n.o.s.
Components, explosive train, n.o.s.
Compounds, tree or weed killing, liquid, *flammable, corrosive, toxic*
Compounds, cleaning liquid, *corrosive, flammable, toxic*
Compressed *or* Liquefied gases, toxic, flammable, n.o.s.
Compressed or Liquefied gases, flammable, n.o.s.
Compressed or Liquefied gases, n.o.s.
Compressed or Liquefied gases, toxic, n.o.s.
Compressed or Liquefied gases, oxidizing, n.o.s.
Contrivances, water-activated
Corrosive, liquid, acidic, inorganic or organic, n.o.s.
Corrosive, liquid, basic, inorganic *or* organic, n.o.s.
Corrosive liquids, flammable, n.o.s.
Corrosive liquids, n.o.s.
Corrosive liquids, oxidizing, n.o.s.
Corrosive liquids, toxic, n.o.s.
Corrosive liquids, water-reactive, n.o.s.
Corrosive, solid, acidic, inorganic *or* organic, n.o.s.
Corrosive, solid, basic, inorganic or organic, n.o.s.
Corrosive solids, flammable, n.o.s.
Corrosive solids, n.o.s.
Corrosive solids, oxidizing, n.o.s.
Corrosive solids, self heating, n.o.s.
Corrosive solids, toxic, n.o.s.
Corrosive solids, water-reactive, n.o.s.
Disinfectants, liquid, toxic, n.o.s.
Disinfectants, solids, toxic, n.o.s.
Disinfectants, liquid, corrosive, n.o.s.
Dispersant gas, n.o.s.
Dyes, liquid, toxic, n.o.s. *or* Dye intermediates, liquid, toxic, n.o.s.
Dyes, liquid, corrosive, n.o.s. *or* Dye intermediates, liquid, corrosive, n.o.s.
Dyes, solid, toxic, n.o.s. or Dye intermediates, solid, toxic, n.o.s.
Dyes, solid, corrosive, n.o.s. or Dye intermediates, solid, corrosive, n.o.s.
Environmentally hazardous substances, liquid or solid, n.o.s.
Flammable gases, solid, corrosive, n.o.s.
Flammable liquids, corrosive, n.o.s.
Flammable liquids, n.o.s.
Flammable liquid, toxic, corrosive, n.o.s.
Flammable liquids, toxic, n.o.s.
Flammable solids, corrosive, organic *or* inorganic, n.o.s.
Flammable solids, organic, molten, n.o.s.
Flammable solids, organic or inorganic, n.o.s.
Flammable solids, toxic, organic or inorganic, n.o.s.
Halogenated irritating liquids, n.o.s.
Hazardous waste, liquid or solid, n.o.s.
Infectious substances, affecting animals
Infectious substances, affecting humans
Insecticide gases, n.o.s.
Insecticide gases, toxic, n.o.s.
Isocyanates, toxic, flammable, n.o.s. or Isocyanates solutions, toxic, flammable, n.o.s.
Isocyanates, flammable, toxic, n.o.s. *or* Isocyanates solutions, flammable, toxic, n.o.s.
Medicine, liquid, flammable, toxic, n.o.s.
Medicines, liquid, toxic, n.o.s.
Medicine, solid, toxic, n.o.s.
Metal powder, self-heating, n.o.s.
Metal salts of organic compounds, flammable, n.o.s.
Metal powders, flammable, n.o.s.
Metallic substance, water-reactive, n.o.s.
Metallic substance, water-reactive, self-heating, n.o.s.
Nitriles, toxic, flammable, n.o.s.
Nitriles, flammable, toxic, n.o.s.
Nitriles, toxic, n.o.s.
Organic peroxide type B, liquid
Organic peroxide type B, liquid, temperature controlled
Organic peroxide type B, solid
Organic peroxide type B, solid, temperature controlled
Organic peroxide type C, liquid
Organic peroxide type C, liquid, temperature controlled
Organic peroxide type C, solid
Organic peroxide type C, solid, temperature controlled

Organic peroxide type D, liquid
Organic peroxide type D, liquid, temperature controlled
Organic peroxide type D, solid
Organic peroxide type D, solid, temperature controlled
Organic peroxide type E, liquid
Organic peroxide type E, liquid, temperature controlled
Organic peroxide type E, solid
Organic peroxide type E, solid, temperature controlled
Organic peroxide type F, liquid
Organic peroxide type F, liquid, temperature controlled
Organic peroxide type F, solid
Organic peroxide type F, solid, temperature controlled
Organometallic compound dispersion, water-reactive, flammable, n.o.s.
Organometallic compound solution, water-reactive, flammable, n.o.s.
Organometallic compound, toxic, n.o.s.
Other regulated substances, liquid, n.o.s.
Other regulated substances, solid, n.o.s.
Oxidizing solid, n.o.s.
Oxidizing solid, corrosive, n.o.s.
Oxidizing solid, flammable, n.o.s.
Oxidizing solid, self-heating, n.o.s.
Oxidizing solid, toxic, n.o.s.
Oxidizing solid, water-reactive, n.o.s.
Oxidizing liquid, n.o.s.
Oxidizing liquid, corrosive, n.o.s.
Oxidizing liquid, toxic, n.o.s.
Pesticides, liquid, toxic, flammable, n.o.s.
Pesticides, liquid, toxic, n.o.s.
Pesticides, liquid, flammable, toxic, n.o.s.
Pesticides, solid, toxic, n.o.s.
Propellant, liquid
Propellant, solid
Pyrophoric liquids, organic *or* inorganic, n.o.s.
Pyrophoric metals, n.o.s. *or* Pyrophoric alloys, n.o.s.
Pyrophoric organometallic compound, n.o.s.
Pyrophoric solids, organic *or* inorganic, n.o.s.
Refrigerant gases, n.o.s.
Samples, explosive (*other than initiating explosives*)
Self-heating liquid, corrosive, inorganic, n.o.s.
Self-heating liquid, corrosive, organic, n.o.s.
Self-heating liquid, inorganic, n.o.s.
Self-heating liquid, organic, n.o.s.
Self-heating liquid, toxic, inorganic, n.o.s.
Self-heating liquid, toxic, organic, n.o.s.
Self-heating solid, corrosive, inorganic, n.o.s.
Self-heating solid, corrosive, organic, n.o.s.
Self-heating solid, organic or inorganic, n.o.s.
Self-heating solid, oxidizing, n.o.s.
Self-heating solid, toxic, organic or inorganic, n.o.s.
Self-reactive liquid type B
Self-reactive liquid type B, temperature controlled
Self-reactive liquid type C
Self-reactive liquid type C, temperature controlled
Self-reactive liquid type D
Self-reactive liquid type D, temperature controlled
Self-reactive liquid type E
Self-reactive liquid type E, temperature controlled
Self-reactive liquid type F
Self-reactive liquid type F, temperature controlled
Self-reactive solid type B
Self-reactive solid type B, temperature controlled
Self-reactive solid type C
Self-reactive solid type C, temperature controlled
Self-reactive solid type D
Self-reactive solid type D, temperature controlled
Self-reactive solid type E
Self-reactive solid type E, temperature controlled
Self-reactive solid type F
Self-reactive solid type F, temperature controlled
Solids containing corrosive liquid, n.o.s.
Solids containing flammable liquid, n.o.s.
Solids containing toxic liquid, n.o.s.
Substances, explosive, n.o.s.
Substances, explosive, very insensitive (substances, EVI) n.o.s.
Tear gas substances, liquid *or* solid, n.o.s.
Toxic liquids, corrosive, organic *or* inorganic, n.o.s.
Toxic liquids, flammable, organic *or* inorganic, n.o.s.
Toxic liquids, organic *or* inorganic, n.o.s.
Toxic liquids, oxidizing, n.o.s.
Toxic liquids, water-reactive, n.o.s.
Toxic solids, corrosive, organic *or* inorganic, n.o.s.
Toxic solids, flammable, organic *or* inorganic, n.o.s.
Toxic solids, organic *or* inorganic, n.o.s.
Toxic solids, oxidizing, n.o.s.
Toxic solids, self-heating, n.o.s.
Toxic solids, water-reactive, n.o.s.
Water-reactive, liquid, n.o.s.
Water-reactive, liquid, corrosive, n.o.s.
Water-reactive, liquid, toxic, n.o.s.
Water-reactive, solid, n.o.s.
Water-reactive, solid, corrosive, n.o.s.
Water-reactive, solid, flammable n.o.s.
Water-reactive, solid, oxidizing, n.o.s.
Water-reactive, solid, self-heating, n.o.s.
Water-reactive, solid, toxic, n.o.s.

* * * * *

(o) *Organic peroxides and self-reactive materials.* The description on a shipping paper for a Division 4.1 (self-reactive) material or a Division 5.2 (organic peroxide) material must include the following additional information, as appropriate:

(1) If notification or competent authority approval is required, the shipping paper must contain a statement of approval of the classification and conditions of transport.

(2) For Division 4.1 (self-reactive) and Division 5.2 (organic peroxide) materials that require temperature control during transport, the control and emergency temperature must be included on the shipping paper.

(3) The word "SAMPLE" must be included in association with the basic description when a sample of a Division 4.1 (self-reactive) material (see § 173.224(c)(4) of this subchapter) or Division 5.2 (organic peroxide) material (see § 173.225(c)(4) of this subchapter) is offered for transportation or transported.

§ 172.203 [Amended]

16. In addition, in § 172.203, in paragraph (m)(1), the wording "(Poison)" would be revised to read "'Poison' or 'Toxic'".

§ 172.204 [Amended]

17. In § 172.204, in paragraph (a)(2), the wording "packed, marked and labeled," would be revised to read "packed, marked and labeled/placarded,".

§ 172.320 [Amended]

18. In § 172.320, in paragraph (b), the wording "or identifying information" would be revised to read "or identifying information, such as a product code".

19. In § 172.400a, a new paragraph (c) would be added to read as follows:

§ 172.400a Exceptions from labeling.

* * * * *

(c) Notwithstanding the provisions of § 172.402(a), a subsidiary hazard label is not required on a package containing a Class 8 (corrosive) material which has a subsidiary hazard of Division 6.1 (poisonous) if the toxicity of the material is based solely on the corrosive destruction of tissue rather than systemic poisoning.

20. In § 172.402, new paragraphs (f) and (g) would be added to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(f) *Division 2.2 materials.* In addition to the label specified in Column 6 of the § 172.101 Table, each package of Division 2.2 material that also meets the definition for Division 5.1 (oxidizer) must be labeled "OXIDIZER".

(g) *Division 2.3 materials.* In addition to the label specified in Column 6 of the § 172.101 Table, each package of Division 2.3 material that also meets the definition for:

(1) Division 2.1, must be labeled FLAMMABLE GAS;

(2) Division 5.1, must be labeled OXIDIZER; and

(3) Class 8, must be labeled "CORROSIVE".

§ 172.402 [Amended]

21. In addition, in § 172.402, the following changes would be made:

a. In paragraph (a)(2), in the text preceding the table, the wording "For other than Class 2 or Class 1 materials (for subsidiary labeling requirements for Class 1 materials see paragraph (e) of this section)" would be revised to read "For other than Class 1 or Class 2 materials (for subsidiary labeling

requirements for Class 1 or Class 2 materials see paragraph (e) or paragraphs (f) and (g), respectively, of this section)".

b. In the paragraph (a)(2) table, in the column "8", for the entry "III", the footnote reference "**" would be removed and replaced with "X", and footnote ** would be removed and reserved.

c. In paragraph (a)(2), in the footnotes following the table, the footnote identified as "*" would be revised to read "If the flash point of a material is at or above 38 °C (100 °F), required for transport by air or vessel only."

§ 172.411 [Amended]

22. In § 172.411, in the third sentence of paragraph (d), the wording "measuring at least 12.7 mm (0.5 inches) in height" would be removed.

23. In § 172.416, a new sentence would be added as the last sentence of paragraph (b) to read as follows:

§ 172.416 POISON GAS label.

* * * * *

(b) * * * The words "TOXIC GAS" may be used in lieu of the words "POISON GAS".

24. In § 172.430, a new sentence would be added as the last sentence of paragraph (b) to read as follows:

§ 172.430 POISON label.

* * * * *

(b) * * * The word "TOXIC" may be used in lieu of the word "POISON".

25. In § 172.540, a new sentence would be added to the end of paragraph (b) to read as follows:

§ 172.540 POISON GAS placard.

* * * * *

(b) * * * The words "TOXIC GAS" may be used in lieu of the words "POISON GAS".

§ 172.547 [Amended]

26. In § 172.547, in paragraph (b), the wording "25 mm (0.98 inches)" would be removed and replaced with "12 mm (0.5 inch)".

27. In § 172.554, a new sentence would be added to the end of paragraph (b) to read as follows:

§ 172.554 POISON placard.

* * * * *

(b) * * * The word "TOXIC" may be used in lieu of the word "POISON".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

28. The authority citation for part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

29. In § 173.2a, in the paragraph (b) table, two notes would be added at the end of the table to read as follows:

§ 173.2a Classification of a material having more than one hazard.

* * * * *

(b) * * *

Precedence of Hazard Table

* * * * *

Note 1: The most stringent packing group assigned to a hazard of the material takes precedence over other packing groups; for example, a material meeting Class 3 PG II and Division 6.1 PG I (oral toxicity) is classified as Class 3 PG I.

Note 2: A material which meets the definition of Class 8 and has an inhalation toxicity by dusts and mists which meets criteria for Packing Group I specified in § 173.133(a)(1) must be classed as Division 6.1 if the oral or dermal toxicity meets criteria for Packing Group I or II. If the oral or dermal toxicity meets criteria for Packing Group III, the material must be classed as Class 8.

§ 173.2a [Amended]

30. In addition, in the paragraph (b) table, the following changes would be made:

a. At the intersection of the line entry "4.2 II" and the column entry "8 I liquid", the wording "(3)" would be revised to read "8".

b. At the intersection of the line entry "4.2 II" and the column entry "8 II liquid", the wording "(3)" would be revised to read "4.2".

c. At the intersection of the line entry "4.2 II" and the column entry "8 III liquid", the wording "(3)" would be revised to read "4.2".

d. At the intersection of the line entry "4.2 III" and the column entry "8 I liquid", the wording "(3)" would be revised to read "8".

e. At the intersection of the line entry "4.2 III" and the column entry "8 II liquid", the wording "(3)" would be revised to read "8".

f. At the intersection of the line entry "4.2 III" and the column entry "8 III liquid", the wording "(3)" would be revised to read "4.2".

31. In § 173.9, a new paragraph (e) would be added to read as follows:

§ 173.9 Cars, truck bodies, freight containers, or trailers containing lading which has been fumigated or treated with Class 3, Division 2.1, 2.3, or 6.1 materials.

* * * * *

(e) See § 176.76(i) of this subchapter for requirements for fumigated transport units on vessels.

§ 173.21 [Amended]

32. In § 173.21, in the first sentence of paragraph (f)(2), the wording "Columns 4a and 4b," would be revised to read "Columns 5 and 6,".

§ 173.22 [Amended]

33. In § 173.22, in paragraph (a)(3)(i), the first word "The" would be removed and replaced with the wording "Except for the marking on the bottom of a metal or plastic drum with a capacity over 100 liters which has been reconditioned, remanufactured or otherwise converted, the".

34. In § 173.24, paragraph (d) would be revised to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(d) *Specification packagings and UN standard packagings manufactured outside the U.S.*—(1) *Specification packagings.* A specification packaging, including a UN standard packaging manufactured in the United States, must conform in all details to the applicable specification or standard in part 178 or part 179 of this subchapter.

(2) *UN standard packagings manufactured outside the United States.* A UN standard packaging manufactured outside the United States, in accordance with national or international regulations based on the UN Recommendations on the Transport of Dangerous Goods, may be imported and used as an authorized packaging under the provisions of paragraph (c)(1) of this section, subject to the following conditions and limitations:

(i) The packaging fully conforms to applicable provisions in the UN Recommendations on the Transport of Dangerous Goods and the requirements of this subpart, including reuse provisions;

(ii) The packaging is capable of passing the prescribed tests in part 178 of this subchapter applicable to that standard; and

(iii) The competent authority of the country of manufacture provides reciprocal treatment for UN standard packagings manufactured in the U.S.

* * * * *

§ 173.24 [Amended]

35. In addition, in § 173.24, in paragraph (e)(4)(ii), the wording "flammable or poisonous gases;" would be revised to read "flammable, poisonous, or asphyxiant gases;".

36. In § 173.25, paragraph (a) introductory text would be revised and a new paragraph (b) would be added to read as follows:

§ 173.25 Authorized packages and overpacks.

(a) Authorized packages containing hazardous materials may be offered for transportation in an overpack as defined in § 171.8 of this subchapter, if all of the following conditions are met:

* * * * *

(b) Shrink-wrapped or stretch-wrapped trays may be used as outer packagings for inner packagings prepared in accordance with the limited quantity provisions or consumer commodity provisions of this subchapter, provided that the complete package is capable of meeting performance standards at the Packing Group III performance level. Each package may not exceed 20 kg (44 lbs) gross weight.

* * * * *

37. In § 173.28, paragraph (b)(1) would be amended by adding a new first sentence, paragraph (b)(4) would be revised and new paragraphs (b)(7) and (c)(4) would be added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(1) Before reuse, a packaging must be examined and determined to be capable of withstanding the performance tests specified in subpart M of Part 178 of this subchapter. * * *

* * * * *

(4) Metal and plastic drums and jerricans used as single packagings or the outer packagings of composite packagings are authorized for reuse only when they are marked in a permanent manner (e.g., embossed) in millimeters with the nominal or minimum thickness of the packaging material, as required by § 178.503(a)(9) of this subchapter, and conform to the following minimum thickness criteria:

Maximum capacity not over	Minimum thickness of packaging material	
	Metal drum or jerrican	Plastic drum or jerrican
20 L	0.63 mm (0.025 inch).	1.1 mm (0.043 inch)
30 L	0.73 mm (0.029 inch).	1.1 mm (0.043 inch)
40 L	0.73 mm (0.029 inch).	1.8 mm (0.071 inch)
60 L	0.92 mm (0.036 inch).	1.8 mm (0.071 inch)
120 L ...	0.92 mm (0.036 inch).	2.2 mm (0.087 inch)
220 L ...	0.92 mm (0.036 inch) [1].	2.2 mm (0.087 inch)
450 L ...	1.77 mm (0.070 inch).	5.0 mm (0.197 inch)

[1] Metal drums or jerricans constructed with a minimum thickness of 0.8 mm (0.03 inch) body and 1.1 mm (0.043 inch) heads are authorized.

* * * * *

(7) Notwithstanding the provisions of paragraph (b)(2) of this section, a packaging otherwise authorized for reuse may be reused without being subjected to the leakproofness test with air provided the packaging:

(i) Is refilled with a material compatible with the previous lading;

(ii) Is offered for transportation or transported by a private carrier, contract carrier, or by a common carrier in a transport vehicle or freight container used exclusively for such service, within a distribution chain controlled by the offeror; and

(iii) Is constructed of stainless steel, monel or nickel with a thickness not less than one and one-half times the nominal thickness prescribed in paragraph (b)(4) of this section or, if constructed of another material or thickness, is approved by the Associate Administrator for Hazardous Materials Safety for reuse without retesting in accordance with the provisions of this paragraph.

(c) * * *

(4) The markings applied by the reconditioner may be different from those applied by the manufacturer at the time of original manufacture, but may not identify a greater performance capability than that for which the original design type had been tested (for example, the reconditioner may mark a drum which was originally marked as 1A1/Y1.8 as 1A1/Y1.2 or 1A1/Z1.8).

* * * * *

§ 173.28 [Amended]

38. In addition, in § 173.28(c)(3), in the first sentence, the reference "§ 178.503(c)" would be revised to read "§ 178.503(c) and (d)".

§ 173.33 [Amended]

39. In § 173.33, in paragraph (c)(5), the wording "Division 6.1" would be revised to read "Division 6.1, Packing Group I or II".

§ 173.52 [Amended]

40. In § 173.52, in paragraph (b), Table 1, the following changes would be made:

a. In the second entry, the wording "Some articles, such as detonators for blasting, detonator assemblies for blasting and primers, cap-type, are included, even though they do not contain primary explosives." would be added at the end of the entry following the wording "features.".

b. In the fifth and sixth entries, the wording ", gel" would be added immediately following the wording "flammable liquid" and immediately preceding the wording "or hypergolic liquid".

41. In § 173.59, the following definitions would be added in appropriate alphabetical order to read as follows:

§ 173.59 Descriptions of terms for explosives.

* * * * *

Charges, propelling for cannon. Articles consisting of a propellant charge in any physical form, with or without a casing, for use in a cannon.

* * * * *

Propellant, liquid. Substances consisting of a deflagrating liquid explosive, used for propulsion.

Propellant, solid. Substances consisting of a deflagrating solid explosive, used for propulsion.

* * * * *

§ 173.59 [Amended]

42. In addition, in § 173.59, the following changes would be made:

a. For the description "*Charges, propelling*", the wording "or for reducing drag for projectiles" would be added immediately following "in cannon or".

b. For the description "*Powder, smokeless*", in the first sentence, the word "generally" would be removed, and the wording "and *charges propelling for cannon*" would be added at the end of the last sentence, immediately following the wording "*charges, propelling*".

c. For the description "*Propellants*", the wording "or for reducing the drag of projectiles" would be added at the end of the sentence immediately following the word "propulsion".

43. In § 173.60, paragraph (b)(15) would be added to read as follows:

§ 173.60 General packaging requirements for explosives.

* * * * *

(b) * * *

(15) Plastic packagings must not be liable to generate or accumulate sufficient static electricity that a discharge could cause the packaged explosive to ignite or the packaged article to function.

44. In § 173.62, paragraph (a) would be revised, a new sentence would be

added after the second sentence in paragraph (b), the Explosives Table in paragraph (b) would be amended by adding or removing entries, in appropriate alpha-numerical sequence; and the Table of Packing Methods in paragraph (c) and paragraph (d) would be revised to read as follows:

§ 173.62 Specific packaging requirements.

(a) Except as provided in paragraph (e) of this section, when the § 172.101 Table specifies that an explosive must be packaged in accordance with this section, only non-bulk packagings which conform to the provisions of paragraphs (b), (c), and (d) of this section, and the applicable requirements in §§ 173.60 and 173.61 may be used, unless otherwise approved by the Associate Administrator for Hazardous Materials Safety.

(b) * * * However, the packing method authorized under E–103 may replace the packing method listed in the Explosives Table. * * *

Explosives Table

Identification No.	Packing methods
[ADD]	
UN0075	E–159
UN0143	E–159
UN0491	E–158
UN0492	E–151
UN0493	E–151
UN0494	E–140
UN0495	E–159
UN0496	E–13
UN0497	E–159
UN0498	E–22
UN0499	E–22
NA0276	E–114
NA0323	E–114
NA0337	E–134
[REMOVE]	
UN0075	US001
UN0143	US001
UN0273	E–158(a),(b),(c)
UN0274	E–158(a),(b),(c)
NA0273	E–22(a),(b),(c)
NA0274	E–22(a),(b),(c)

(c) * * *

TABLE OF PACKING METHODS

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–1(a)	Not necessary	Bags: Paper, multiwall, water resistant (5M2) Textile, sift-proof (5L2) Textile, water resistant (5L3) Plastic, woven, sift-proof (5H2) Plastic, woven, water resistant (5H3) Plastic, film (5H4)	
E–1(b)	Bags: Paper, Kraft Plastic Sheets: Plastic	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Steel, removable head (1A2)	
E–2	Receptacles: Metal Paper Plastic Sheets: Plastic Bags: paper, multiwall, water resistant woven plastics	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Steel, removable head (1A2) *Note:* Removable head plastic drums (1H2) are authorized for UN 0219.	1 for all entries 2 for all entries except UN 0402.
E–3	Bags: Plastic Rubber Textile Rubberized textile Intermediate Bags: Plastic Rubber Textile Rubberized textile Barrels: Wood Receptacles Plastic	Barrels: Wood, removable head (2C2) Drums: Plastic, removable head (1H2) Steel, removable head (1A2)	3, 4, D1.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–4(a)	Receptacles: Fiberboard Metal Paper Plastic Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Steel (4A) Fiberboard (4G) natural wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	
E–4(b)	Optional	Drums: Aluminum, removable head (1B2) Fiber (1G) Steel, removable head (1A2) *Note:* steel drums (1A2) must be dust tight	
E–5	Bags: Plastic Sheets: Paper, Kraft Paper, waxed	Boxes: Fiberboard (4G) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	
E–6 (a)(i)	For wetted explosives: Bags: Plastic Rubberized, textile	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Steel, removable head (1A2) Fiber (1G)	
E–6 (a)(ii)	For wetted explosives: Bags: Rubber Textile Rubberized textile Intermediate: Bags: Rubber Rubberized textile Plastics	Barrels: Wood, removable head (2C2) Drums: Steel, removable head (1A2) Fiber (1G)	
E–6(b)	For desensitized explosives: Same as for wetted explosives except that any fiberboard boxes may be used as inner packaging and any textile bags as intermediate packaging	For desensitized explosives: Same as for wetted explosives except that any fiberboard boxes may be used as inner packagings and any textile bags as intermediate packaging	
E–8	Receptacles: Waterproof material Sheets: Waterproof	Barrels: Wood, removable head (2C2) Boxes: Steel (4A) Aluminum (4B) Plastics, solid (4H2) Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2)	D15, D13.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–9	Bags: Oil-resistant Sheets: Plastic Cans: Metal	Bags: Paper, multiwall water resistant (5M2) Textile, sift-proof (5L2) Textile, water resistant (5L3) Woven plastic, without inner lining or coating (5H1) Woven plastic, sift- proof (5H2) Woven plastic, water resistant (5H3) Plastic film (5H4) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Drums: Fiber (1G) Steel, removable head (1A2) *Note:* If bags of 5H2, 5H3, 5H4, or 5M2 are used, no inner packaging necessary.	D13
E–10	Bags: Waxed paper Plastic Rubberized textile Sheets: waxed paper, plastics, rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–11	Bags: Waxed paper Plastic Rubberized textile Sheets: Waxed paper Plastic Textile Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Fiberboard (4G) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–12	Bags: Oil-resistant Sheets: Plastic	Bags: Paper, multiwall, water resistant (5M2) Woven plastic, without inner lining or coating (5H1) Woven plastic, sift-proof (5H2) Woven plastic, water resistant (5H3) Plastic film (5H4) Textile, sift-proof (5L2) Textile, water resistant (5L3) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2) *Note:* If bags of 5H2 or 5H3 are used, no inner packaging is necessary.	D14

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–13(a)	For wetted explosives Bags: Plastic Woven plastics Paper, multiwall, water resistant Sheets: Plastic	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4CI) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–13(b)	For dry explosives Bags: Paper Plastic woven plastics Paper, multiwall, water resistant Boxes: Fiberboard Sheets: Plastic	Barrels: Wood, removable head xl (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4CI) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–15(a)	Not necessary	Drums: Aluminum, removable head (1B2) Steel, removable head (1A2)	
E–15(b)	Bags: Waterproof paper Plastic Rubberized textile Sheets: Plastic Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4CI) Plywood (4D) Reconstituted wood (4F) Fiberboard (4G) Drums: Fiber (1G)	
E–17	Cans: Metal Receptacles: Glass Plastic	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–18	Bags: Paper Plastic Sheets: Plastic	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Plywood (1D) Steel, removable head (1A2)	
E–19(a)	Not necessary	Drums: Aluminum, removable head (1B2) Steel, removable head (1A2) Plastic, removable head (1H2)	7
E–19(b)	Bags: Plastic Sheets: Plastic	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–20	Receptacles: Metal Plastic Wood Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2) Drums: Fiber (1G)	55.
E–21	Boxes: Fiberboard Cans: Metal Receptacles: Waterproof paper Plastic *Note:* Plastic used must not be liable to generate static electricity by contained substances.	Boxes: Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	2.
E–22(a)	Bags: Paper, Kraft Plastic Textile Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F) Steel (4A) Drums: Fiber (1G) Plywood (1D)	11 for UN 0411.
E–22(b)	Receptacles: Fiberboard Metal Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	10.
E–22(c)	Not Necessary	Drums: Steel, removable head (1A2) Fiber (1G) Plywood (1D) Jerricans: Steel (3A1) Steel, removable head (3A2)	8, 9, 10.
E–24(a)	Bags: Rubber Rubberized textile Plastic	Boxes: Fiberboard (4G)	
E–24(b)	Bags: Rubber Rubberized textile Plastic Intermediate: Bags: Rubber Rubber textile Plastic	Drums: Steel, removable head (1A2) with coating other than lead	
E–25	Bags: Plastic	Drums: Fiber (1G) Steel, removable head (1A2)	

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–26	Bags: Plastic Paper Paper, multiwall, water resistant Sheets: Plastic Receptacles: Metal Paper Plastic	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Bags: Plastic, sift-proof (5H2)	53.
E–102	Optional	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Fiberboard (4G) Plastics, solid (4H2) Crates: (For large articles) Drums: Steel, removable head (1A2) Fiber (1G) Aluminum, removable head (1B2)	13, 48, 49.
E103	Must be specifically authorized by the Associate Administrator for Hazardous Materials Safety prior to transportation. See §§ 173.57 and 173.58. For an international shipment, the package must be marked with "Packaging authorized by competent authority of the United States of America (USA)."		
E–106	Not necessary	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2) Drums: Steel, removable head (1A2)	49 for all entries except UN 0434 and UN 0435.
E–107	Not necessary	Boxes:	57.
(a)	*Note:* This packaging method is to be used for boosters which are finished articles consisting of closed metal, plastic, or fiberboard receptacles that contain a detonating explosive, or consisting of a plastic-bonded detonating explosive.	Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) *Note:* This packaging method is to be used for boosters which are finished articles consisting of closed metal, plastic, or fiberboard receptacles that contain a detonating explosive, or consisting of a plastic-bonded, detonating explosive.	
E–107 (b)	Receptacles: Fiberboard Metal Plastic Sheets: Plastic Paper *Note:* This packaging method is to be used for cast or pressed boosters in tube or capsules without end closures.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) *Note:* This packaging method is to be used for cast or pressed boosters in tube or capsules without end closures.	57.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–108	Receptacles Metal Plastic Wooded NOTE: Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes Wooden, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	23
E–109	Receptacles: Metal Plastic Wood Paper fiberboard	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	28
E–113	Receptacles: Fiberboard Plastic Metal	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Natural wood, with sift-proof walls (4C2) Steel (4A)	
E–114	Receptacles: Fiberboard Plastic Metal Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Natural wood, with sift-proof walls (4C2) Drums: Steel, removable head (1A2)	
E–115	Receptacles: Fiberboard Metal Paper, Kraft (for cartridge of 1.4G and 1.4S) Plastic Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Plastics, solid (4H2)	
E–116	Bags: Plastic Textile Boxes: Fiberboard Plastic Wood NOTE: (1) Bags are authorized for small cases only. (2) Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–117	Not necessary	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G) Drums: Steel, removable head.	57.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E-119	Not necessary	Boxes: Wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G) Plastics, solid (4H2) Drums: Steel, removable head (1A2) Aluminum, removable head (1B2) *Note:* Packaging 4C1 is authorized for cased charges only	
E-120	Tubes: Fiberboard Other materials *Note:* Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	30, 31.
E-121	Not necessary	Boxes: Fiberboard (4G1) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (1B2)	32, 57.
E-122	Boxes: Metal Plastic Wood Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E-123	Receptacles: Fiberboard Metal Plastics *Note:* Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Wood, ordinary (4C1), with metal liner Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1)	35, 49.
E-124	Reels Receptacles: Metal	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Aluminum (4B) Steel (4A) Drums: Steel, removable head (1A2) Aluminum (1B2) Fiber (1G)	33
E-125	Bags: Plastic Sheets: Paper, Kraft Plastic *Note:* Reels may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (1B2)	34

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–126	Receptacles: Fiberboard NOTE: Reels may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (1B2)	
E–127	Receptacles: Fiberboard Metals Plastics	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G)	
E–128	Boxes: Fiberboard Plastic Wood Trays: Fiberboard Plastic Wood Cans: Metal *Note:* All inner packagings must be fitted with dividing partitions.	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G)	23, 36.
E–129	Receptacles: Fiberboard Plastic Sheets: Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–130	Receptacles: Fiberboard Plastic Metal Sheets: Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1), Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Drums: Fiber (1G) Plastic, removable head (1H2) Steel, removable head (1A2) Aluminum, removable head (1B2)	
E–133	Receptacles: Fiberboard Metal Plastic Sheets: Paper, Kraft *Note:* Dividing partitions in the outer package may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Solid plastics (4H2) Drums: Fiber (1G) Plastic, removable head (1H2) Steel, removable head Aluminum, removable head (1B2)	

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–134	Receptacles: Fiberboard Metal Plastic Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (4B)	
E–135	Bags: Plastic Reels Sheets: Paper, Kraft Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–136	Not necessary	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded solid (4H2) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2)	32, 57
E–137	Receptacles: Fiberboard Metal Plastic Wood Trays: Plastic Wood *Note:* Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G) Plastics, solid (4H2) Drums: Steel, removable head (1A2)	56, 38 for UN 0106, 0107, 0257, 0367, 0408, 0409 and 0410 only.
E–138	Optional	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2)	
E–139	Receptacles: Metal Plastic Wood Fiberboard	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2)	28 for UN 0121 only.
E–141	Receptacles: Fiberboard Metal Wood Sheets: Paper Trays: Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	

TABLE OF PACKING METHODS—Continued

Packing method	Inner packaging	Outer packaging	Particular packaging exception/requirement
(1)	(2)	(3)	(4)
E–142	Boxes: Fiberboard Metal Plastic Wood Cans: Metal Trays: Fiberboard, sleeved Plastic, sleeved Intermediate: (Optional with inner boxes but mandatory with trays.) Boxes: Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	40, D11, D39.
E–143	Boxes: Fiberboard Metal Wood Tubes: Fiberboard Trays: Plastic	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–145	Receptacles: Fiberboard Metal (for rivets, explosives) Plastic Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–146(a)	Not necessary	Boxes: Fiberboard (4G) Plywood (4D) Reconstituted wood (4F) Steel (4A) Wood, ordinary (4C1)	
E–146(b)	Not necessary	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–146(c)	Not necessary	Boxes: Steel (4A1) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–147	Receptacles: Fiberboard Metal	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–149	Optional	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Solid plastics (4H2) Steel (4A) Aluminum (4B)	42, 50.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–150	Boxes: Fiberboard metal Receptacles: Metal Plastic Sheets: Paper, Kraft	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Plastics, solid (4H2) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2) Plastics, removable head (1H2)	12.
E–151	Receptacles: Metal Plastic Wood Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Fiber (1G)	43, 44, 45.
E–153	Sheets: Fiberboard, corrugated Tubes: Fiberboard Intermediate: Receptacles: Fiberboard Metal Plastic	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	46.
E–156	Bags: Plastic Boxes: Fiberboard Tubes: Fiberboard Plastic Metal NOTE: Dividing partitions in the outer packaging may be used in place of inner packaging.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–157	Not necessary	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–158(a)	Bags: Paper, Kraft Plastics Textile Rubberized textile	Boxes: Fiberboard(4G) Wood, ordinary(4C1) Wood, sift-proof(4C2) Plywood(4D) Reconstituted wood(4F) Solid plastics(4H2) Drums: Steel, removable head (1A2) Fiber(1G) Plywood(1D)	8, 10.
E–158(b)	Receptacles: Fiberboard Metal Plastics	Boxes: Fiberboard(4G) Wood, ordinary(4C1) Wood, sift-proof(4C2) Plywood(4D) Reconstituted wood(4F) Solid plastics(4H2)	10

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–158(c)		Composite packagings: Plastic receptacle with outer solid plastic box (6HH2)	
E–159(a)	Receptacles: Plastics Intermediate: Bags Plastic, in metal cans	Boxes: Natural wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) NOTE: DOT Spec. MC–200, motor vehicle container may be used as the outer packaging.	58.
E–159(b)	Receptacles: Plastics Intermediate: Drums Metal	Drums: Steel, removable head (1A2) Aluminum, removable head (1B2) NOTE: DOT Spec. MC–200, motor vehicle container may be used as the outer packaging.	59.
US002	Receptacles: Fiberboard Metal Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	D2, D3.
US003	Receptacles: Fiberboard Metal Plastic Intermediate: Boxes: Fiberboard Wood Sheets: Paper, Kraft Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	D2, D3, D4, D10.
US004	Receptacles: Fiberboard Metal Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	D2, D5, D6, D7, D8.
US005	Boxes: Fiberboard Metal Plastic Wood NOTE: Metal clips or dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2)	13
US006	Jet perforating guns, charged, oiled well may be transported under the following conditions: a. Initiation devices carried on the same motor vehicle or offshore supply vessel must be segregated; each kind from every other kind, and from the guns, tools or other supplies. Initiation devices shall be carried in a container having individual pockets for each such device or in a fully enclosed steel container lined with a non-sparking material. No more than two initiation devices per gun shall be carried on the same motor vehicle. b. Each shaped charge affixed to the gun may not contain more than 112 g (4 ounces) of explosives. c. Each shaped charge if not completely enclosed in glass or metal, must be fully protected by a metal cover after installation in the gun. d. Jet perforating guns classed as 1.1D or 1.4D may be transported by highway by private or contract carriers engaged in oil well operations. 1. Motor vehicles must have specially built racks or carrying cases designed and constructed so that guns are securely held in place during transportation and are not subject to damage by contact, one to the other or other articles or materials carried in the vehicle, and; 2. The assembled gun or guns packed on the vehicle may not extend beyond the body of the motor vehicle. e. Jet perforating guns classed as 1.4D may be transported by private offshore supply vessels only when the guns are carried in motor vehicles as specified in paragraph (d) of this packing method or on offshore down-hole tool pallets provided that: 1. All the conditions specified in paragraphs (a), (b), and (c) of this packing method are met;		

	2. The total explosive contents does not exceed 9.1 kg (20 pounds) per pallet; 3. Each cargo vessel compartment may contain up to 90.8 kg (200 pounds) of explosive content if the segregation requirements in § 176.83(b)(3) of this subchapter are met; and 4. When more than one vehicle or pallet is stowed "on deck" a minimum horizontal separation of 3 m (9.8 feet) must be provided.

(d) *Table of particular packaging requirements or exceptions.*

Number identifying packaging requirement or exception	Explanation of packaging requirement or exception
1	Water soluble substances must be packed in waterproof receptacles.
2	Packages must be lead-free.
3	The barrels and drums must have a watertight seal.
4	The intermediate and outer packagings must be filled with water or an appropriate water saturated material when the intermediate packaging is a rubber or rubberized textile bag.
7	Metal drums used for powder paste must be so constructed that explosion is not possible by reason of increase in internal pressure from internal or external causes.
8	The inside of drums and jerricans must be galvanized, painted or otherwise protected. Bare steel must not come into contact with smokeless powder.
9	Drums or jerricans of steel must be constructed without pockets or crevices in which smokeless powder could be trapped or nipped.
10	Metal receptacles must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes, is reduced.
11	The inner packagings must be sealed.
12	Outer boxes of natural wood may be provided with tin-plate liner having a sealed lid.
13	Open ends of inner packagings must be fitted with padded end caps or the outer packaging must be padded.
22	The inner packagings must be separated from the outer packaging by a gap of not less than 25 mm (1 inch) of cushioning material, e.g., sawdust, wood, wool.
28	Metal inner packagings must be padded with cushioning material.
30	The shaped charges must be packed so that contact between them is prevented.
31	The conical cavities of the shaped charges must face inward in pairs or groups to minimize the shaped charge (jetting) effect in the event of accidental initiation.
32	The ends of the articles must be sealed or the use of bags, plastics, as inner packaging is mandatory.
33	The ends of the detonating cord must be sealed and tied fast.
34	The ends of the detonating cord must be sealed. Spaces must be filled with packing material.
35	Packagings must be sealed against the ingress of water.
36	The detonators must be cushioned to prevent significant movement and contact between them.
38	The detonating fuses must be separated from each other in the inner packaging.
41	The primers must be packed with shock absorbent layers of felt, paper or plastic to prevent propagation within the outer packaging.
42	The outer plastic packagings must be reinforced with metal at corners and edge.
43	The signals must be separated to prevent contact with one another and kept apart from the bottom, walls, and lid of the outer packaging, e.g., by cushioning material.
44	Where the signals are contained in magazines for fitting into automatic units, the magazine may replace the inner packaging provided adequate cushioning material is used.
45	Tin-plate inner packagings must be sealed.
46	The sounding device must be wrapped individually in corrugated fiberboard sheets or inserted in fiberboard tubes.
47	Absorbent cushioning material must be inserted.
48	Large articles without propelling charge and without means of ignition or initiation may be carried unpacked.
49	Large articles without their means of initiation, or with their means of initiation containing at least two effective protective features, may be carried unpackaged.
50	Large articles without their means of ignition may be carried unpackaged.
53	Bags, sift-proof (5H2) recommended only for flake or prilled TNT in the dry state and a maximum net mass of 30 kg (66 pounds).
55	Not more than 50 g (1.8 ounces) of a substance shall be packed in an inner packaging.
56	Fiberboard boxes (4G) are not authorized outer packagings for UN0106 or UN0107.
57	Liner or inner coating required for metal outer packagings unless another means, such as the use of an inner packaging or cushing material protects the explosive substance from contact with the metal outer packaging during normal conditions of transport.
58	Plastic receptacles must have taped screw cap closures and be of not more than 5 liters capacity each. Each receptacle should be contained within an intermediate packaging. Each plastic bag should be surrounded on all sides with at least 50 mm of non-combustible absorbent cushioning material: metal cans in the outer packaging must also be cushioned from each other in all directions. Net mass of propellent should be limited to 30 kg for each package.
59	The intermediate drum must be surrounded on all sides with at least 50 mm of non-combustible absorbent cushioning material. A composite packaging consisting of a plastic receptacle in a metal drum may be used instead of the inner and intermediate packagings. The net volume of propellent in each packaging must not exceed 120 liters.
D1	The intermediate packaging must be entirely surrounded by wetted cushioning material within the outer packaging.

Number identifying packaging requirement or exception	Explanation of packaging requirement or exception
D2	Quantity limitations for all detonators are as follows unless specifically defined for each type of detonator: (a) For detonators containing no more than 10 g of explosive (excluding ignition and delay charges): (i) No more than 50 detonators may be packed in one inner packaging. (ii) No more than 500 detonators may be packed in one outer packaging. (b) For detonators containing no more than 3 g of explosive (excluding ignition and delay charges): (i) No more than 100 detonators may be packed in one inner packaging. (ii) No more than 1000 detonators may be packed in one outer packaging. (c) There are no quantity limitations for detonators classed as 1.4B or 1.4S. The number of detonators that may be packed in each inner or outer (if inner packaging is not required) packaging is determined by: (i) The ability for that package to pass certain tests (see § 173.57) that qualify the detonators to be classed as 1.4B or 1.4S; or (ii) The gross weight limitations of the packaging used.
D3	Inner packaging is not required for electric blasting caps when packed in pasteboard tubes, or when their leg wires are wound on spools with the caps either placed inside the spool or securely taped to the wire on the spool, so as to restrict freedom of movement of the caps and to protect them from impact forces. No more than 500 electric blasting caps shall be contained in one outer packaging.
D4	Intermediate packagings are required only for non-electric detonators that are blasting caps or delay connectors in metal tubes.
D5	Blasting caps are not required to be attached to the safety fuse, metal clad mild detonating cord, detonating cord, or shock tube.
D6	Inner packagings are not required if the packing configuration restricts freedom of movement of the caps and protects them from impact forces.
D7	Quantity limitations for detonator assemblies with detonating cord are: (a) No more than 50 detonator assemblies shall be packed in one inner packaging. (b) No more than 500 detonator assemblies shall be packed in one outer packaging.
D8	Quantity limitations for detonator assemblies with safety fuse or shock tube are: (a) No more than 50 detonator assemblies shall be packed in one inner packaging. (b) No more than 1,000 detonator assemblies shall be packed in one outer packaging.
D9	Primers fitted with anvil, composition not covered with a disc of metal foil or other material (varnished only). (a) The primers must be packed in rows in single layers in trays of fiberboard or plastic. (b) Not more than 500 primers shall be packed in an inner packaging.
D10	Detonators that are blasting caps (including percussion activated) or delay connectors in metal tubes must be packed as follows: (a) The detonators must be packed in an inner packaging with the open end of any detonator covered with appropriate cushioning material; (b) Inner packagings must be snugly packed in an intermediate packaging; (c) Intermediate packagings must be separated from the outside packaging by at least 25 mm (1 inch) of cushioning material; (d) Detonators containing no more than 10 g of explosive (excluding ignition and delay charges) must be packed as follows: (i) No more than 50 detonators in one inner packaging. (ii) No more than 500 detonators in one outer packaging. (e) Detonators containing no more than 3 g of explosive (excluding ignition and delay charges) must be packed as follows: (i) No more than 110 detonators in one inner packaging. (ii) No more than 5,000 detonators in one outer packaging.
D11	Primers not fitted with an anvil, composition covered, not more than 5,000 primers shall be packed in an inner packaging.
D12	Large articles may be carried unpackaged.
D13	No inner packaging required for drums, fiber (1G).
D14	Inner packaging is not required with fiberboard boxes (4G) for packaging UN 0332.
D15	Sheets, waterproof, when used, must also be impervious to any liquid explosive ingredients of the substance.

* * * * *

§ 173.62 [Amended]

45. In addition, in § 173.62, in paragraph (e), the phrase "January 1, 1988" would be removed and replaced with the phrase "January 1, 1990" each place it appears.

46. In § 173.115, paragraphs (b)(3) and (b)(4) would be added to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(b) * * *

(3) Is asphyxiant. An asphyxiant gas is a gas which dilutes or replaces oxygen normally in the atmosphere; or

(4) Is oxidizing. An oxidizing gas is defined as a gas which may, generally by providing oxygen, cause or contribute to the combustion of other material more than air does.

* * * * *

§ 173.115 [Amended]

47. In addition, in § 173.115, the wording ", and" at the end of paragraph (b)(1) and the period at the end of paragraph (b)(2) would be removed and replaced with a semicolon.

48. Section 173.120 would be amended by revising paragraph (a) and adding a sentence at the end of paragraph (b)(2) to read as follows:

§ 173.120 Class 3—Definitions.

(a) *Flammable liquid.* For the purpose of this subchapter, a *flammable liquid* (Class 3) means a liquid having a flash point of not more than 60.5 °C (141 °F), or any material in a liquid phase with a flash point at or above 37.8 °C (100 °F) that is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging, with the following exceptions:

(1) Any liquid meeting one of the definitions specified in § 173.115.

(2) Any mixture having one or more components with a flash point of 60.5 °C (141 °F) or higher, that make up at

least 99 percent of the total volume of the mixture, if the mixture is not offered for transportation or transported at or above its flash point.

(3) Any liquid with a flash point greater than 35 °C (95 °F) which does not sustain combustion. A procedure for determining if a material sustains combustion when heated under test conditions and exposed to an external source of flame is provided in Appendix H of this part.

(4) Any liquid with a flash point greater than 35 °C (95 °F) and with a fire point greater than 100 °C (212 °F) according to ISO 2592–1973.

(5) Any liquid with a flash point greater than 35 °C (95 °F) which is in a water miscible solution with a water content of more than 90 percent by mass.

(b) * * *

(2) * * * An elevated temperature material that meets the definition of a Class 3 material because it is intentionally heated and offered for transportation or transported at or above its flash point may not be reclassed as a combustible liquid.

* * * * *

§ 173.120 [Amended]

49. In addition, in § 173.120, the following changes would be made:

a. In paragraph (c)(1)(i)(A), the wording "ASTM D56–79" would be revised to read "ASTM D 56–87".

b. In paragraphs (c)(1)(i)(B) and (c)(1)(ii)(B), the wording "ASTM D3278–78" would be revised to read "ASTM D 3278–89".

c. In paragraph (c)(1)(ii)(A), the wording "ASTM D93–80" would be revised to read "ASTM D 93–90".

50. Section 173.121 would be amended by adding a parenthetical note at the end of paragraph (b)(1)(ii) before the semicolon and revising the paragraph (b)(1)(iv) table and paragraph (b)(2)(i) to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(b) * * *

(1) * * *

(ii) * * * (Note: The mixture is not necessarily required to bear a POISON or CORROSIVE subsidiary risk label);

* * * * *

(iv) * * *

Flow time t in seconds	Jet diameter in mm	Flash point c.c.
20<t≤60	4	Above 17 °C (62.6 °F).
60<t≤100	4	Above 10 °C (50 °F).
20<t≤32	6	Above 5 °C (41 °F).
32<t≤44	6	Above −1 °C (31.2 °F).
44<t≤100	6	Above −5 °C (23 °F).
100<t	6	−5 °C (23 °F) and below.

(2) * * *

(i) *Viscosity test.* The flow time in seconds is determined at 23 °C (73.4 °F) using the ISO standard cup with a 4 mm (0.16 inch) jet (ISO 2431:1984). Where the flow time exceeds 100 seconds, a further test is carried out using the ISO standard cup with a 6 mm (0.24 inch) jet.

* * * * *

51. In § 173.124, the section heading and paragraph (a)(2) would be revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(2)(i) Self-reactive materials are materials that are thermally unstable and that can undergo a strongly exothermic decomposition even without participation of oxygen (air). A material is excluded from this definition if any of the following applies:

(A) The material meets the definition of an explosive as prescribed in subpart C of this part, in which case it must be classed as an explosive;

(B) The material is forbidden from being offered for transportation according to § 172.101 of this subchapter or § 173.21;

(C) The material meets the definition of an oxidizer or organic peroxide as prescribed in subpart D of this part, in which case it must be so classed;

(D) The material meets one of the following conditions:

(*1*) Its heat of decomposition is less than 300 J/g; or

(*2*) Its self-accelerating decomposition temperature (SADT) is greater than 75 °C (167 °F); or

(E) The Associate Administrator for Hazardous Materials Safety has determined that the material does not present a hazard which is associated with a Division 4.1 material.

(ii) *Generic types.* Division 4.1 self-reactive materials are assigned to a generic system consisting of seven types. A self-reactive substance identified by technical name in the Self-Reactive Materials Table in § 173.224 is assigned to a generic type in accordance with that Table. Self-reactive materials not identified in the Self-Reactive Materials Table in § 173.224 are assigned to generic types under the procedures of paragraph (a)(2)(iii) of this section.

(A) *Type A.* Self-reactive material type A is a self-reactive material which, as packaged for transportation, can detonate or deflagrate rapidly. Transportation of type A self-reactive material is forbidden.

(B) *Type B.* Self-reactive material type B is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly, but is liable to undergo a thermal explosion in a package.

(C) *Type C.* Self-reactive material type C is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly and cannot undergo a thermal explosion.

(D) *Type D.* Self-reactive material type D is a self-reactive material which—

(*1*) Detonates partially, does not deflagrate rapidly and shows no violent effect when heated under confinement;

(*2*) Does not detonate at all, deflagrates slowly and shows no violent effect when heated under confinement; or

(*3*) Does not detonate or deflagrate at all and shows a medium effect when heated under confinement.

(E) *Type E.* Self-reactive material type E is a self-reactive material which, in laboratory testing, neither detonates nor deflagrates at all and shows only a low or no effect when heated under confinement.

(F) *Type F.* Self-reactive material type F is a self-reactive material which, in laboratory testing, neither detonates in the cavitated state nor deflagrates at all and shows only a low or no effect when heated under confinement as well as low or no explosive power.

(G) *Type G.* Self-reactive material type G is a self-reactive material which, in laboratory testing, does not detonate in the cavitated state, deflagrate, all, show any effect when heated under confinement, or show any explosive power. A type G self-reactive material is not subject to the requirements of this subchapter for self-reactive material of Division 4.1 provided that it is thermally stable (self-accelerating decomposition temperature is 50 °C (122 °F) or higher for a 50 kg (110 pounds) package). A self-reactive material meeting all characteristics of type G except thermal stability and requiring temperature control is classed as a type F self-reactive material.

(iii) *Procedures for assigning a self-reactive material to a generic type.* A self-reactive material shall be assigned to a generic type based on—

(A) Its physical state (i.e. liquid or solid), in accordance with the definition of liquid and solid in § 171.8 of this subchapter;

(B) A determination as to its control temperature and emergency temperature, if any, under the provisions of § 173.21(f);

(C) Performance of the self-reactive material under the test procedures specified in the United Nations Recommendations and the provisions of paragraph (a)(2)(iii) of this section; and

(D) For other than a self-reactive material which is identified by technical name in the Self-Reactive Materials Table in § 173.224(b) or a self-reactive material which may be shipped as a sample under the provisions of § 173.224, written approval by the Associate Administrator for Hazardous Materials Safety. The person requesting approval shall submit to the Associate Administrator for Hazardous Materials Safety the tentative shipping description and generic type and—

(*1*) All relevant data concerning physical state, temperature controls, and tests results; or

(*2*) An approval issued for the self-reactive material by the competent authority of a foreign government.

(iv) *Tests.* The generic type for a self-reactive material shall be determined using the testing protocol from Figure 14.2 (Flow Chart for Assigning Self-Reactive Substances to Division 4.1) from the UN Recommendations.

* * * * *

52. In § 173.128, paragraph (b)(7) would be revised, paragraph (c)(4) would be removed, paragraph (d) would be redesignated paragraph (e) and a new paragraph (d) would be added to read as follows:

§ 173.128 Class 5, Division 5.2—Definitions and types.

* * * * *

(b) * * *

(7) *Type G.* Organic peroxide type G is an organic peroxide which will not detonate in a cavitated state, will not deflagrate, shows no effect when heated under confinement, and has no explosive power. A type G organic peroxide is not subject to the requirements of this subchapter for organic peroxides of Division 5.2 provided it is thermally stable (self-accelerating decomposition temperature is 50° C (122° F) or higher for a 50 kg (110 pounds) package). An organic peroxide meeting all characteristics of type G except thermal stability and requiring temperature control is classed as a type F organic peroxide.

* * * * *

(d) *Approvals.* (1) An organic peroxide must be approved, in writing, by the Associate Administrator for Hazardous Materials Safety, before being offered for transportation, including assignment of a generic type and shipping description, except for—

(i) An organic peroxide which is identified by technical name in the Organic Peroxides Table in § 173.225(b);

(ii) A mixture of organic peroxides prepared according to § 173.225(c)(5); or

(iii) An organic peroxide which may be shipped as a sample under the provisions of § 173.225(c).

(2) A person applying for an approval must submit all relevant data concerning physical state, temperature controls, and tests results or an approval issued for the organic peroxide by the competent authority of a foreign government.

* * * * *

§ 173.128 [Amended]

53. In addition, in § 173.128, the following changes would be made:

a. In paragraph (a) introductory text, the word "apply" would be revised to read "applies".

b. In paragraph (c)(2), the word "and" would be added at the end of the paragraph, and in paragraph (c)(3), at the end of the paragraph, the wording "; and" would be removed and replaced with a period.

54. In § 173.136, paragraph (a) would be revised to read as follows:

§ 173.136 Class 8—Definitions.

(a) For the purpose of this subchapter, "corrosive material" (Class 8) means a liquid or solid that causes full thickness destruction of human skin at the site of contact within a specified period of time. A liquid that has a severe corrosion rate on steel or aluminum based on the criteria in § 173.137(c)(2) is also a corrosive material.

* * * * *

55. In § 173.137, the second sentence of the introductory text, and paragraphs (a), (b), and (c) would be revised to read as follows:

§ 173.137 Class 8—Assignment of packing group.

* * * When the § 172.101 Table provides more than one packing group for a Class 8 material, the packing group must be determined using data obtained from tests conducted in accordance with the 1992 OECD Guidelines for Testing of Chemicals Number 404 "Acute Dermal Irritation/Corrosion" as follows:

(a) *Packing Group I.* Materials that cause full thickness destruction of intact skin tissue within an observation period of up to 60 minutes starting after the exposure time of three minutes or less.

(b) *Packing Group II.* Materials that cause full thickness destruction of intact skin tissue within an observation period of up to 14 days starting after the exposure time of more than three minutes but not more than 60 minutes.

(c) *Packing Group III.* Materials, other than those meeting Packing Group I or II criteria—

(1) That cause full thickness destruction of intact skin tissue within an observation period of up to 14 days starting after the exposure time of more than 60 minutes but not more than 4 hours; or

(2) Materials which do not cause full thickness destruction of intact skin tissue but which exhibit a corrosion rate on steel or aluminum surfaces exceeding 6.25 mm (0.25 inch) a year at a test temperature of 55 °C (130 °F). For the purpose of testing steel P3 (ISO 2604 (IV):1975) or a similar type, and for testing aluminum, non-clad types 7075–T6 or AZ5GU–T6 should be used. An acceptable test is described in ASTM G 31–72 (Reapproved 1990).

56. In § 173.150, the section heading and paragraph (d) would be revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(d) *Alcoholic beverages.* An alcoholic beverage (wine and distilled spirits as defined in 27 CFR 4.10 and 5.11) is not subject to the requirements of this subchapter if it—

(1) Contains 24 percent or less alcohol by volume;

(2) Is in a packaging of five liters or less; or

(3) Is a Packing Group III alcoholic beverage in a packaging of 250 L (66 gallons) or less, unless transported by air.

* * * * *

§ 173.150 [Amended]

57. In addition, in § 173.150, the following changes would be made:

a. In paragraph (a), the wording "another hazard class." would be revised to read "another hazard class except Division 6.1, Packing Group III or Class 8, Packing Group III.".

b. In the introductory text of paragraph (b), the wording "flammable liquids (Class 3)" would be revised to read "flammable liquids (Class 3) and combustible liquids".

c. In paragraph (b)(3), the wording "flammable liquids in Packing Group III," would be revised to read "flammable liquids in Packing Group III and combustible liquids,".

58. In § 173.152, paragraph (b)(3) would be revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) * * *

(3) For organic peroxides which do not require temperature control during transportation—

(i) For Type D, E, or F organic peroxides, inner packagings not over 125 ml (4.22 ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity for solids, packed in strong outer packagings.

(ii) For Type B or C organic peroxides, inner packagings not over 25 ml (0.845 ounces) net capacity each for liquids or 100 g (3.528 ounces) net capacity for solids, packed in strong outer packagings.

* * * * *

§ 173.159 [Amended]

59. In § 173.159, paragraph (d) would be removed and reserved.

60. Section 173.164 would be amended by revising the paragraph (b) introductory text and the last sentence of paragraph (b)(1), redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively, and adding a new paragraph (c) to read as follows:

§ 173.164 Mercury (metallic and articles containing mercury).

* * * * *

(b) Manufactured articles or apparatuses containing more than 100 mg (0.0035 ounce) mercury are excepted from the specification packaging requirements of this subchapter when packaged as follows:

(1) * * * Mercury switches and relays are excepted from these packaging requirements, if they are totally enclosed, leakproof and in sealed metal or plastic units.

* * * * *

(c) Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of mercury and packaged so that the quantity of mercury per package does not exceed 1 g (0.035 ounce) are not subject to the requirements of this subchapter.

* * * * *

§ 173.164 [Amended]

61. In addition, in § 173.164, the following changes would be made:

a. In paragraph (a)(1), in the first sentence, the wording "not more than 250 ml (8 oz) capacity each" would be revised to read "not more than 3.5 kg (7.7 pounds) capacity each".

b. In paragraphs (a)(1) and (a)(2), the wording "or reconstituted wood (4F) boxes," would be revised to read ", reconstituted wood (4F) or solid plastic (4H2) boxes," each place it appears.

c. In paragraph (a)(2), immediately following the wording " 'quicksilver flasks' " the wording "of not more than 3.5 kg (7.7 pounds) capacity each" would be added.

62. Section 173.166 would be amended by revising the section heading, adding a new last sentence in paragraph (a), revising paragraph (b), the last sentence of paragraph (c) and paragraph (d)(1) to read as follows:

§ 173.166 Air bag inflators, air bag modules, seat-belt pre-tensioners, and seat-belt modules.

(a) * * * A seat-belt pre-tensioner contains similar hazardous materials and is used in the operation of a seat-belt restraining system in a motor vehicle. A seat-belt module is the seat belt pre-tensioner plus seat-belt hardware.

(b) *Classification.* An air bag inflator, air bag module, seat-belt pre-tensioner or seat-belt module may be classed as Class 9 only if it meets the following requirements—

(1) The manufacturer has submitted each design type air bag inflator or seat-belt pre-tensioner to the Bureau of Explosives (BOE) or the Bureau of Mines (BOM) for examination and testing. The submission must contain a detailed description of the inflator or pre-tensioner (or, if more than a single inflator or pre-tensioner is involved, the maximum parameters of each particular inflator or pre-tensioner design type for which approval is sought) and details on the complete package.

(2) Samples of the inflator or pre-tensioner, packaged as for transport, have been subjected to test series 6(c) of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Second Edition, 1990 with no explosion of the device, no fragmentation of device casings, and no projection hazard or thermal effect which would significantly hinder fire-fighting or other emergency response efforts in the immediate vicinity.

(3) The manufacturer submits an application, including—

(i) The BOE or BOM test results and report recommending the shipping description and classification for each device or design type; or

(ii) An approved classification issued by the competent authority of a foreign government, to the Associate Administrator for Hazardous Materials Safety, and is notified in writing by the Associate Administrator that the device has been classed as Class 9 and approved for transportation.

(4) No approval applications are required for air bag or seat-belt modules containing an approved air bag inflator or seat-belt pre-tensioner.

(c) * * * A module must be identified with the same EX number or product code of the approved inflator or pre-tensioner.

(d) * * * (1) An air bag or seat-belt module that has been approved by the Associate Administrator for Hazardous Materials Safety and is installed in a motor vehicle or in completed vehicle components, such as steering columns or door panels, is not subject to the requirements of this subchapter.

* * * * *

§ 173.166 [Amended]

63. In addition, in § 173.166, the following changes would be made:

a. In paragraph (c), in the first and second sentences, the wording "or pre-tensioner" would be added immediately following the wording "inflator" each place it appears.

b. In paragraph (d)(2), the wording "or seat-belt" would be added immediately following the wording "air bag" and the wording "or pre-tensioner" would be added immediately following the wording "inflator".

c. In paragraph (f), the wording "FLAMMABLE SOLID label" would be revised to read "CLASS 9 label".

64. Section 173.168 would be added to read as follows:

§ 173.168 Nonspillable wet electric storage batteries.

(a) Nonspillable wet electric storage batteries are batteries from which electrolyte will not flow in the event of a ruptured or cracked case. These batteries must be capable of withstanding the vibration test and the pressure differential test listed below without leakage of battery fluid.

(1) *Vibration test.* The battery must be rigidly clamped to the platform of a vibration machine, and a simple harmonic motion having an amplitude of 0.8 mm (0.03 inches), with a 1.6 mm (0.063 inches) maximum total excursion must be applied. The frequency must be varied at the rate of 1 Hz/min between the limits of 10 Hz to 55 Hz. The entire range of frequencies and return must be traversed in 95±5 minutes for each mounting position (direction of vibrator) of the battery. The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for equal time periods.

(2) *Pressure differential test.* Following the vibration test, the battery must be stored for six hours at 24 °C±4

°C (75 °±7 °F) while subjected to a pressure differential of at least 88 kPa (13 psi). The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for at least six hours in each position.

(b) Except as provided in § 175.10(a)(19) of this subchapter, a nonspillable battery is not subject to any other requirements of this subchapter if—

(1) The battery is protected against short circuits and securely packaged; and

(2) For a battery manufactured after September 30, 1995, the battery and any outer packaging is plainly and durably marked "NONSPILLABLE" or "NONSPILLABLE BATTERY".

§ 173.171 [Amended]

65. In § 173.171, in paragraph (a), the wording "Division 1.3 classification" would be revised to read "Division 1.3 and Division 4.1 classification".

66. Section 173.185 would be revised to read as follows:

§ 173.185 Lithium cells and batteries.

(a) Except as otherwise provided in this subpart, a lithium cell or battery is authorized for transportation only if it conforms to the provisions of this section.

(b) *Exceptions.* Cells and batteries are not subject to the requirements of this subchapter if they meet the following requirements:

(1) Each cell with a liquid cathode may contain no more than 0.5 g (0.02 ounce) of lithium or lithium alloy, and each cell with a solid cathode may contain no more than 1.0 g (0.04 ounce) lithium or lithium alloy;

(2) Each battery with a liquid cathode may contain an aggregate quantity of no more than 1.0 g (0.04 ounce) lithium or lithium alloy, and each battery with a solid cathode may contain an aggregate quantity of no more than 2.0 g (0.07 ounce) of lithium or lithium alloy;

(3) Each cell must be hermetically sealed;

(4) Cells and batteries must be separated so as to prevent short circuits and must be packed in strong packagings, except when installed in equipment; and

(5) If a liquid cathode battery contains more than 0.5 g (0.02 ounce) of lithium or lithium alloy or a solid cathode battery contains more than 1.0 g (0.04 ounce) lithium or lithium alloy, it may not contain a liquid or gas that is a hazardous material according to this subchapter unless the liquid or gas, if free, would be completely absorbed or neutralized by other materials in the battery.

(c) Cells and batteries also are not subject to this subchapter if they meet the following requirements:

(1) Each cell contains not more than 5 g (0.18 ounces) of lithium or lithium alloy;

(2) Each battery contains not more than 25 g (0.88 ounces) of lithium or lithium alloy;

(3) Each cell or battery is of the type proved to be non-dangerous by testing in accordance with tests in Part IV of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994; such testing should be carried out on each type prior to the initial transport of that type; and

(4) Cells and batteries are designed or packed in such a way as to prevent short circuits under conditions normally encountered in transportation.

(d) Cells and batteries and equipment containing cells and batteries which were first transported prior to January 1, 1995 and were assigned to Class 9 on the basis of the requirements of this subchapter in effect on October 1, 1993 may continue to be transported in accordance with the applicable requirements in effect on October 1, 1993.

(e) Cells and batteries may be transported as items of Class 9 if they meet the requirements in paragraphs (e)(1) through (e)(9) of this section:

(1) Cells must not contain more than 12 g (0.42 ounce) of lithium or lithium alloy. When transported by passenger aircraft, cells must not contain more than 3 g (0.11 ounces) of lithium or lithium alloy.

(2) Batteries must not contain more than 500 g (17.6 ounces) of lithium or lithium alloy. When transported by passenger aircraft, batteries must not contain more than 125 g (4.4 ounces) of lithium or lithium alloy.

(3) Each cell and battery must be equipped with an effective means of preventing external short circuits.

(4) Each cell and battery must incorporate a safety venting device or be designed in a manner that will preclude a violent rupture under conditions normally incident to transportation.

(5) Batteries containing cells or series of cells connected in parallel must be equipped with diodes to prevent reverse current flow.

(6) Cells and batteries must be packed in strong inner packagings containing not more than 500 g (17.6 ounces) of lithium or lithium alloy. When transported by passenger aircraft, inner packagings must not contain more than 125 g (4.4 ounces) of lithium or lithium alloy.

(7) Cells and batteries must be packed in inner packagings in such a manner as to effectively prevent short circuits and to prevent movement which could lead to short circuits.

(8) Cells and batteries must be packaged in packagings conforming to the requirements of part 178 of this subchapter at the Packing Group II performance level:

(i) Inner packagings must be packed within a wooden box (4C1, 4C2, 4D, or 4F), fiberboard box (4G), fiber drum (1G), or metal drum (1A2 or 1B2);

(ii) Cells and batteries intended for air transportation must be packaged in metal drums (1A1 or 1B2) fitted with gas-tight gaskets; and

(iii) When the outer packaging is metal, the inner packagings must be separated from each other and from the outer packaging by at least 25 mm (1 inch) of non-combustible cushioning material.

(9) One of the following criteria must be met:

(i) Each cell or battery is of the type proven to meet the criteria of Class 9 by testing in accordance with tests in Part IV of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994; or

(ii) Ten cells and one battery of each type taken from production each week should be subjected to extreme temperature exposure and the short circuit test procedures in Part IV of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994, or, equivalent tests approved by the Associate Administrator for Hazardous Materials Safety. There should be no evidence of distortion, leakage or internal heating in conducting the extreme temperature exposure test procedure. In conducting the short circuit test procedure, if venting occurs, an open flame applied to venting fumes should not produce an explosive condition; or

(iii) Cells and batteries that are hermetically sealed are excepted from paragraphs (e)(8)(ii) and (e)(8)(iii) if the cells and batteries are subjected to the altitude simulation, extreme temperature exposure, vibration, and shock tests described in the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994, or equivalent tests approved by the Associate Administrator for Hazardous Materials Safety, and show no visible evidence of out-gassing, leakage, loss of mass or distortion.

(10) Except as provided in paragraph (i) of this section, cells or batteries may not be offered for transportation or transported if any cell has been

discharged to the extent that the open circuit voltage is less than two volts or is less than 2/3 of the voltage of the fully charged cell, whichever is less.

(f) Equipment containing or packed with cells and batteries meeting the requirements of paragraph (b) or (c) of this section are excepted from all other requirements of this subchapter.

(g) Equipment containing or packed with cells and batteries may be transported as items of Class 9 if the batteries and cells meet all the requirements of paragraph (e) of this section and are packaged as follows:

(1) Equipment containing cells and batteries must be packed in a strong outer packaging that is waterproof or is made waterproof through the use of a liner. The equipment must be secured within the outer packaging and be packed as to effectively prevent movement, short circuits, and accidental operation during transport; and

(2) Cells and batteries packed with equipment should be packed in inner packagings conforming to paragraph (e)(9) of this section in such a manner as to effectively prevent movement and short circuits. Not more than 5 kg of cells and batteries may be packed with each item of equipment.

(h) Cells and batteries, for disposal, may be offered for transportation or transported to a permitted storage facility and disposal site by motor vehicle when they meet the following requirements:

(1) Cells must not contain more than 12 g (0.42 ounce) and batteries must not contain more than 500 g (17.6 ounces) of lithium or lithium alloy;

(2) Be equipped with an effective means of preventing external short circuits; and

(3) Are packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a. The packaging need not conform to performance requirements of part 178 of this subchapter.

(i) Cells and batteries and equipment containing or packed with cells and batteries which do not comply with the provisions of this section may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

(j) For testing purposes, cells containing not more than 12 g (0.42 ounce) of lithium or lithium alloy and batteries containing not more than 500 g (17.6 ounces) of lithium or lithium alloy may be offered for transportation or transported by highway only as items of Class 9. Packaging must conform with paragraphs (e)(8)(i) and (iii) of this section with not more than 100 cells per package.

67. Section 173.189 would be added to read as follows:

§ 173.189 Batteries containing sodium or cells containing sodium.

(a) Batteries and cells may not contain any hazardous material other than sulfur. Cells not forming a component of a completed battery may not be offered for transportation at a temperature at which any liquid sodium is present in the cell. Batteries may only be offered for transportation, or transported, at a temperature at which any liquid sodium present in the battery conforms to the conditions prescribed in paragraph (d) of this section.

(b) Cells must consist of hermetically sealed metal casings which fully enclose the hazardous materials and which are so constructed and closed as to prevent the release of the hazardous materials under normal conditions of transport. Cells must be placed in suitable outer packagings with sufficient cushioning material to prevent contact between cells and between cells and the internal surfaces of the outer packaging, and to ensure that no dangerous movement of the cells within the outer packaging occurs in transport. Cells must be packaged in 1A2, 1B2, 1D, 1G, 1H2, 4C, 4D, 4F, 4G or 4H2 outer packagings which meet the requirements of part 178 of this subchapter at the Packing Group II performance level.

(c) Batteries must consist of cells secured within, and fully enclosed by a metal casing so constructed and closed as to prevent the release of the hazardous materials under normal conditions of transport. Batteries may be offered for transportation, and transported, unpacked or in protective packagings that are not subject to the requirements of part 178 of this subchapter.

(d) Batteries containing any liquid sodium may not be offered for transportation, or transported, by aircraft. Batteries containing liquid sodium may be transported by motor vehicle, rail car or vessel under the following conditions:

(1) Batteries must be equipped with an effective means of preventing external short circuits, such as by providing complete electrical insulation of battery terminals or other external electrical connectors. Battery terminals or other electrical connectors penetrating the heat insulation fitted in battery casings must be provided with thermal insulation sufficient to prevent the temperature of the exposed surfaces of such devices from exceeding 55 °C (130 °F).

(2) No battery may be offered for transportation if the temperature at any point on the external surface of the battery exceeds 55 °C (130 °F).

(3) If any external source of heating is used during transportation to maintain sodium in batteries in a molten state, means must be provided to ensure that the internal temperature of the battery does not reach or exceed 400 °C (752 °F).

(4) When loaded in a transport vehicle or freight container:

(i) Batteries must be secured so as to prevent significant movement within the transport vehicle or freight container under conditions normally incident to transportation;

(ii) Adequate ventilation and/or separation between batteries must be provided to ensure that the temperature at any point on the external surface of the battery casing will not exceed 240 °C (464 °F) during transportation; and

(iii) No other hazardous materials, with the exception of cells containing sodium, may be loaded in the same transport vehicle or freight container. Batteries must be separated from all other freight by a distance of not less than 0.5 meters (1.6 feet).

§ 173.196 [Amended]

68. In § 173.196, in paragraph (f), the wording "the primary receptacle and secondary packaging" would be revised to read "the primary receptacle or secondary packaging".

§ 173.211 [Amended]

69. In § 173.211, in paragraph (c), for the entry "Steel box with liner:", the wording "4A2" would be revised to read "4A"; and for the entry "Aluminum box with liner:" the wording "4B2" would be revised to read "4B".

§ 173.212 [Amended]

70. In § 173.212, in paragraph (c), for the entry "Steel box:" the wording "4A1" would be revised to read "4A"; for the entry "Steel box with liner:" the wording "4A2" would be revised to read "4A"; for the entry "Aluminum box:" the wording "4B1" would be revised to read "4B"; and for the entry "Aluminum box with liner:" the wording "4B2" would be revised to read "4B".

§ 173.213 [Amended]

71. In § 173.213, in paragraph (c), for the entry "Steel box with liner:" the wording "4A2" would be revised to read "4A"; for the entry "Steel box:" the wording "4A1" would be revised to read "4A"; and for the entry "Aluminum box with liner:" the

wording "4B2" would be revised to read "4B".

72. Section 173.224 would be revised to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

(a) *General.* When the § 172.101 Table of this subchapter specifies that a Division 4.1 material be packaged in accordance with this section, only packagings which conform to the provisions of this section may be used. Each packaging must conform to the general packaging requirements of subpart B of this part and the applicable requirements of part 178 of this subchapter. Non-bulk packagings must meet Packing Group II performance levels. To avoid unnecessary confinement, metallic non-bulk packagings meeting Packing Group I are not authorized. Self-reactive materials which require temperature control are subject to the provisions of § 173.21(f). Packagings required to bear a Class 1 subsidiary label must conform to §§ 173.60 through 173.62.

(b) *Self-Reactive Materials Table:* The self-reactive materials table specifies, by technical name, those self-reactive materials that are authorized for transportation and not subject to the approval provisions of § 173.124(a)(2)(vii). A self-reactive material identified by technical name in the following table is authorized for transportation only if it conforms to all applicable provisions of the table. The column headings of the Self-Reactive Materials Table are as follows:

(1) *Technical name.* Column 1 specifies the technical name.

(2) *ID number.* Column 2 specifies the identification number which is used to identify the proper shipping name in the § 172.101 Table.

(3) *Concentration of self-reactive material.* Column 3 specifies the concentration (percent) limitations, if any, in mixtures or solutions for the self-reactive material. Limitations are given as minimums, maximums, or a range, as appropriate. A range includes the lower and upper limits (i.e., "53–100" means from, and including, 53 percent to, and including 100 percent).

(4) *Packing method.* Column 4 species the highest packing method which is authorized for the self-reactive material. A packing method corresponding to a smaller package size may be used, but a packing method corresponding to a larger package size may not be used. The Table of Packing Methods in § 173.225(d) defines the packing methods. Additional bulk packagings are authorized in paragraph (d) of this section for Type F self-reactive materials.

(5) *Control temperature.* Column 5 specifies the control temperature in °C. Temperatures are specified only when temperature controls are required (see § 173.21(f)).

(6) *Emergency temperature.* Column 6 specifies the emergency temperature in °C. Temperatures are specified only when temperature controls are required (see § 173.21(f)).

(7) *Notes.* Column 7 specifies other applicable provisions, as set forth in notes following the table.

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance (1)	Identification number (2)	Concentration (%) (3)	Packing method (4)	Control temperature (°C) (5)	Emergency temperature (°C) (6)	Notes (7)
Azodicarbonamide formulation type B	3232	<100	OP5B			
Azodicarbonamide formulation type C	3234	<100	OP6A			
Azodicarbonamide formulation type D	3236	<100	OP7B			
2,2'-Azodi(2,4-dimethyl-4-methoxyvaleronitrile)	3236	100	OP7B	−5	+5	
2,2'-Azodi(2,4-dimethylvaleronitrile)	3236	100	OP7B	+10	+15	
2,2'-Azodi(ethyl 2-methylpropionate)	3235	100	OP7A	+20	+25	
1,1-Azodi(hexahydrobenzonitrile)	3236	100	OP7B			
2,2'-Azodi(isobutyronitrile)	3234	100	OP6B	+40	+45	
2,2'-Azodi(2-methylbutyronitrile)	3236	100	OP7B	+35	+40	
Benzene-1,3-disulphohydrazide, as a paste	3236	52	OP7B			
Benzene sulphohydrazide	3236	100	OP7B			
4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride.	3236	100	OP7B			
4-(Benzyl(methyl)amino)-3-ethoxybenzenediazonium zinc chloride.	3236	100	OP7B	+40	+45	
3-Chloro-4-Diethylamino-benzenediazonium zinc chloride.	3236	100	OP7B			
2-Diazo-1-Naphthol-4-sulphochloride	3222	100	OP5B			
2-Diazo-1-Naphthol-5-sulphochloride	3222	100	OP5B			
2,5-Diethoxy-4-morpholino-benzenediazonium zinc chloride.	3236	67–100	OP7B	+35	+40	
2,5-Diethoxy-4-morpholino-benzenediazonium zinc chloride.	3236	66	OP7B	+40	+45	
2,5-Diethoxy-4-morpholino-benzenediazonium tetrafluoroborate.	3236	100	OP7B	+30	+35	
2,5-Diethoxy-4-(phenylsulphonyl)benzenediazonium zinc chloride.	3236	67	OP7B	+40	+45	
2,5-Dimethoxy-4-(4-methylphenylsulphony)benzene-diazonium zinc chloride.	3236	79	OP7B	+40	+45	
4-Dimethylamino-6-(2-dimethylaminoethoxy)toluene-2-diazonium zinc chloride.	3236	100	OP7B	+40	+45	
N,N'-Dinitroso-N,N'-dimethyl- terephthalamide, as a paste.	3224	72	OP6B			

SELF-REACTIVE MATERIALS TABLE—Continued

Self-reactive substance (1)	Identification number (2)	Concentration (%) (3)	Packing method (4)	Control temperature (°C) (5)	Emergency temperature (°C) (6)	Notes (7)
N,N'-Dinitrosopentamethylenetetramine	3224	82	OP6B			1
Diphenyloxide-4,4'-Disulphohydrazide	3226	100	OP7B			
4-Dipropylaminobenzenediazonium zinc chloride	3226	100	OP7B			
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	63–92	OP7B	+40	+45	
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	62	OP7B	+35	+40	
N-Formyl-2-(nitromethylene)-1,3-perhydrothiazine	3236	100	OP7B	+45	+50	
2-(2-Hydroxyethoxy)-1-(pyrrolidin-1-yl)benzene-4-diazonium zinc chloride.	3236	100	OP7B	+45	+50	
3-(2-Hydroxyethoxy)-4-(pyrrolidin-1-yl)benzenediazonium zinc chloride.	3236	100	OP7B	+40	+45	
2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethylphenylsulphonyl)benzene-diazonium zinc chloride.	3236	96	OP7B	+45	+50	
4-Methylbenzenesulphonylhydrazide	3226	100	OP7B	+40	+45	
3-Methyl-4-(pyrrolidin-1-yl) benzenediazonium tetrafluoroborate.	3234	95	OP6B	+45	+50	
4-Nitrosophenol	3236	100	OP7B	+35	+40	
Self-reactive liquid, sample	3223		OP2A			2
Self-reactive liquid, sample, temperature control	3233		OP2A			2
Self-reactive solid, sample	3224		OP2B			2
Self-reactive solid, sample, temperature control	3234		OP2B			2
Sodium 2-diazo-1-naphthol-4-sulphonate	3226	100	OP7B			
Sodium 2-diazo-1-naphthol-5-sulphonate	3226	100	OP7B			
Tetramine palladium (II) nitrate	3234	100	OP6B	+30	+35	

1. With a compatible diluent having a boiling point of not less than 150 C.
2. Samples may only be offered for transportation when all available data indicate that the sample is no more dangerous than a self-reactive substance type C, and the sample is packaged using packaging method OP2A for liquids or OP2B for solids, as appropriate, in quantities less than 10 kg per shipment, employing any necessary temperature controls.

(c) *New self-reactive materials, formulations and samples.* (1) Except as provided for samples in paragraph (c)(4) of this section, no person may offer, accept for transportation, or transport a self-reactive material which is not identified by technical name in the Self-Reactive Materials Table of this section, or a formulation of one or more self-reactive materials which are identified by technical name in the table, unless the self-reactive material is assigned a generic type and shipping description and is approved by the Associate Administrator for Hazardous Materials Safety under the provisions of § 173.124(a)(2)(vii).

(2) Except as provided by an approval issued under § 173.124(a)(2)(vii), intermediate bulk and bulk packagings are not authorized.

(3) Non-bulk packagings are authorized as specified in the Packing Method Table for Generic Types, as follows. Column 1 of the table specifies the generic type by identification number. Column 2 of the table specifies the generic proper shipping name from the § 172.101 Table. Column 3 of the table specifies the series of packing methods authorized for use. The Table of Packing Methods in § 173.225(d) defines the packing methods. The Packing Method Table for Generic Types is as follows:

Packing Method Table for Generic Types

PACKING METHOD TABLE FOR GENERIC TYPES

UN No. (1)	Proper shipping name (2)	Packing method (3)
3221 ..	Self-reactive liquid Type B.	OP1A–OP5A
3222 ..	Self-reactive solid Type B.	OP1B–OP5B
3223 ..	Self-reactive liquid Type C.	OP1A–OP6A
3224 ..	Self-reactive solid Type C.	OP1B–OP6B
3225 ..	Self-reactive liquid Type D.	OP1A–OP7A
3226 ..	Self-reactive solid Type D.	OP1B–OP7B

PACKING METHOD TABLE FOR GENERIC TYPES—Continued

UN No. (1)	Proper shipping name (2)	Packing method (3)
3227 ..	Self-reactive liquid Type E.	OP1A–OP8A
3228 ..	Self-reactive solid Type E.	OP1B–OP8B
3229 ..	Self-reactive liquid Type F.	OP1A–OP8A
3230 ..	Self-reactive solid Type F.	OP1B–OP8B
3231 ..	Self-reactive liquid Type B, temperature controlled.	OP1A–OP5A
3232 ..	Self-reactive solid Type B, temperature controlled.	OP1B–OP6B
3233 ..	Self-reactive liquid Type C, temperature controlled.	OP1A–OP6A
3234 ..	Self-reactive solid Type C, temperature controlled.	OP1B–OP7B
3235 ..	Self-reactive liquid Type D, temperature controlled.	OP1A–OP7A

PACKING METHOD TABLE FOR GENERIC TYPES—Continued

UN No. (1)	Proper shipping name (2)	Packing method (3)
3236 ..	Self-reactive solid Type D, temperature controlled.	OP1B–OP8B
3237 ..	Self-reactive liquid Type E, temperature controlled.	OP1A–OP8A
3238 ..	Self-reactive solid Type E, temperature controlled.	OP1B–OP8B
3239 ..	Self-reactive liquid Type F, temperature controlled.	OP1A–OP8A
3240 ..	Self-reactive solid Type F, temperature controlled.	OP1B–OP8B

(4) *Samples.* Samples of new self-reactive materials or new formulations of self-reactive materials identified in the Self-Reactive Materials Table in paragraph (b) of this section, for which complete test data are not available, and which are to be transported for further testing or evaluation, may be assigned an appropriate shipping description for Self-reactive materials Type C, packaged and offered for transportation under the following conditions:

(i) Data available to the person offering the material for transportation must indicate that the sample would pose a level of hazard no greater than that of a self-reactive material Type B and that the control temperature, if any, is sufficiently low to prevent any dangerous decomposition and sufficiently high to prevent any dangerous phase separation;

(ii) The sample must be packaged in accordance with packing method OP2A or OP2B, for a liquid or a solid, respectively;

(iii) Packages of the self-reactive material may be offered for transportation and transported in a quantity not to exceed 10 kg (22 pounds) per transport vehicle; and

(iv) One of the following shipping descriptions must be assigned:

(A) Self-reactive, liquid, type C, 4.1, UN3223.

(B) Self-reactive, solid, type C, 4.1, UN3224.

(C) Self-reactive, liquid, type C, temperature controlled, 4.1, UN3233.

(D) Self-reactive, solid, type C, temperature controlled, 4.1, UN3234.

(d) Self-reactive substances of Type F may not be transported in bulk or intermediate bulk containers except as approved, in writing, by the Associate Administrator for Hazardous Materials Safety.

73. In § 173.225, the fourth sentence of paragraph (a) and the Organic Peroxides Table in paragraph (b) would be revised, and a new paragraph (c)(5) would be added to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

(a) * * * To avoid unnecessary confinement, metallic non-bulk packagings meeting Packing Group I are not authorized. * * *

(b) * * *

ORGANIC PEROXIDES TABLE

Technical Name (1)	ID Number (2)	Concentration (Mass %) (3)	Diluent (Mass %) A (4a)	B (4b)	I (4c)	Water (Mass %) (5)	Packing Method (6)	Temperature(°C) Control (7a)	Emergency (7b)	Notes (8)
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7A			2
Acetyl acetone peroxide *as a paste*	UN3106	≤32					OP7B			21
Acetyl benzoyl peroxide	UN3105	≤45	≥55				OP7A			
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82				≥12	OP4B	-10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≤32		≥68			OP7A	-10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6			≥6	OP8A			
tert-Amyl peroxyacetate	UN3107	≤62	≥38				OP8A			
tert-Amyl peroxybenzoate	UN3105	≤96	≥4				OP7A			
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100					OP7A	+20	+25	
tert-Amyl peroxy-2-ethylhexyl carbonate	UN3103	92-100					OP5A			
tert-Amyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	+10	
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5A	+10	+15	
tert-Amylperoxy-3,5,5-trimethylhexanoate	UN3101	≤100					OP5A			
2,2-Bis(4,4-di(tert-butylperoxycyclohexyl)propane	UN3107	≤25		≥75			OP8A			
tert-Butyl cumyl peroxide	UN3105	>42 - 100					OP7A			1, 9
tert-Butyl cumyl peroxide	UN3106	≤42			≥68		OP7B			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3103	>52 - 100					OP5A			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3106	>42 - 52			≥48		OP7B			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3108	≤42			≥58		OP8A			
tert-Butyl hydroperoxide	UN3103	>79 - 90				≥10	OP5A			13
tert-Butyl hydroperoxide	UN3105	≤80	≥20				OP7A			4, 13
tert-Butyl hydroperoxide	UN3107	≤79				>14	OP8A			13, 16
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8A			14
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8A			13, 14
tert-Butyl hydroperoxide + Di-tert-butylperoxide	UN3103	<82 + >9				≥7	OP5A			13
tert-Butyl monoperoxymaleate	UN3102	>52 - 100					OP5B			
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48				OP6A			
tert-Butyl monoperoxymaleate	UN3108	≤52			≥48		OP8B			
tert-Butyl monoperoxymaleate *as a paste*	UN3010	≤42					OP8B			21
tert-Butyl monoperoxymaleate *as a paste*	UN3108	≤52					OP8B			21
tert-Butyl monoperoxyphthalate	UN3102	≤100					OP5B			
tert-Butyl peroxyacetate	UN3101	>52 - 77	≥23				OP5A			
tert-Butyl peroxyacetate	UN3103	>32 - 52	≥48				OP6A			
tert-Butyl peroxyacetate	UN3109	≤32	≥68				OP8A			10
tert-Butyl peroxyacetate	UN3119	≤32		≥68				+30	+35	10, 14
tert-Butyl peroxybenzoate	UN3103	>77 - 100	≤22				OP5A			
tert-Butyl peroxybenzoate	UN3105	>52 - 77	≥23				OP7A			1
tert-Butyl peroxybenzoate	UN3106	≤52			≥48		OP7B			
tert-Butyl peroxybutyl fumarate	UN3105	≤52	≥48				OP7A			
tert-Butyl peroxycrotonate	UN3105	≤77	≥23				OP7A			
tert-Butyl peroxydiethylacetate	UN3113	≤100					OP5A	+20	+25	
tert-Butyl peroxydiethylacetate + tert-Butyl peroxybenzoate	UN3105	≤33 + ≤33	≥33				OP7A			

ORGANIC PEROXIDES TABLE—Continued

Technical Name	ID Number	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing Method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl peroxy-2-ethylhexanoate	UN3113	>52 - 100					OP6A	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN3117	>32 - 52		≥48			OP8A	+30	+35	
tert-Butyl peroxy-2-ethylhexanoate	UN3118	≤52			≥48		OP8B	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68			OP8A	+40	+45	14
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68			OP8A	+40	+45	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68				+30	+35	10
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68				+10	+15	14
tert-Butyl peroxy-2-ethylhexanoate + 2,2-di-(tert-Butylperoxy)butane	UN3106	≤12 + ≤14	>14		≥60		OP7B			
tert-Butyl peroxy-2-ethylhexanoate + 2,2-di-(tert-Butylperoxy)butane	UN3115	≤31 + ≤36		≥33			OP7A	+35	+40	
tert-Butyl peroxy-2-ethylhexylcarbonate	UN3105	≤100					OP7A			
tert-Butyl peroxyisobutyrate	UN3111	>52 - 77		≥23			OP5A	+15	+20	
tert-Butyl peroxyisobutyrate	UN3115	≤52		≥48			OP7A	+15	+20	
tert-Butylperoxy isopropylcarbonate	UN3103	≤77	≥23				OP5A			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenz	UN3105	≤77	≥23				OP7A			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene	UN3108	≤42			≥58		OP8B			
tert-Butyl peroxy-2-methylbenzoate	UN3103	≤100					OP5A			
tert-Butyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	+10	
tert-Butyl peroxyneodecanoate	UN3115	>77 - 100					OP7A	-5	+5	
tert-Butyl peroxyneodecanoate *as a paste*	UN3117	≤42					OP8A	0	+10	21
tert-Butyl peroxyneodecanoate *as a paste (frozen)*	UN3118	≤42					OP8B	0	+10	21
3-tert-Butylperoxy-3-phenylphthalide	UN3106	≤100					OP7B			
tert-Butyl peroxypivalate	UN3113	>67 - 77	≥23				OP5A	0	+10	
tert-Butyl peroxypivalate	UN3115	>27 - 67		≥33			OP7A	0	+10	
tert-Butyl peroxypivalate	UN3119	≤27		≥73			OP8A	+30	+35	14
tert-Butyl peroxypivalate	UN3119	≤27		≥73			OP8A	+30	+35	
tert-Butyl peroxypivalate	UN3119	≤27		≥73				+10	+15	10
tert-Butyl peroxypivalate	UN3119	≤27		≥73				-5	+5	14
tert-Butylperoxy stearylcarbonate	UN3106	≤100					OP7B			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3105	>32 - 100					OP7A			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3109	≤32	≥68				OP8A			10
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3119	≤32	≥68					+35	+40	14
3-Chloroperoxybenzoic acid	UN3102	>57 - 86			≥14		OP1B			
3-Chloroperoxybenzoic acid	UN3106	≤57			≥3	≥40	OP7B			
3-Chloroperoxybenzoic acid	UN3106	≤72			≥10	≥18	OP7B			
Cumyl hydroperoxide	UN3107	>90 - 98	≤10				OP8A			13
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8A			14
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8A			13, 15, 14
Cumyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	-10	0	
Cumyl peroxypivalate	UN3115	≤77		≥23			OP7A	-5	+5	
Cyclohexanone peroxide(s)	UN3104	≤91				≥9	OP6B			13
Cyclohexanone peroxide(s)	UN3105	≤72		≥28			OP7A			5
Cyclohexanone peroxide(s)	Exempt	≤32			≥68		Exempt			
Cyclohexanone peroxide(s) *as a paste*	UN3106	≤72					OP7B			5, 21
Diacetone alcohol peroxides	UN3115	≤57		≥26		≥8	OP7A	+40	+45	5
Diacetyl peroxide	UN3115	≤27		≥73			OP7A	+20	+25	8
Diacetyl peroxide	UN3115	≤27		≥73			OP7A	+20	+25	8, 13
Di-tert-amyl peroxide	UN3107	≤100					OP8A			
1,1-Di-(tert-amylperoxy)cyclohexane	UN3103	≤80	≥20				OP6A			
Dibenzoyl peroxide	UN3102	>51 - 100			≤48		OP2B			
Dibenzoyl peroxide	UN3102	>77 - 94				≥6	OP4B			3
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6B			
Dibenzoyl peroxide	UN3106	>35 - 52			≥48		OP7B			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7B			
Dibenzoyl peroxide	UN3107	>36 - 42	≥18			≤40	OP8A			
Dibenzoyl peroxide	UN3107	>36 - 42	≥58				OP8A			
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt			
Dibenzoyl peroxide *as a paste*	UN3106	>52 - 62					OP7B			21
Dibenzoyl peroxide *as a paste*	UN3108	≤52					OP8B			21
Dibenzoyl peroxide *as a paste*	UN3108	≤56				≥15	OP8B			21
Dibenzoyl peroxide *as a paste*	Exempt	≤50				≥18	Exempt			21
Dibenzyl peroxydicarbonate	UN3112	≤87				≥13	OP5B	+25	+30	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate	UN3114	≤100					OP6B	+30	+35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate	UN3114	≤100					OP6B	+30	+35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate *as a stable dispersion in water*	UN3119	≤42					OP8A	+30	+35	10
Di-tert-butyl peroxide	UN3107	>32 - 100					OP8A			
Di-tert-butyl peroxide	UN3109	≤22		≥78			OP8A			14
Di-tert-butyl peroxide	UN3109	≤32	≥68				OP8A			14
Di-tert-butyl peroxyazelate	UN3105	≤52	≥48				OP7A			
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48				OP6A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	>80 - 100					OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	>52 - 80	≥20				OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	≤52	≥48				OP7A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≤42	≥13		≥45		OP7B			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≤27	≥36				OP8A			22
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤13	≥13	≥74			OP8A			14
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤25	≥25	≥50			OP8A			14
Di-n-butyl peroxydicarbonate	UN3115	>27 - 52		≥48			OP7A	-15	-5	
Di-n-butyl peroxydicarbonate	UN3117	≤27		≥73			OP8A	-10	0	
Di-sec-butyl peroxydicarbonate	UN3113	>52 - 100					OP4A	-20	-10	

ORGANIC PEROXIDES TABLE—Continued

Technical Name	ID Number	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing Method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-sec-butyl peroxydicarbonate	UN3115	≤52		≥48			OP7A	-15	-5	
Di-(2-tert-butylperoxyisopropyl)benzene(s)	UN3106	>42 - 100			≤57		OP7B			1, 9
Di-(2-tert-butylperoxyisopropyl)benzene(s)	Exempt	≤42			≥58		Exempt			
Di-(tert-butylperoxy)phthalate	UN3105	>42 - 52	≥48				OP7A			
Di-(tert-butylperoxy)phthalate	UN3107	≤42	≥58				OP8A			
Di-(tert-butylperoxy)phthalate *as a paste*	UN3106	≤52					OP7B			21
2,2-Di-(tert-butylperoxy)propane	UN3105	≤52	≥48				OP7A			
2,2-Di-(tert-butylperoxy)propane	UN3106	≤42	≥13		≥45		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3101	>90 - 100					OP5A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3103	>57 - 90	≥10				OP5A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3106	≤57			≥43		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3107	≤32	≥26	≥42			OP8A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3107	≤57	≥43				OP8A			
Dicetyl peroxydicarbonate	UN3116	≤100					OP7B	+20	+25	
Dicetyl peroxydicarbonate *as a stable dispersion in water*	UN3119	≤42					OP8A	+30	+35	10
Di-4-chlorobenzoyl peroxide	UN3102	≤77				≥23	OP5B			
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥68		Exempt			
Di-4-chlorobenzoyl peroxide *as a paste*	UN3106	≤52					OP7B			21
Dicumyl peroxide	UN3109	>42 - 100					OP8A			9, 14
Dicumyl peroxide	UN3110	>42 - 100			≤57		OP8B			9, 11, 14
Dicumyl peroxide	Exempt	≤42			≥58		Exempt			
Dicyclohexyl peroxydicarbonate	UN3112	>91 - 100					OP3B	+5	+10	
Dicyclohexyl peroxydicarbonate	UN3114	≤91				≥9	OP5B	+5	+10	
Didecanoyl peroxide	UN3114	≤100					OP6B	+30	+35	
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane	UN3106	≤42			≥58		OP7B			
Di-2,4-dichlorobenzoyl peroxide	UN3102	≤77				≥23	OP5B			
Di-2,4-dichlorobenzoyl peroxide *as a paste with silicon oil*	UN3106	≤52					OP7B			
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	>77 - 100					OP5A	-20	-10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≤77					OP7A	-15	-5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water*	UN3117	≤42					OP8A	-15	-5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water (frozen)*	UN3118	≤42					OP8B	-15	-5	
Diethyl peroxydicarbonate	UN3115	≤27		≥73			OP7A	-10	0	
2,2-Dihydroperoxypropane	UN3102	≤27			≥73		OP5B			
Di-(1-hydroxycyclohexyl)peroxide	UN3106	≤100					OP7B			
Diisobutyryl peroxide	UN3111	>32 - 52		≥48			OP5A	-20	-10	
Diisobutyryl peroxide	UN3115	≤32		≥68			OP7A	-20	-10	
Di-isopropylbenzene dihydroperoxide	UN3106	≥82	≥5			≥5	OP7B			17
Diisopropyl peroxydicarbonate	UN3112	>52 - 100					OP2B	-15	-5	
Diisopropyl peroxydicarbonate	UN3115	≤52		≥48			OP7A	-10	0	
Diisotridecyl peroxydicarbonate	UN3115	≤100					OP7A	-10	0	
Dilauroyl peroxide	UN3106	≤100					OP7B			
Dilauroyl peroxide *as a stable dispersion in water*	UN3109	≤42					OP8A			10
Di-(2-methylbenzoyl) peroxide	UN3112	≤87				≥13	OP5B	-30	+35	
Di-(4-methylbenzoyl)peroxide *as a paste with silicon oil*	UN3106	≤52					OP7B			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3102	>82 - 100					OP5B			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3104	≤82				≥18	OP5B			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3106	≤82			≥18		OP7B			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3105	>52 - 100					OP7A			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3106	≤70			≥30		OP7B			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3109	≤52	≥48				OP8A			14
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3109	≤52	≥48				OP8A			14
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane *as a paste*	UN3108	≤47					OP8B			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3	UN3103	>52 - 100					OP5A			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3	UN3106	≤52			≥48		OP7B			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane	UN3115	≤100					OP7A	+20	+25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≤82				≥18	OP6B			
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane	UN3105	≤77	≥23				OP7A			
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate	UN3117	≤52		≥48			OP8A	+0	+10	
Dimyristyl peroxydicarbonate	UN3116	≤100					OP7B	+20	+25	
Dimyristyl peroxydicarbonate *as a stable dispersion in water*	UN3119	≤42					OP8A	+20	+25	
Dimyristyl peroxydicarbonate *as a stable dispersion in water*	UN3119	≤42						+15	+25	10
Di-(2-neodecanoylperoxyisopropyl) benzene	UN3115	≤52	≥48				OP7A	-10	0	
Di-n-nonanoyl peroxide	UN3116	≤100					OP7B	0	+10	
Di-n-octanoyl peroxide	UN3114	≤100					OP5B	+10	+15	
Diperoxy azelaic acid	UN3116	≤27			≥73		OP7B	+35	+40	
Diperoxy dodecane diacid	UN3116	>13 - 42			≥58		OP7B	+40	+45	
Diperoxy dodecane diacid	Exempt	≤13			≥87		Exempt			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3102	>85 - 100					OP5B			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3106	≤85				≥15	OP7B			
Dipropionyl peroxide	UN3117	≤27		≥73			OP8A	+15	+20	
Di-n-propyl peroxydicarbonate	UN3113	≤100					OP4A	-25	-15	
Distearyl peroxydicarbonate	UN3106	≤87			≥13		OP7B			
Disuccinic acid peroxide	UN3102	>72,≤100					OP4B			18
Disuccinic acid peroxide	UN3102	>72 - 100					OP4B			18
Disuccinic acid peroxide	UN3116	≤72				≥28	OP7B	+10	+15	18
Di-(3,5,5-trimethyl-1,2-dioxolanyl-3) peroxide *as a paste*	UN3116	≤52					OP7B	+30	+35	21

ORGANIC PEROXIDES TABLE—Continued

Technical Name	ID Number	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing Method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3115	>38 - 82	≥18				OP7A	0	+10	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62				OP8A	+20	+25	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62					+10	+15	10
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62					-10	0	14
Di-(3,5,5-trimethylhexanoyl)peroxide *as a stable dispersion in water*	UN3117	≤52					OP8A	+10	+15	
Ethyl 3,3-di-(tert-amylperoxy)butyrate	UN3105	≤67	≥33				OP7A			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3103	>77 - 100					OP5A			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3105	≤77	≥23				OP7A			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3106	≤52			≥48		OP7B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3102	>52 - 100					OP4B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3105	≤52	≥48				OP7A			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3106	≤52			≥48		OP7B			
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8A			14
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8A			13, 14
p-Menthyl hydroperoxide	UN3105	56 - 100					OP7A			13
p-Menthyl hydroperoxide	UN3109	≤55	≥45				OP8A			14
p-Menthyl hydroperoxide	UN3109	< 56	>44				OP8A			14
Methylcyclohexanone peroxide(s)	UN3115	≤67		≥33			OP7A	+35	+40	
Methyl ethyl ketone peroxide(s)	UN3101	≤52	≥48				OP5A			5, 13
Methyl ethyl ketone peroxide(s)	UN3105	≤45	≥55				OP7A			5
Methyl ethyl ketone peroxide(s)	UN3107	≤40	≥60				OP8A			5
Methyl isobutyl ketone peroxide(s)	UN3105	≤62	≥19				OP7A			5, 23
Organic peroxide, liquid, sample, temperature controlled	UN3113						OP2A			12
Organic peroxide, solid, sample	UN3104						OP2B			12
Organic peroxide, solid, sample, temperature controlled	UN3114						OP2B			12
Peracetic acid with 20% hydrogen peroxide	Exempt	≤5				≥60	Exempt			
Peracetic acid with 7% hydrogen peroxide	UN3107	≤36				≥15	OP8A			
Peroxyacetic acid, type D, stabilized	UN3105	≤43					OP7A			13, 20
Peroxyacetic acid, type E, stabilized	UN3107	≤43					OP8A			13, 20
Peroxyacetic acid, type F, stabilized	UN3109	≤43					OP8A			13, 20
Pinanyl hydroperoxide	UN3105	56 - 100					OP7A			13
Pinanyl hydroperoxide	UN3109	≤55	≥45				OP8A			14
Pinanyl hydroperoxide	UN3109	< 56	>44				OP8A			14
Tetrahydronaphthyl hydroperoxide	UN3106	≤100					OP7B			
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≤100					OP7A			
1,1,3,3-Tetramethylbutylperoxy-2-ethylhexanoate	UN3115	≤100					OP7A	+20	+25	
2,4,4-Trimethylpentyl-2-peroxyneodecanoate	UN3115	≤72		≥28			OP7A	-5	+5	
2,4,4-Trimethylpentyl-2-peroxy phenoxyacetate	UN3115	≤37		≥63			OP7A	-10	0	

1. For domestic shipments, OP8A is authorized.
2. Available oxygen must be <4.7 percent.
3. For concentrations <80 percent OP5B is allowed. For concentrations 80 percent but <85 percent, OP4B is allowed. For concentrations ≥85 percent, maximum package size is OP2B.
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be percent.
6. For domestic shipments, OP5A is authorized.
7. [Reserved]
8. Only non-metallic packagings are authorized.
9. For domestic shipments, this material may be transported in bulk packagings under the provisions of § 173.225(e)(3)(c)(ii).
10. This material may be transported in intermediate bulk containers under the provisions of § 173.225(e).
11. Up to 2000 kg per container authorized.
12. Samples may only be offered for transportation when all available date indicate that the sample is no more dangerous than an Organic Peroxide type C, and the sample is packaged using packaging method OP2A for liquids or OP2B for solids, as appropriate, in quantities less than 10 kg per shipment, employing any necessary temperature controls.
13. "Corrosive" subsidiary risk label is required.
14. This material may be transported in bulk packagings under the provisions of § 173.225(e).
15. No "Corrosive" subsidiary risk label is required for concentrations below 80%.
16. With <6% di-tert-butyl peroxide.
17. With <= 8% 1-isopropylhydroperoxy-4-isopropylhydroxybenzene.
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water and acid(s).
21. With diluent type A, with or without water.
22. With <36 percent, by mass, ethylbenzene.
23. With >19 percent, by mass, methyl isobutyl ketone.

(c) * * *

(5) *Mixtures.* Mixtures of organic peroxides individually identified in the Organic Peroxides Table in paragraph (b) of this section may be classified as the same type of organic peroxide as that of the most dangerous component and be transported under the conditions for transportation given for this type. If the stable components form a thermally less stable mixture, the SADT of the mixture must be determined and the new control and emergency temperature derived under the provisions of § 173.21(f).

* * * * *

§ 173.226 [Amended]

73a. In § 173.226(c)(1), the wording "4A1 or 4A2" and "4B1 or 4B2" would be removed and the wording "4A" or "4B", respectively, would be added in its place.

§ 173.304 [Amended]

74. In § 173.304, in the paragraph (a)(2) table, for the entry "Carbon dioxide", in Column 3, "DOT–311800" would be removed and replaced with "DOT–3T1800".

75. In § 173.306, paragraph (a)(3)(v) would be revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) * * *

(3) * * *

(v) Each container must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F) (50

°C) (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). If the contents are sensitive to heat or if the containers are made of plastics material which softens at this test temperature, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur, except that a plastic container may be deformed through softening provided that it does not leak.

* * * * *

Appendix A to Part 173 [Removed]

76. Appendix A to part 173 would be removed and reserved.

77. In Appendix E to part 173, paragraph 2.b.(4) would be redesignated 2.b.(5) and a new 2.b.(4) would be added to read as follows:

Appendix E to Part 173—Guidelines for the Classification and Packing Group Assignment of Class 4 Materials

* * * * *

2. * * *

b. * * *

(4) A self-reactive material shall be regarded as possessing explosive properties when, in laboratory testing, the formulation is liable to detonate, to deflagrate rapidly or show a violent effect when heated under confinement.

* * * * *

Appendix E to Part 173 [Amended]

78. In addition, in Appendix E to part 173, in paragraph 2.c.(3)(B), the wording "Powders of metals or metal alloys are classified when they can be ignited" would be revised to read "Powders of metals or metal alloys are classified in Division 4.1 when they can be ignited".

Appendix F to Part 173 [Amended]

79. In Appendix F to part 173, in paragraph 1., the phrase "Division 4.1" would be removed and replaced with "Division 5.1".

80. Appendix H would be added to part 173 to read as follows:

Appendix H to Part 173—Method of Testing for Sustained Combustibility

1. *Method.* The method describes a procedure for determining if the material when heated under the test conditions and exposed to an external source of flame applied in a standard manner sustains combustion.

2. *Principle of the method.* A metal block with a concave depression (test portion well) is heated to a specified temperature. A specified volume of the material under test is transferred to the well and its ability to sustain combustion is noted after application and subsequent removal of a standard flame under specified conditions.

3. *Apparatus.* A combustibility tester consisting of a block of aluminum alloy or other corrosion-resistant metal of high thermal conductivity is used. The block has a concave well and a pocket drilled to take a thermometer. A small gas jet assembly on a swivel is attached to the block. The handle and gas inlet for the gas jet may be fitted at any convenient angle to the gas jet. A suitable apparatus is shown in Figure 5.1 of the UN Recommendations and the essential dimensions are given in Figures 5.1 and 5.2 of the UN Recommendations. The following equipment is needed:

(a) *Gauge*, for checking that the beight of the center of the gas jet above the top of the test portion well is 2.2 mm (see Figure 5.1);

(b) *Thermometer*, mercury in glass, for horizontal operation, with a sensitivity not less than 1 mm/°C, or other measuring device of equivalent sensitivity permitting reading at 0.5 °C intervals. When in position in the block, the thermometer bulb must be surrounded with thermally conducting thermoplastic compound;

(c) *Hotplate*, fitted with a temperature-control device. (Other types of apparatus with suitable temperature-control facilities may be employed to heat the metal block);

(d) *Stopwatch*, or other suitable timing device;

(e) *Syringe*, capable of delivering 2 ml to an accuracy of ± 0.1 ml; and

(f) *Fuel source*, butane test fuel.

4. *Sampling.* The sample must be representative of the material to be tested and must be supplied and kept in a tightly closed container prior to test. Because of the possibility of loss of volatile constituents, the sample must receive only the minimum treatment necessary to ensure its homogeneity. After removing each test portion, the sample container must be immediately closed tightly to ensure that no volatile components escape from the container; if this closure is incomplete, an entirely new sample must be taken.

5. *Procedure.* Carry out the determination in triplicate.

WARNING—Do not carry out the test in a small confined area (for example a glove box), because of the hazard of explosions.

(a) It is essential that the apparatus be set up in a completely draft-free area (see warning) and in the absence of strong light to facilitate observation of flash, flame, etc.

(b) Place the metal block on the hotplate or heat the metal block by other suitable means so that its temperature, as indicated by the thermometer placed in the metal block, is maintained at the specified temperature within a tolerance of ± 1 °C. The test temperature is 60.5 °C or 75 °C, (see (h)). Correct this temperature for the difference in barometric pressure from the standard atmospheric pressure (101.3 kPa) by raising the test temperature for a higher pressure or lowering the test temperature for a lower pressure by 1.0 °C for each 4 kPa difference. Ensure that the top of the metal block is exactly horizontal. Use the gauge to check that the jet is 2.2 mm above the top of the well when in the test position.

(c) Light the butane test fuel with the jet away from the test position (i.e. in the "off" position, away from the well). Adjust the size of the flame so that it is 8 mm to 9 mm high and approximately 5 mm wide.

(d) Using the syringe, take from the sample container at least 2 ml of the sample and rapidly transfer a test portion of 2 ml ± 0.1 ml to the well of the combustibility tester and immediately start the timing device.

(e) After a heating time of 60 seconds (s), by which time the test portion is deemed to have reached its equilibrium temperature, and if the test fluid has not ignited, swing the test flame into the test position over the edge of the pool of liquid. Maintain it in this position for 15 s and then return it to the "off" position while observing the behavior of the test portion. The test flame must remain lighted throughout the test.

(f) For each test observe and record:

(i) whether there is ignition and sustained combustion or flashing, or neither, of the test portion before the test flame is moved into the test position;

(ii) whether the test portion ignites while the test flame is in the test position, and, if so, how long combustion is sustained after the test flame is returned to the "off" position.

(g) If sustained combustion interpreted in accordance with paragraph 6. of this appendix is not found, repeat the complete procedure with new test portions, but with a heating time of 30 s.

(h) If sustained combustion interpreted in accordance with paragraph 6. of this appendix is not found at a test temperature of 60.5 °C (141 °F), repeat the complete procedure with new test portions, but at a test temperature of 75 °C (167 °F).

6. *Interpretation of observations.*

The material must be assessed either as not sustaining combustion or as sustaining combustion. Sustained combustion must be reported at either of the heating times if one of the following occurs with either of the test portions:

(a) When the test flame is in the "off" position, the test portion ignites and sustains combustion;

(b) The test portion ignites while the test flame is in the test position for 15 s, and sustains combustion for more than 15 s after the test flame has been returned to the "off" position.

Note: Intermittent flashing may not be interpreted as sustained combustion. Normally, at the end of 15 s, the combustion has either clearly ceased or continues. In cases of doubt, the material must be deemed to sustain combustion.

§§ 173.201, 173.202, 173.203, 173.211, 173.212, 173.213, 173.226 [Amended]

81. In addition to the amendments set forth above, part 173 would be amended by removing the wording "4A1 or 4A2" and inserting in its place "4A" each place it appears; removing the wording "4B1 or 4B2" and inserting in its place "4B" each place it appears; and by removing the wording "6HH" and inserting in its place "6HH1" each place it appears in the following sections:

a. Section 173.201 (b) and (c);

b. Section 173.202 (b) and (c);

c. Section 173.203 (b) and (c);
d. Section 173.211 (b) and (c);
e. Section 173.212 (b) and (c); and
f. Section 173.213 (b) and (c).

PART 175—CARRIAGE BY AIRCRAFT

82. The authority citation for part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

83. In § 175.10, paragraphs (a)(4) introductory text and (a)(13) would be revised, paragraph (a)(17) would be removed and reserved, and a new paragraph (a)(26) would be added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) Non-radioactive medicinal and toilet articles carried by a crew member or passenger in checked or carry-on baggage, and non-flammable and non-toxic aerosols, with no subsidiary risk, for sporting or home use, when carried in checked baggage only, when:

* * * * *

(13) Carbon dioxide, solid (dry ice) when:

(i) In quantities not exceeding 2.3 kg (5.07 pounds) per package packed as prescribed by § 173.217 of this subchapter and used as a refrigerant for the contents of the package. The package must be marked with the name of the contents being cooled, the net weight of the dry ice or an indication that the net weight is 2.3 kg (5.07 pounds) or less, and also marked "Carbon Dioxide, Solid" or "Dry Ice";

(ii) Intended for use in food and beverage service aboard aircraft; or

(iii) In quantities not exceeding 2 kg (4.4 pounds) per passenger when used to pack perishables in carry-on baggage provided the package permits the release of carbon dioxide gas.

* * * * *

(26) A small medical or clinical mercury thermometer for personal use, when carried in protective cases by passengers or crew members.

§ 175.10 [Amended]

84. In addition, in § 175.10, in paragraph (a)(12) introductory text, the wording "environmental restoration or protection," would be added immediately following "weather control," and immediately preceding "forest preservation".

85. In § 175.33, a new sentence would be added in paragraph (a)(1) introductory text after the first sentence, and a new paragraph (a)(9) would be added to read as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(1) * * * In the case of Class 1 material, the compatibility group letter also must be shown. * * *

* * * * *

(9) The air waybill number (when issued).

* * * * *

§ 175.33 [Amended]

86. In addition, in § 175.33, in paragraph (a)(6), the word "and" at the end of the sentence would be removed; in paragraph (a)(7), the period at the end of the sentence would be removed and replaced with a semicolon; and in paragraph (a)(8), the period at the end of the sentence would be removed and replaced with "; and".

PART 176—CARRIAGE BY VESSEL

87. The authority citation for part 176 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

88. A new paragraph (c) would be added in § 176.27 to read as follows:

§ 176.27 Certificate.

* * * * *

(c) (1) A person responsible for packing or loading a freight container or transport vehicle containing hazardous materials for transportation by a manned vessel in ocean or coastwise service, must provide the vessel operator with a signed container packing certificate stating, at a minimum, that—

(i) The freight container or transport unit is serviceable for the materials loaded therein, contains no incompatible goods, and is properly marked, labeled or placarded, as applicable; and

(ii) When the freight container or transport unit contains packages, those packages have been inspected prior to loading, are properly marked, labeled or placarded, as applicable; are not damaged; and are properly secured.

(2) The certificate may be either on a separate document or be provided on the certificate required in § 172.204 of this subchapter.

89. In § 176.76, a new paragraph (i) would be added to read as follows:

§ 176.76 Transport vehicles, freight containers, and portable tanks containing hazardous materials.

* * * * *

(i) A fumigated transport unit may only be transported on board a vessel subject to the following conditions and limitations:

(1) The fumigated transport unit may be placed on board a vessel only if at least 24 hours have elapsed since the unit was last fumigated;

(2) The fumigated transport unit is accompanied by a document showing the date of fumigation and the type and amount of fumigant used;

(3) Prior to loading, the master is informed of the intended placement of the fumigated transport unit on board the vessel and the information provided on the accompanying document;

(4) Equipment that is capable of detecting the fumigant and instructions for the equipment's use is provided on the vessel;

(5) The fumigated transport unit must be stowed at least five meters from any opening to accommodation spaces;

(6) Fumigated transport units may only be transported on deck on vessels carrying more than 25 passengers; and

(7) Fumigants may not be added to transport units while on board a vessel.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

90. The authority citation for part 177 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.841 [Amended]

91. In § 177.841, in paragraph (e)(3), the wording "is separated as required in § 177.848(e)(3) for classes identified with the letter 'O' in the Segregation Table for Hazardous Materials." would be revised to read "is separated in a manner that, in the event of leakage from packages under conditions normally incident to transportation, commingling of hazardous materials with foodstuffs, feed, or any other edible material would not occur."

PART 178—SPECIFICATIONS FOR PACKAGINGS

92. The authority citation for part 178 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

93. In § 178.2, paragraph (a) would be revised and paragraph (e) would be added to read as follows:

§ 178.2 Applicability and responsibility.

(a) *Applicability.* (1) The requirements of this part apply to packagings manufactured—

(i) To a DOT specification, regardless of country of manufacture; or

(ii) To a UN standard, for packagings manufactured within the United States. For UN standard packagings manufactured outside the United States, see § 173.24(d)(2) of this subchapter. For UN standard packagings for which standards are not prescribed in this part, see § 178.3(b).

(2) A manufacturer of a packaging subject to the requirements of this part is primarily responsible for compliance with the requirements of this part. However, any person who performs a function prescribed in this part shall perform that function in accordance with this part.

* * * * *

(e) *Definitions.* For the purpose of this part—

Manufacturer means the person whose name and address or symbol appears as part of the specification markings required by this part or, for a packaging marked with the symbol of an approval agency, the person on whose behalf the approval agency certifies the packaging.

Specification markings mean the packaging identification markings required by this part including, where applicable, the name and address or symbol of the packaging manufacturer or approval agency.

94. In § 178.3, paragraph (a) introductory text, the first sentence of paragraph (a)(2) and paragraph (b) would be revised, a sentence would be added at the end of paragraph (a)(4) and a new paragraph (a)(5) would be added, to read as follows:

§ 178.3 Marking of packagings.

(a) Each packaging manufactured to a DOT specification or a UN standard must be marked with specification markings conforming to the applicable specification, and with the following:

(1) * * *

(2) Unless otherwise specified in this part, with the name and address or symbol of the packaging manufacturer or, where specifically authorized, the symbol of the approval agency certifying compliance with a UN standard. * * *

* * * * *

(4) * * * For packagings having a capacity of 5 L (1 gallon) or 5 kg (11 pounds) or less, letters and numerals must be of an appropriate size.

(5) For packages with a gross mass of more than 30 kg (66 pounds), the markings or a duplicate thereof must appear on the top or on a side of the packaging.

(b) A UN standard packaging for which the UN standard is set forth in this part may be marked with the United Nations symbol and other specification markings only if it fully conforms to the requirements of this part. A UN standard packaging for which the UN standard is not set forth in this part may be marked with the United Nations symbol and other specification markings for that standard as provided in the ICAO Technical Instructions or Annex 1 of the IMDG Code subject to the following conditions:

(1) The U.S. manufacturer must establish that the packaging conforms to the applicable provisions of the ICAO Technical Instructions or Annex 1 of the IMDG Code, respectively.

(2) If an indication of the name of the manufacturer or other identification of the packaging as specified by the competent authority is required, the name and address or symbol of the manufacturer must be entered. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety.

(3) The letters "USA" shall be used to indicate the State authorizing the allocation of the specification marks if manufactured in the United States.

* * * * *

§ 178.502 [Amended]

95. In § 178.502, the following changes would be made:

a. In the paragraph (a) introductory text, the wording "types" would be revised to read "kinds".

b. In the paragraph (a)(1) introductory text and the first sentence in paragraph (a)(3), the wording "type" would be revised to read "kind".

96. In § 178.503, paragraph (d) would be redesignated paragraph (e); new paragraphs (a)(11) and (d) would be added; paragraph (a) introductory text, paragraph (a)(9), and paragraph (a)(10) would be revised; and newly designated paragraph (e)(3) would be amended by revising the illustration, to read as follows:

§ 178.503 Marking of packagings.

(a) The manufacturer must mark every packaging that is required to meet a UN standard with the marks specified in this section. The markings must be legible and placed in a location and of such a size relative to the packaging as to be readily visible, as specified in § 178.3(a). For packages with a gross mass of more than 30 kg (66 pounds), the markings or a duplicate thereof must appear on the top or on a side of the packaging. Except as otherwise provided in this section, every reusable packaging liable to undergo a reconditioning process which might obliterate the packaging marks must bear the marks specified in paragraphs (a)(1) through (a)(6) and (a)(9) of this section in a permanent form (e.g. embossed) able to withstand the reconditioning process. A marking may be applied in a single line or in multiple lines provided the correct sequence is respected. As illustrated by the examples in paragraph (e) of this section, the following information must be presented in the correct sequence. Slash marks should be used to separate this information. A packaging conforming to a UN standard must be marked as follows:

* * * * *

(9) For metal or plastic drums or jerricans intended for reuse or reconditioning as single packagings or the outer packagings of a composite packaging, the thickness of the packaging material, expressed in millimeters, as follows:

(i) Metal drums or jerricans must be marked with the nominal thickness of the metal used in the body. The marked nominal thickness must not exceed the minimum thickness of the steel used by more than the thickness tolerance stated in ISO Standard 3574. The unit of measure is not required to be marked. When the nominal thickness of either head of a metal drum is thinner than that of the body, the nominal thickness of the top head, body, and bottom head must be marked (eg., "1.0–1.2–1.0" or "0.9–1.0–1.0").

(ii) Plastic drums or jerricans must be marked with the minimum thickness (in mm, rounded to the nearest 0.1 mm) of the packaging material. Minimum thicknesses of plastic must be as determined in accordance with § 173.28(b)(4). The unit of measure is not required to be marked.

(10) In addition to the markings prescribed in paragraphs (a)(1) through (a)(9) of this section, every new metal or plastic drum having a capacity greater than 100 L and intended for reuse or reconditioning as a single packaging or the outer packaging of a composite packaging, must bear the marks described in paragraphs (a)(1) through (a)(6), and (a)(9) of this section, in a permanent form, on the bottom. For these packagings, the markings on the top head or side of the packaging need not be applied in a permanent form and need not include the thickness mark described in paragraph (a)(9) of this section. This marking describes a drum's characteristics at the time it was manufactured and must be consistent with the original manufacturer's UN marking on the top head or side. Subsequent remanufacture may render some of the information provided in this bottom mark to be invalid (e.g., a 1A1 drum may be remanufactured into a 1A2 drum). This marking should not be used to evaluate compliance with § 173.24 of this subchapter.

(11) Rated capacity of the packaging expressed in liters may be marked.

* * * * *

(d) When, after reconditioning, the markings required by paragraph (a)(1)

through (a)(6) of this section no longer appear on the top head or the side of the metal drum, the reconditioner must apply them in a durable form followed by the markings in paragraph (c) of this section. These markings may identify a different performance capability than that for which the original design type had been tested and marked, but may not identify a greater performance capability. The markings applied in accordance with this paragraph may be different from those which are permanently marked on the bottom of a drum in accordance with paragraph (a)(10) of this section.

(e) * * *

(3) * * *

BILLING CODE 4910-60-P

BILLING CODE 4910-60-C

* * * * *

§ 178.503 [Amended]

97. In addition, in § 178.503, the reference "§ 178.503(a)(1) through (a)(10)" following the illustration would be revised to read "§ 178.503(a)(1) through (a)(9)".

§ 178.508 [Amended]

98. In § 178.508, in paragraph (a)(2). the wording "plywood or plastic material" would be revised to read "plywood, plastics, or other suitable material".

99. In § 178.512, paragraphs (a)(3) and (a)(4) would be removed and paragraphs (a)(1), (a)(2), and (b)(2) would be revised to read as follows:

§ 178.512 Standards for steel or aluminum boxes.

(a) * * *

(1) 4A for a steel box; and

(2) 4B for an aluminum box.

(b) * * *

(2) Boxes must be lined with fiberboard or felt packing pieces or must have an inner liner or coating of suitable material in accordance with subpart C of part 173 of this subchapter. If a double seamed metal liner is used, steps must be taken to prevent the ingress of materials, particularly explosives, into the recesses of the seams.

* * * * *

100. In § 178.513, paragraphs (b)(2) and (b)(3) would be redesignated (b)(3) and (b)(4), respectively, and a new paragraph (b)(2) would be added to read as follows:

§ 178.513 Standards for boxes of natural wood.

* * * * *

(b) * * *

(2) Fastenings must be resistant to vibration experienced under normal conditions of transportation. End grain nailing must be avoided whenever practicable. Joints which are likely to be highly stressed must be made using clenched or annular ring nails or equivalent fastenings.

* * * * *

§ 178.516 [Amended]

101. In § 178.516, the following changes would be made:

a. In paragraph (b)(1), at the end of the second sentence, the wording "ISO International Standard 535–1976(E)" would be revised to read "ISO International Standard 535–1991(E)".

b. In paragraph (b)(2), at the end of the first sentence, the wording "of wood." would be revised to read "of wood or other suitable material."; and in the second sentence the wording "or other suitable material" would be added immediately following the word "battens".

c. Paragraphs (b)(4) and (b)(5) would be redesignated as paragraphs (b)(5) and (b)(6) and paragraph (b)(3)(iii) would be redesignated as paragraph (b)(4).

§ 178.521 [Amended]

102. In § 178.521, in paragraph (b)(2). in the penultimate sentence, the wording "water-resistant ply or barrier must also be placed" would be revised to read "waterproof ply or barrier, such as double-tarred kraft paper, plastics-coated kraft paper, plastics film bonded to the inner surface of the bag, or one or more inner plastics liners, must also be placed".

103. In § 178.522, paragraphs (a)(10) and (b)(3)(viii) would be revised and paragraphs (a)(11) and (b)(3)(ix) would be added to read as follows:

§ 178.522 Standards for composite packagings with inner plastic receptacles.

(a) * * *

(10) 6HH1 for a plastic receptacle within a protective plastic drum; and

(11) 6HH2 for a plastic receptacle within a protective plastic box.

(b) * * *

(3) * * *

(viii) 6HH1: Protective packaging must conform to the requirements for plastic drums, in § 178.509(b).

(ix) 6HH2: Protective packaging must conform to the requirements for plastic boxes, in § 178.517(b).

* * * * *

§ 178.522 [Amended]

104. In addition, in § 178.522, the following changes would be made:

a. In paragraph (a)(9), the word "and" at the end of the paragraph would be removed.

b. In paragraph (b)(4), the wording "6HH" would be revised to read "6HH1"; and the wording ", 6HH2" would be added immediately following "6HG2".

c. In paragraph (b)(5), the wording "6HH" would be revised to read "6HH1", and the wording ", 6HH2" would be added immediately following "6HG2".

105. In § 178.601, paragraph (k) would be redesignated as paragraph (l) and revised, a new paragraph (k) would be added, and paragraphs (b), (g)(2)(i), and (g)(2)(vi) would be revised to read as follows:

§ 178.601 General requirements.

* * * * *

(h) *Responsibility.* It is the responsibility of the packaging manufacturer to assure that each package is capable of passing the prescribed tests. To the extent that a package assembly function, including final closure, is performed by the person who offers a hazardous material for transportation, that person is responsible for performing the function in accordance with §§ 173.22 and 178.2 of this subchapter.

* * * * *

(g) * * *

(2) * * *

(i) The outer packaging must have been successfully tested in accordance with § 178.603 with fragile (e.g. glass) inner packagings containing liquids at the Packing Group I drop height;

* * * * *

(vi) When the outer packaging is intended to contain inner packagings for liquids and is not leakproof, or is intended to contain inner packagings for solids and is not siftproof, a means of containing any liquid or solid contents in the event of leakage must be provided in the form of a leakproof liner, plastic bag, or other equally efficient means of containment. For packagings containing liquids, the absorbent material required in paragraph (g)(2)(v) of this section must be placed inside the means of containing liquid contents; and

* * * * *

(k) *Number of test samples.* Provided the validity of the test results is not affected and with the approval of the Associate Administrator for Hazardous Materials Safety, several tests may be performed on one sample.

(l) *Record retention.* Following each design qualification test and each periodic retest on a packaging, a test report must be prepared. The test report must be maintained at each location where the packaging is manufactured, at each location where the design qualification tests are conducted for as long as the packaging is produced and for at least two years thereafter, and at each location where the periodic retests are conducted until such tests are successfully performed again and a new test report produced. In addition, a copy of the test report must be maintained by a person certifying compliance with this part. The test report must be made available to users of a packaging or a representative of the Department upon request. The test report must contain the following information:

(1) Name and address of test facility;

(2) Name and address of applicant (where appropriate);

(3) A unique test report identification;

(4) Date of the test report;

(5) Manufacturer of the packaging;

(6) Description of the packaging design type (e.g. dimensions, materials, closures, thickness, etc.), including methods of manufacture (e.g. blow molding) and which may include drawing(s) and/or photograph(s);

(7) Maximum capacity;

(8) Characteristics of test contents, e.g. viscosity and relative density for liquids and particle size for solids;

(9) Test descriptions and results; and

(10) Signed with the name and address of signatory.

§ 178.601 [Amended]

106. In addition, in § 178.601, the following changes would be made:

a. In paragraph (g)(2) introductory text, the wording "Inner packagings" would be revised to read "Articles or inner packagings".

b. In paragraph (g)(5)(i), the reference "§ 178.602" would be revised to read "§ 178.603".

c. In paragraph (g)(5)(ii), the reference "§ 178.603" would be revised to read "§ 178.604".

§ 178.602 [Amended]

107. In § 178.602, in the second sentence of paragraph (c), the reference "§ 178.603(d)(2)" would be revised to read "§ 178.603(e)".

108. In § 178.603, in paragraph (a) introductory text, a sentence would be added following the second sentence, the first sentence in paragraph (c) would be revised, and paragraph (f)(1) would be revised to read as follows:

§ 178.603 Drop test.

(a) * * * Where more than one orientation is possible for a given drop test, the orientation most likely to result in failure of the packaging must be used.

* * *

* * * * *

(c) * * * Testing of plastic drums, plastic jerricans, plastic boxes other than expanded polystyrene boxes, composite packagings (plastic material), combination packagings with plastic inner packagings, textile bags with inner plastic liners, woven plastic bags, and plastic film bags must be carried out when the temperature of the test sample and its contents has been reduced to − 18 °C (0 °F) or lower. * * *

* * * * *

(f) * * *

(1) For packagings containing liquid, each packaging does not leak when equilibrium has been reached between the internal and external pressures, except for inner packagings of combination packagings when it is not necessary that the pressures be equalized;

* * * * *

§ 178.604 [Amended]

109. In § 178.604, in paragraph (d), in the second sentence, the wording "for a period of time sufficient to pressurize the interior of the packaging to the specified air pressure and to determine if there is leakage of air from the packaging" would be revised to read ", for other than production testing, for a minimum time of five minutes"

Issued in Washington, DC on July 1, 1994 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–16542 Filed 7–15–94; 8:45 am]

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Federal Register

Monday
July 18, 1994

Part III

Department of Housing and Urban Development

24 CFR Part 880, et al.
Preferences for Admission to Assisted Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 880, 881, 882, 883, 884, 885, 886, 889, 904, 905, 906 and 960

[Docket No. R–94–1671; FR–3122–F–03]

RIN 2501–AB35

Preferences for Admission to Assisted Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This document revises the tenant selection preference provisions of regulations of several project-based assisted housing programs. The rule implements a statutory change that decreases the number of families that must be admitted on the basis of qualifying for a federal selection preference and specifically authorizes adoption of local selection preferences by housing agencies to be used in admitting some applicants. If a housing agency wants to use such local preferences, the rule requires the agency to adopt ones that respond to local housing needs and priorities after conducting public hearings. If the owner of a project assisted under one of the covered Section 8 programs wants to admit applicants that do not qualify for the federal preferences, the owner would be required to use the housing agency's duly adopted local preferences for the Section 8 Certificate and Voucher program.

With respect to the public housing, Indian housing, and Section 8 Moderate Rehabilitation programs, the rule also disqualifies from a selection preference for three years any individual or family that has been evicted from certain HUD assisted housing for drug-related criminal activity.

EFFECTIVE DATE: August 17, 1994, except for §§ 905.303(b)(2)(i) and 960.211(b)(2)(i), which become effective January 18, 1995.

FOR FURTHER INFORMATION CONTACT: For the public housing and Section 8 Moderate Rehabilitation programs (Parts 882, 904, and 960), Edward Whipple, Director, Occupancy Division, Office of Public Housing, (202) 708–0744 (voice); (202) 708–9300 (TDD).

For the Section 8 programs except for the Moderate Rehabilitation program (Parts 880, 881, 883, 884, 885, 886, and 889), Barbara D. Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing, (202) 708–3944 (voice); (202) 708–4594 (TDD).

For the Indian housing programs (Part 905), Dominic A. Nessi, Director, Office of Native American Housing, (202) 708–1015 (voice); (202) 708–0850 (TDD).

For the Section 5(h) homeownership program (Part 906), Gary F. Van Buskirk, Office of Resident Initiatives, (202) 708–4233 (voice); (202) 708–0850 (TDD).

None of these telephone numbers is toll-free. All of the individuals listed are located at the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The information collection requirements for the preference provisions of the assisted housing programs are included in the paperwork burden of the application procedures and have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) under approval numbers 2502–0372, for the programs administered by the Office of Housing, 2577–0105 for the Indian housing and public housing programs, and 2577–0169 for the Section 8 Moderate Rehabilitation program.

Table of Contents

I. Background

This final rule is being issued pursuant to the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3672, approved October 28, 1992). Section 104 of that Act requires that the Department give notice and opportunity for public comment before issuing a rule for effect. That section also requires issuance of a final rule to implement the tenant selection preference provisions originally enacted by the National Affordable Housing Act (Pub. L. 101–625, 104 Stat. 4079, approved November 28, 1990), no later than April 26, 1993, to take effect upon issuance.

Although the deadline for issuance of a final rule had passed, the Department published a proposed rule, as required by the statute, on August 25, 1993 (58 FR 44968) to solicit public comments on its content. See the final rule published elsewhere in this issue of the **Federal Register** for the provisions dealing with the tenant selection preference provisions enacted in 1990 that are not covered by this rule.

One additional statutory amendment enacted since the publication of the proposed rule has been implemented in this final rule. That is to add to the examples of owner action that qualifies an applicant for the involuntary displacement federal preference, "displacement because of disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978," in accordance with the amendments made by section 101(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (108 Stat. 342).

This rule will take effect 30 days following publication, except for the provisions requiring that a housing agency must adopt local preferences for admission of families that do not qualify for federal preference only after conducting public hearings. Those provisions, §§ 905.303(b)(2)(i) and 960.211(b)(2)(i), do not become effective until 6 months after publication of this rule, because it may take HAs that long to comply with the hearing requirement. Other provisions of the rule, such as the use of ranking preferences for organizing an owner's list of applicants who are federal preference holders, may be implemented without conducting public hearings. Since the review of residency preferences is to be handled in a separate rulemaking, residency preferences are unaffected by this rule.

II. Response to Public Comments

A. Overall System of Preferences

1. Counting Federal Preference and Local Preference Admissions

There were several criticisms of the way the proposed rule provided for counting an admission as either a federal preference admission or a local preference admission. Permitting admission of an applicant who does not

qualify for a federal preference to count as a federal preference admission when there is no federal preference holder eligible for the assistance (so long as the applicant is not chosen using a local income-based preference) was criticized as unjustified under the statute. Concern was expressed about the difficulty of maintaining the data necessary to document that, on the date of admission, there were no similarly situated applicants who qualified for a federal preference.

The language of the final rule dealing with this issue differs somewhat from that of the proposed rule. It frames the "counting" in terms of a limit on the number of "local preference" admissions that can be made during a one-year period. Only 30 or 50 percent of annual admissions, depending on the program involved, may be families selected on the basis of local preference. Under the rule, a family that qualifies for a "federal preference" is not precluded from being admitted on the basis of its "local preference," but the admission would be counted against the HA's local preference limit.

This method of counting was developed to respond to the situation that occurs with some frequency, particularly with respect to the project-based Section 8 programs. There may not be the required percentage (70%) of federal preference holders available to occupy a project. Since the concept of a "preference" operates when there is competition between a family that qualifies for it and one that does not, it is incongruous to apply the limit when there is no such competition. This method of counting may provide somewhat of a documentation problem, but it offers infinitely more flexibility in the admissions procedures in areas where there is not an abundant supply of federal preference holders.

One commenter asked at what point the percentages must be met—throughout the year, end of calendar year, end of fiscal year. The final rule continues the practice of referring only to annual admissions. The housing agency or owner may determine what 12-month period is used for this purpose.

One commenter asked why the percentage of local preference admissions is different in the various programs, and, in particular, why the percentage for Indian housing (30%) is different from the percentage for public housing (50%). The percentages were specified in sections 501 and 545 of NAHA: 10% for tenant-based assistance, and 30% for project-based assistance. In the Housing and Community Development Act of 1992, the percentage was increased for public housing to 50%. However, since this change did not specifically refer to its applicability to Indian housing, it did not apply (by virtue of section 201(b)(2) of the 1937 Act, 42 U.S.C. 1437aa(b)(2)). Therefore, the percentage that still applies to Indian housing is 30%.

While the Department believes that this difference in percentages of local preference admissions between public housing and Indian housing is the result of an oversight on the part of Congress, it does not have the discretion to change the law and expand the percentage for IHAs without legislative change.

2. Management of Waiting Lists; Ranking Preferences

Several commenters urged the rule to specify one particular way of managing waiting lists. They suggested that there should be three categories of applicants on the waiting list: those with federal preference, those with local preference, and those with no preference. Within each group, the applicants could then be ordered by date and time of application. If no other "ranking preferences" were applied, the system would be easier to understand for applicants, Housing Agency (HA) employees, and anyone attempting to audit the system. The commenter suggested that this system be described as an option.

The Department agrees that such a system is permissible under the rule and may be suitable for many HAs. No HA or owner is required to use ranking preferences to select among federal preference holders. However, many HAs may have goals with respect to their own circumstances that warrant the use of ranking preferences. For example, if an HA determined that applicants were refusing offers of units because of the racial composition of the project or the location, it could adopt a ranking preference for applicants that had not previously been offered a unit or who had not refused an offer other than for good cause. As another example, an HA or owner may have determined that it wants to provide role models for children living in its developments, where most families are on public assistance, and therefore adopts a preference for working families.

Other commenters suggested that HAs should not be allowed to rank federal preference holders through the use of local preferences, because that practice would defeat the purpose of requiring federal preferences. Under current regulations, HAs and owners are permitted to use their own system to select among applicants who qualify for a federal preference. The use of these "ranking preferences" has allowed HAs and owners to address local objectives while meeting the statutory requirement to serve federal preference holders. "Ranking preferences" is the term used in this rule and preamble for factors used only to distinguish among federal preference-holders, whereas "local preferences" is used to refer to those factors adopted after the hearing procedure to use in admitting applicants as an alternative to admission of federal preference holders.

This rule continues to permit selecting among federal preference holders according to ranking preferences. Permitting different elements of federal preference to be given differing weight, which the current rule has permitted, is similar to permitting the use of other ranking preferences.

The statutory change that is being implemented in this rule is one that opens up the admissions process to more flexibility for local choice and increasing the percentage of locally based admissions preferences for other programs. The Department believes that it would be contrary to the spirit of that statute to use this rule to limit the existing practices of using ranking preferences or to prescribe one method of managing a waiting list.

Another commenter stated that date and time should not be considered independently for federal preference holders and for local preference holders. The rule does not prescribe such a result. An applicant should be placed on every preference's waiting list (federal and local) for which the persons qualifies, one commenter suggested. This is a permissible method of administering preferences under the rule.

Ranking preferences should be the subject of public hearings, one commenter advocated, suggesting that HUD should review these preferences for their impact on fair housing goals. Another commenter expressed the view that ranking preferences should not be required to be the subject of a public hearing.

In fact, HUD does periodic monitoring reviews of HA activities to assure that there are no violations of fair housing requirements. Owners' preference systems are also subject to review for fair housing impact, if they use residency preferences or any system of local preferences. If citizens in a particular jurisdiction wish to challenge the ranking preferences used by an HA, they may raise the issue in the required public hearing if the HA chooses to use a system of local preferences.

3. Non-Preference Selection Issues

Commenters praised the recognition given to the question of matching family characteristics to the unit. That provision of the proposed rule is retained in the final rule.

One commenter recommended that the rule be more specific about the minimum and maximum family sizes for units. It suggested that the Occupancy Task Force's recommendation that HAs inform applicants of the minimum and maximum sizes for which they qualify and let them decide the size of unit(s) for which they would like to be considered be embodied in the rule. Although the Department believes this approach may be useful, the Department intends to address it in a separate proposed rulemaking to be instituted in the near future.

4. Preference Disqualification for Eviction Based on Drug-Related Activity

There was general approval of the disqualification from a preference for persons evicted from housing assisted under United States Housing Act of 1937 ("1937 Act") for drug-related criminal activity. A suggestion was made that the disqualification should be extended to evictions from State-aided housing, as well. There was also a complaint from one HA that it should not be required to research evictions from housing programs that it does not administer. The rule provides only what the statute requires: disqualification from a preference for families evicted on this basis from housing assisted under the 1937 Act. However, the statute does not limit the use of general screening criteria that an HA may apply to all applicants.

This disqualification applies to the public housing, Indian housing, and Section 8 Existing Housing programs. The Section 8 Existing Housing programs covered by this rule are the Moderate Rehabilitation program (Part 882, Subparts D and E), the Loan Management Setaside program (Part 886, Subpart A), and the Property Disposition program (Part 886, Subpart C). The other Section 8 programs covered by this rulemaking are not subject to this disqualification.

One question raised by commenters was when the three year disqualification starts to run—from the date of eviction or the date the family applies for assistance. The statute states that the disqualification is based on the eviction. Another question was whether a family can be prevented from applying for assistance until the three years has expired. There is no legal basis for a refusal to accept an application, but such an applicant would not qualify for a preference until the expiration of the three year period. In addition, an owner or HA may screen applicants for previous criminal activity as well as disruptive behavior and other factors at any point, so long as it considers mitigating circumstances, if it has a stated policy to that effect.

One organization suggested that an eviction for drug use, as distinguished from drug distribution, should not be considered an eviction for drug-related criminal activity. However, the rule covering when such evictions are authorized (24 CFR 966.4) specifies that drug use is a "drug-related criminal activity" for which eviction is appropriate.

The issue of what is successful completion of an approved rehabilitation of a person evicted for drug-related criminal activity was also raised. A few HAs suggested that HUD should provide examples. One example suggested by another commenter was completion of a drug rehabilitation program that is federally funded. As a test of "successful completion" of a program, an HA could require certification from a health professional that the person was tested and found drug free on a particular date before admission. On this issue, as on a number of others, the Department prefers to give maximum flexibility to HAs to adopt standards that make sense in their own communities.

Guidance was also sought by a commenter for adequate proof that an individual did not participate in or have knowledge of drug-related criminal activity—a basis for permitting members of a family that had been evicted to distinguish themselves from the family member who had been the cause of a previous eviction. Again, the Department leaves this type of determination to the HA's best judgment.

One commenter suggested that persons undergoing such rehabilitation or who have completed it are entitled to reasonable accommodation as "disabled persons." Even if such persons are "disabled persons," the specific statutory disqualification applies unless the HA or owner has determined that there has been successful completion of an appropriate program by the person evicted for drug-related criminal activity.

5. Eligibility of Public Housing Residents for Federal Preference

One commenter expressed concern about a resident of an assisted project never being able to establish eligibility for a federal preference because of an assumption that all assisted housing is not substandard. The commenter asked that HUD at least prohibit a housing provider from categorically refusing to consider applicants residing in assisted housing based on presumptive ineligibility for a federal preference. The Department agrees that each family's application should be considered on the facts presented by its own situation, rather than automatically treated in a particular way because of residency in another type of assisted housing. The rule has been revised to include such a provision.

The commenter also sought assurance in the rule that an applicant for the Section 8 program who had accepted a unit in a public housing development who had originally qualified for a federal preference would be permitted to retain that preference on the Section 8 waiting list. That issue is addressed in the rule being published concerning admissions issues in Section 8 tenant-based assistance.

B. Preference for Working Families

Public comments addressed the question of a preference for working families in several respects. One comment requested that HUD clarify whether a local preference can be given for working families, designed to achieve a broad range of incomes, to permit admission of a higher income working family before a lower income non-working family whose place on the waiting list is higher. Other comments were received on the proposed language of § 960.205 permitting a preference based on a family's employment status. One housing agency and two organizations of housing agencies expressed approval of the change, and a legal services organization expressed disapproval of this change.

The Department is convinced that housing agencies must have the flexibility to give preference to working families to assure diversity in the residency of projects and to include families who can serve as role models for other families. Consequently, the final rule preserves the removal of the current rule's prohibition on using employment as a selection criterion.

Moreover, an HA is free to adopt a preference for working families as a "local preference" for admission of families who do not qualify for a "federal preference", as well as to use such a criterion as a "ranking preference", to be used to select among applicants who do qualify for a "federal preference." Housing owners also may use this criterion as a "ranking preference"; and as a "local preference"

if it is included in the local preference system adopted by the relevant HA for the Section 8 Certificate and Voucher programs.

There are, however, two limits on the use of a preference for working families. First, the preference may not be administered in a way that will violate the legal prohibitions against discrimination. Second, the preference may not be used in a way that will violate the legal prohibition contained in section 16 of the United States Housing Act of 1937 (42 U.S.C. 1437n) against selecting a higher income applicant before a lower income applicant who is higher on the waiting list.

Both of these limits are expressed in an example of the use of a ranking preference in the rule: this type of preference may be used so long as the prohibition against selection of higher income families and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. If such a preference is used, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older, or are receiving social security disability or supplemental security income disability benefits, or any other payments based on an individual's inability to work. The owner also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market.

When used as a "local preference" instead of as a "ranking preference," the concern about selection of a higher income applicant is not a limitation if it is being used in the public housing program or the Indian housing program. In these programs, a local preference for working families, designed to achieve a broad range of incomes, may be used to admit a higher income working family over a lower income non-working family whose place on the waiting list is higher.

The distinction between programs is made because of specific language found in section 16 with respect to public housing that exempts such projects when "local preferences" are being used (to attain a broad range of incomes, presumably), and because the section 16 restriction does not apply to Indian housing. The nondiscrimination limitation does continue to apply when such a preference is applied as a local preference. It should be noted that section 16's exception for IHAs permits them to use income ranges as a local preference, ranking preference, or both.

Housing agencies are not the only entities that may avail themselves of a preference for working families. Private owners may also adopt such a preference as a ranking preference—with both limits described above applicable to them.

C. Broad Range of Incomes

The statutory requirement for an HA to seek a tenancy that represents a broad range of incomes applies to public housing and Indian housing, but not to the Section 8 program. The rule's elimination of the requirement for studies of the income level of families in an HA's jurisdiction was praised as beneficial, while the rule's retention of the requirement that an HA's admission policies further selection of families with a broad range of incomes was praised. One commenter also commended the rule for recognizing that the goal of attaining residents with a broad range of incomes might be furthered through means other than local preferences.

One commenter sought approval of a practice of selection of applicants from waiting lists of federal preference holders organized by income within the category of very low-income families where higher income families would be selected ahead of lower income families—all from the category of very low income families. The commenter argued that section 16 of the 1937 Act does not prohibit such use of income categories for federal preference holders so long as the family selected is a very low-income family. The Department's legal interpretation is that selection of higher income families over lower income families that are higher on the waiting list is permitted only pursuant to admission on the basis of a local preference. Therefore, a practice as described above, which involves federal preference admissions, would violate our interpretation of the law.

One commenter asked what is meant by the term "project" in the requirement that families with a broad range of incomes be sought for each project. The term "project" is used in the public housing program to mean the entity with a single project number.

When an HA has only scattered sites or small concentrations of assisted units, how is the requirement to be applied? It can be applied to the project that includes several sites. The regulatory language focuses on the goal to be achieved, rather than the specific method used by the HA.

Can a rural HA use each waiting list (for a geographical area) as a project? If so, the rent range policy can be implemented in a manner that would obviate the need for operating subsidy. If an HA determines that it can achieve the broad range of income in each project result by applying an income range local preference for a group of projects, HUD would not object to that procedure.

The language of § 960.204(a)(2)(i) on avoiding concentrations of families with serious social problems should be revised to eliminate the reference to "low-income families" and to emphasize preventing concentrations of "the most economically deprived families [with serious social problems]." The Department agrees, and the rule has been revised accordingly.

D. Residency Preference

There was great praise for and great criticism of the requirement for advance HUD approval of the use of residency preferences in all of the programs covered by this rule. The praise was based on the greater assurance the procedure would give to furthering fair housing goals, an objective that HUD is charged with advancing. The criticism focused on the lack of stated criteria to be used for disapproving residency preferences and the lack of a mechanism for HAs to challenge a disapproval action.

The Department agrees with the commenters that residency preferences need to be reviewed for their impact on fair housing goals. The Department also agrees that more specific criteria need to be provided for HAs to use in assessing the impact of any residency preference they might consider adopting. Therefore, a separate rulemaking is being initiated to provide the opportunity for public comment on criteria that the Department is developing. Until that rule takes effect, the current requirements with respect to residency preferences will continue to apply.

E. Other Local Preferences

Commenters suggested that the rule text should list the statutory examples of local preferences. Since the list is only advisory, the Department believes it unnecessary to include it in the rule. However, the examples (from section 545 of the Cranston-Gonzalez National Affordable Housing Act) are repeated here, for reference:

—Assisting very low-income families who either reside in transitional housing assisted under the McKinney Act or participate in a program designed to provide public assistance recipients with greater access to

employment and educational opportunities;
—Assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification with the child's family;
—Assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; and
—Assisting persons displaced by the rental rehabilitation program.
—Assisting disabled veterans who are being discharged from a medical facility but do not have an accessible unit to which to return.
—Achieving other objectives of national housing policy as affirmed by Congress.

Another commenter suggested that the preamble should give more useful examples of local preferences. Additional examples of local preferences would be preferences for working families, veterans, and category of time on the waiting list (such as more than two years).

While one commenter advocated that any local preferences should be required to be consistent with the goal of promoting access to assisted housing by those most in need and the objectives of national housing policy, another stated that local preferences need not further any of the objectives of national housing policy. Yet another commenter urged that the local preferences be required to be consistent with the needs identified in the jurisdiction's Comprehensive Housing Affordability Strategy, unless the HA justifies a variation. Under current policy for the public housing program, the Department does not purport to review local preferences for approval, despite a suggestion by a commenter to the contrary. Therefore, HAs, in consultation with the public in hearings, will make the decision about what needs and priorities local preferences should serve.

Various arguments were advanced for circumstances that would warrant an exemption for an HA from holding public hearings on the adoption of local preferences:
—Date and time for non-federal preference admissions;
—Preferences based on income, to advance the broad range of income goal;
—Adoption of preferences, such as a veteran's preference, that are required by State law;
—When cost of hearings is high, low response is typical, and the HA is a "high-performing housing authority."

The statute requires that an HA establish its written system of local priorities after conducting a public hearing to respond to local housing needs and priorities. The hearing provides citizens an opportunity to suggest alternatives. Since it is required by the statute, this rule provides no exemptions from the requirement.

Some commenters wanted the rule to give more specific requirements concerning the hearing: specific requirements for notice to the public and public participation in the hearing, and more detail about the purpose of the hearing. The Department believes that each HA will conduct its hearing in accordance with the federal statute, and with State and local laws. Many localities have ordinances concerning the conduct of public hearings. The Department has no desire to add to such requirements.

A comment was made that the three month period given in the proposed rule for HAs to conduct a public hearing on local preferences after the effective date of a final rule was insufficient time. The period of time has been lengthened to six months. Of course, HAs are encouraged to act as soon as possible after the effective date of this rule to establish any system of local preferences in accordance with the hearing requirement. However, existing local preferences that have not been approved in that manner by the expiration of six months after the effective date of this rule will become invalid. Thereafter, until the procedure is followed, the only authorized preferences used in admitting applicants will be the federal preferences (including any ranking preferences).

One organization recommended that the rule provide that applicants denied eligibility for a local preference be given an opportunity to contest the denial. The Department believes that this suggestion has merit. The final rule extends to denials of local preferences the same informal meeting/review process that the current rules provide for federal preference denials.

In the preamble to the proposed rule, an example of a valid local preference was stated to be one that would prefer members of one Indian tribe over members of other tribes and over non-Indians. Some commenters stated that such a preference violates nondiscrimination laws. An Indian Housing Authority commented that such a preference presumes that all such persons are eligible for its programs, which they may not be if tribal law limits eligibility for housing operated by the tribal housing authority.

Under the Indian housing program, there are federal statutory provisions that recognize limits to the eligibility of some types of housing. (In the Mutual Help Homeownership Opportunity program, non-Indians may only be admitted under very limited circumstances.) Moreover, in recognition of the status of IHAs created under tribal law, tribal law as well as federal law governs the operation of the IHA programs. Therefore, the example still stands as a legitimate type of local preference, but there may not be any need for such a preference.

F. Definitions of Federal Preferences

1. Flexibility for HAs To Define Terms

One legal services organization stated that HAs should not be allowed to adopt their own definitions of the federal preference categories because there should be uniformity. Most HAs, as represented by an organization of housing administrators and one HA, like this flexibility. The statute being implemented by this rule is not a cause for a change to the Department's longstanding policy of permitting this flexibility.

Two legal services organizations suggested that HAs be given standards for exercising the discretion and that they not be permitted to adopt more restrictive definitions (or verification procedures) than those set forth in the regulations. In HUD's experience, HAs do not seek approval of more restrictive definitions.

One HA asked for examples of acceptable expansions of the definitions. HUD would consider favorably such an expansion as a definition of "income" for purposes of the rent burden preference to use adjusted income instead of annual income. This change would benefit larger families, families with large medical expenses, and elderly and disabled persons. The Department would also give favorable consideration to a definition of "substandard housing" that included overcrowding, as requested by two commenters.

A legal services organization advocated that HAs be able to adopt their own definitions with respect to all Section 8 programs, as well as for their public housing or Indian housing and Section 8 moderate rehabilitation programs. HAs have a different role with respect to any project-based Section 8 program. In such a case, there is still a project owner who is responsible for tenant selection.

HUD field offices must be directed to give great weight to local conditions when reviewing an HA's revised definitions, one organization urged. This type of instruction is appropriate for inclusion in the HUD handbook, which provides operational guidance, rather than in this rule.

The verification procedures that have been included in the Indian housing and public housing rules for federal preferences have been optional, and the rule has specifically stated that HAs could adopt different procedures. These programs have traditionally given HAs the discretion to adopt verification procedures with respect to eligibility issues. Only the regulations with respect to federal preferences have attempted to specify verification procedures. Therefore, the Department is taking this opportunity to deregulate by removing the suggested procedures from the regulations for these programs.

The provision that purports to give HUD authority to specify special conditions that would satisfy federal preference definitions for owner-administered housing (comparable to the HA's flexibility), § 880.614(l), is of no effect, one commenter argued. Any change other than an interpretation would require advance publication and opportunity for comment.

Under this rule, HAs administering the public housing and Section 8 Moderate Rehabilitation programs may adopt local definitions of the individual federal preferences. These definitions must be approved by HUD, within the requirements of the statute. For Section 8 programs where tenants are selected by a private owner, the rule provides that HUD may specify additional conditions under which the federal preferences can be satisfied, referring to HUD Handbook 4350.3. This procedure is comparable to the action taken with respect to HAs in approving their proposed definitions that may vary from those specified in the regulation.

2. Substandard Housing

Several HAs and a management agent supported the Department's decision not to include overcrowding in the rule's definition of "substandard housing." They agreed with this position since the term is traditionally used (for census purposes, for example) to deal solely with the condition of the unit and not its ability to properly house the number of occupants residing in it. On the other hand, one HA and a few organizations advocating including overcrowding in this definition, at least where the extent of overcrowding constitutes a housing code or health code violation. Another commenter suggested that overcrowding could amount to imminent displacement.

The final rule maintains virtually the same definition of substandard housing. If an HA wants to include overcrowding, it may. If an HA believes overcrowding constitutes imminent involuntary displacement, it may submit such a definition to HUD for approval. The HA may include overcrowding as a ranking preference without HUD approval.

With reference to a person with mobility impairment, one commenter urged that the definition of substandard housing should include housing that is inaccessible. Since a bathroom that cannot be entered or used by a person with a mobility impairment causes the unit to be without a "usable flush toilet" or "usable bathtub" for that person, it constitutes substandard housing for that person, the commenter argued. Given the Department's preference for dealing with the fit of a unit with an individual family under the category of involuntary displacement, we would prefer to permit qualification under that category of preference for a person whose mobility impairment renders the person's current unit significantly deficient and the owner cannot make changes to the unit as a reasonable accommodation for the disabled person. The rule has ben amended to reflect this decision.

The same commenter also urged coverage under the substandard housing category of preference of a person in an institution who is ready for discharge but cannot be released because the person's prior unit is no longer available. If that person has no housing unit to which to return, the person would qualify under the definition of a "homeless person," discussed below.

Two organizations urged that the definition of "homeless person" in the definition of substandard housing be revised to require either that the person lacks a fixed, regular and adequate nighttime residence or that one has a primary nighttime residence that is a temporary shelter, an institution that is a temporary residence for individuals to be institutionalized, or a place not intended as habitation for human beings. The statute and implementing regulations now require satisfaction of both sets of conditions. Therefore, this rule also requires that they both be satisfied.

Commenters advocated that the definition of "homeless person" should explicitly include persons living in transitional housing, since it is temporary housing. The definition has been revised to include transitional housing in the examples of temporary living accommodations.

One commenter also had a suggestion with respect to deferring the effectiveness of a preference for a family in transitional housing. When an applicant in transitional housing reaches the top of the waiting list and is selected for housing, the commenter suggested that the family be given the option of being admitted or remaining at the same place on the waiting list while completing the transitional program. The Department agrees that if the applicant is not ready or able to leave the transitional housing unit when an offer is made, the applicant's rejection of the unit would be for good cause and the applicant's qualification for preference would continue. However, the rule does not require any change to reflect this position.

3. Involuntary Displacement

Comments were submitted dealing with the qualification for this preference if displacement is anticipated within six months. Some HAs erroneously believed that if displacement had occurred more than six months before the applicant applied and the applicant had been living in temporary quarters, the applicant would lose preference status. Another commenter stated that the six month period might present insurmountable verification problems. Nothing about this six month period is new. It reflects the current rule.

The language concerning domestic violence victims was praised. One commenter wanted acknowledgement in the rule that the HA has a "right to exercise prudent judgment and to establish reasonable criteria for determining, on a case-by-case basis, the legitimacy of a claimed preference." Any standards that an HA wants to establish as part of its admissions policy are welcome. Moreover, the language of the final rule excluding the alleged abuser from the unit has been made stronger. The new language responds to comments by making it clear that the alleged abuser *may not be included in the household without the advance written approval of the HA or owner.* Violation of the applicant's certification that this person will be excluded is stated as grounds for denial or termination of assistance. These revisions should assist in assuring that the preference is not claimed unjustifiably.

Two commenters suggested that an abuser should be permitted to live in the unit if the abuser has successfully completed a rehabilitation program, and that standards should be provided in the rule to guide the HAs and owners in

making such a determination. The Department has not added anything on this subject to the rule. HAs and owners should use their own best judgment on this issue.

One commenter recommended that the definition of involuntarily displaced should be expanded to include a person in an institution who is ready for discharge but cannot be released because the person's current unit is inaccessible because of disability. This is one of the examples given in the statute of a local preference. It is certainly an appropriate category of persons to be given a preference under an HA's system of local preferences, and would be covered under involuntary displacement by mobility impairment, discussed above.

Two changes have been made in the final rule's definition of involuntary displacement—not in response to public comment—but as part of the Administration's efforts to support law enforcement activities and protect families against hate crimes. A category of displacement has been added to cover displacement to avoid reprisals. This category is to cover situations where a family member was a witness to a crime and the family must be rehoused to avoid risk of violence as a result of the person's cooperation with law enforcement officials. The second category covers actual or constructive displacement caused by "hate crimes"—actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

Two other changes have been made to improve the organization of the discussion of displacement resulting from owner action and to include a provision enacted by Congress to cover displacement resulting from HUD disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978 [Multifamily Housing Property Disposition Reform Act of 1994, section 101(c), 108 Stat. 357]. The change with respect to owner action places the non-exclusive list of examples of owner action with the initial statement of that category of involuntary displacement. The addition of the element of HUD disposition of a project is added at the end of the categories of involuntary displacement.

4. Rent Burden

There were only two types of comment on the rent burden category of federal preference. The first dealt with the 90-day period for demonstrating excessive rent burden. The second dealt with the exclusion from the definition of rent any utility costs covered by an energy assistance program.

The provision that this preference applies only to applicants who experience excessive rent burden for at least 90 days was added to assure that applicants would not purposely place themselves in a rent burdened situation for a very short period merely to qualify for a preference. Eleven commenters favored this approach. Five commenters opposed it, indicating that it is unnecessary (because applicants wait so long to be admitted) and that it would be burdensome to enforce. Although in some areas waiting lists are so long that this 90-day provision is unnecessary, there are other areas where waiting lists may be short. Where it is unnecessary, it will not have any effect, but elsewhere it will help prevent sham preference applications.

The Department of Health and Human Services submitted the comment criticizing the exclusion from rent the amount of costs covered by its Low Income Home Energy Assistance Program. It stated that the statute authorizing that program prohibits the benefits from being counted as income or resources under any federal or state law. HUD has had previous correspondence with the HHS on this matter (1989). Our position then remains unchanged. Since the amount paid by LIHEAP is not included in income of the family, the expense it covers is also not counted as a rental expense of the family.

G. Interaction of Section 8 and Public Housing

It was suggested that this rule explicitly authorize merged waiting lists for the Section 8 Certificate/Voucher and public housing programs, and that an HA be required to notify the public before it actually merges them. The rule for the Section 8 Certificate/Voucher program does mention merger of waiting lists. The Department believes it is unnecessary to discuss this subject in this rule, as well.

A few commenters indicated that they thought it would be difficult for an HA that maintains one waiting list for its public housing and Section 8 programs to comply with the provisions of this rule and the one governing the Section 8 Certificate/Voucher rule. The two rules have been developed in coordination with each other, and compliance with them should not be difficult. If an HA is looking for particular characteristics of an applicant when it is selecting a participant for one program, it can search its merged list for that characteristic.

One commenter urged that differences between an HA's Section 8 program preferences and its public housing program preferences should be required to be justified on the basis of statutory differences or other compelling reasons. Another commenter stated that the ability to adopt different local preferences for the two programs was good. The Department disagrees with the former suggestion because it would limit HA discretion unnecessarily. The Department believes that HAs should be provided flexibility in tailoring their local preferences to local needs, and, therefore, agrees with the latter suggestion. Since the HA must respond to the public in the development of local preferences, its system should not be arbitrary.

Two commenters asked why a system of local preferences that has been approved by HUD (as it is in the Section 8 Certificate/Voucher program) must be submitted for approval by a Section 8 project owner. It is possible that a system of preferences that is applied to applicants selected for a program in which the participants are dispersed throughout the jurisdiction may have a very different, and discriminatory, impact when applied to a particular project.

Two commenters objected to the requirement that if an owner wanted to use a system of preferences other than the federal preferences it is required to use the HA's. This is a statutory requirement. Therefore, the commenter who advocated that an owner should be able to submit its own system of preferences if the HA in the jurisdiction of the project had not adopted any must also be disappointed. The statute does not authorize such a practice.

One organization criticized the provision allowing owners to establish their own ranking preferences. It stated that a uniform national system of ordering applicants with federal preference by date and time only would be fair and easy to monitor. The Department recognizes that private owners have invested in their projects and need to have some say over how they select tenants, while complying with the statutorily required preferences. This is a continuation of existing policy, which was not changed by Congress when it made other changes.

One commenter advocated that owners should be able to select tenants by income categories in order to achieve a stable and desirable economic mix of residents. However, another commenter pointed out that the rule's provision

prohibiting income-based admissions in the Section 8 program must be retained, since such admissions are not authorized under the law.

Commenters objected to permitting an owner to select the HA whose local preferences it will apply when there is more than one that has jurisdiction in the area where the housing is located. In the Section 8 program, an HA may operate anywhere it may legally enter into contracts—which results in a theoretical multiplicity of HAs with jurisdiction over a particular project area. The final rule requires use of the local preferences of the HA for the jurisdiction (using the statutory language). However, it clarifies that when there is more than one HA with jurisdiction, the local preferences of the "HA for the lowest level of government that has jurisdiction where the project is located" are used.

III. Transition

If an HA has not adopted local preferences following a public hearing in accordance with this rule by six months after August 17, 1994, no local preferences will be in effect, and the federal preferences (including any ranking preferences) will be used for all admissions until such time as local preferences are duly adopted.

IV. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. The rule specifies to what extent preferences for admission of particular categories of applicants that are established by the local housing agency, in accordance with a statutorily-prescribed hearing procedure, may be used to admit participants. The only guidelines stated for the local agency's discretion are those required by the statute: the preferences are to respond to local housing needs and priorities. Since the rule merely carries out a statutory mandate and does not create any new significant requirements, it is not subject to review under the Executive Order.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule merely carries out the mandate of federal statute with respect to admission preferences. (To the extent that an HA adopts a local preference for admitting families whose children would otherwise be put in foster care, as is suggested by the statute, there would be a positive impact on families. However, neither the statute nor the rule requires adoption of such a preference.)

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing authorities or housing owners.

F. Regulatory Agenda

This rule was listed as sequence number 1552 under the Office of the Secretary in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20440) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC 20410.

H. Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.157, 14.182, 14.850, and 14.856.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and record keeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate

income housing, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and record keeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and record keeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Handicapped, Public housing.

Accordingly, chapters VIII and IX of title 24 of the Code of Federal Regulations are amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

§ 880.603 [Amended]

2. Section 880.603 is amended by removing from the introductory text of paragraph (b) the phrase "a Federal selection preference in accordance with § 880.613", and by adding in its place the phrase "selection preferences in accordance with §§ 880.613 through 880.617"; by removing paragraph (b)(1); and by redesignating paragraphs (b) (2), (3), and (4) as paragraphs (b) (1), (2), and (3).

3. Section 880.613 is revised and new §§ 880.614 through 880.617 are added to read as follows:

§ 880.613 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 880.614(a).

(2) "Ranking preferences" are preferences that may be established by the owner for use in selecting among applicants that qualify for federal preference. See § 880.614(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families (see subpart D of this part).

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing

regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or a local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (d)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 880.614 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 880.613(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If an owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.*

(1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 880.615(c) (involuntary displacement); § 880.616(c) (substandard housing); and § 880.617(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) Approval of special conditions satisfying preference definitions. HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 880.615 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.*

An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement

is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 880.616 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 880.617 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

4. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

§ 881.603 [Amended]

5. Section 881.603 is amended by removing from the introductory text of paragraph (b) the phrase, "a Federal selection preference in accordance with § 881.613", and by adding in its place the phrase, "selection preferences in accordance with §§ 881.613 through 881.617".

6. Section 881.613 is revised and new §§ 881.614 through 881.617 are added, to read as follows:

§ 881.613 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 881.614(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 881.614(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families (see subpart D of this part).

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or a local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 881.614 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 881.613(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If an owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.*

(1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 881.615(c) (involuntary displacement); § 881.616(c) (substandard housing); and § 881.617(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section,

can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 881.615 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant's family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant's family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of

government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 881.616 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 881.617 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using

the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

6. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

7. Section 882.517 is revised and new §§ 882.518 through 882.521 are added, to read as follows:

§ 882.517 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 882.518(a).

(2) "Ranking preferences" are preferences that may be established by the HA to use in selecting among applicants that qualify for federal preferences. See § 882.518(b).

(3) "Local preferences" are preferences used to select among applicants without regard to their federal preference status.

(b) *System.* The HA's admission policy, in accordance with its regulations, must include the following:

(1) How the federal preferences will be used, including any changes in the definitions of the federal preferences or changes in the verification procedures from those specified in §§ 882.518 through 882.521;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The HA may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the HA must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the HA wants to use preferences to select among applicants without regard to their federal preference status, it may use its local preference system (see § 982.209 of this title).

(ii) "Local preference limit" means thirty percent of total annual admissions to an HA's project-based Section 8 Moderate Rehabilitation programs. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The HA may not give a preference to an applicant (federal preference, local preference or ranking preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the HA may give an admission preference in any of the following cases:

(i) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA;

(ii) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(d) *Informing applicants about admission preferences.*

(1) The HA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the HA determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the HA may provide this notification to fewer than all applicants on the list at any given time. The HA, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the HA's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the HA's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences*—(1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an HA must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where

applicable) the HA's HUD-approved equal opportunity plan.

(g) *Income-based admission.* The HA may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the HA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the HA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the HA to review the determination. The meeting may be conducted by any person or persons designated by the HA, who may be an officer or employee of the HA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2577–0169)

§ 882.518 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The HA's admission policy may provide for use of ranking preference to select among applicants who qualify for federal preference.

(1) The HA could give preference to working families—so long as the prohibition of § 882.517(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If an HA adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An HA could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The HA also could use its "local preferences" to rank federal preference holders.

(2) The HA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference*—(1) *Basis of federal preference.* The HA must use the following definitions of the federal preferences unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the HA that the family qualifies for federal preference. The HA must accept this certification, unless the HA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the HA must require the applicant to provide information needed by the HA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) Once the HA has verified an applicant's qualification for a federal preference, the HA need not require the applicant to provide information needed by the HA to verify such qualification again unless:

(A) The HA determines reverification is desirable because a long time has passed since verification, or

(B) The HA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(Approved by the Office of Management and Budget under OMB control number 2577–0169)

§ 882.519 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The PHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the PHA has given advance written approval. If the family is admitted, the PHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The PHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The PHA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

§ 882.520 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 882.521 Federal preference: rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

8. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

9. Section 883.714 is revised and new §§ 883.715 through 883.718 are added, to read as follows:

§ 883.714 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 883.715(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 883.715(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If an owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given a preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given

time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences*—(1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 883.715 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 883.714(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference*—(1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 883.716(c) (involuntary displacement); § 883.717(c) (substandard housing); and § 883.718(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 883.716 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 883.717 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 883.718 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

10. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

11. Section 884.226 is revised and new §§ 884.227 through 884.230 are added, to read as follows:

§ 884.226 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 884.227(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 884.227(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If an owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the

preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 884.227 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 884.228(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission,

including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 884.228(c) (involuntary displacement); § 884.229(c) (substandard housing); and § 884.230(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 884.228 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 884.229 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 884.230 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance

program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

12. The authority citation for part 885 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

13. Section 885.427 is revised to read as follows:

§ 885.427 Selection preferences.

The provisions of §§ 880.613–880.617 of this chapter are applicable to projects assisted under subpart B of this part.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

14. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

15. Section 886.133 is redesignated as § 886.138; § 886.132 is revised; and new §§ 886.133 through 886.136 are added, to read as follows:

§ 886.132 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 886.133(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 886.133(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If an owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The owner may not give a preference to an applicant (federal preference, local preference or ranking preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the owner may give an admission preference in any of the following cases:

(i) If the owner determines that the evicted person has successfully completed a rehabilitation program approved by the owner;

(ii) If the owner determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the owner determines that the evicted person no longer participates in any drug-related criminal activity.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 886.133 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 886.132(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal

preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certificatian of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 886.134(c) (involuntary displacement); § 886.135(c) (substandard housing); and § 886.136(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditians satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 886.134 Federal preference: involuntary displacement.

(a) *Haw applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning af involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by gavernment actian.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of hausing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by damestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement ta avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 886.135 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 886.136 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

16. Section 886.337 is revised to read as follows:

§ 886.337 Selection preferences.

Sections 886.132 through 886.136 govern the use of preferences in the selection of tenants under this subpart.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

17. The authority citation for part 889 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

18. Sections 889.611–889.615 are added to subpart F, to read as follows:

§ 889.611 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 889.612(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 889.612(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences

and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 889.612 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 889.611(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 889.613(c) (involuntary displacement); § 889.614(c) (substandard housing); and § 889.615(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 889.613 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 889.614 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 889.615 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of

applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

19. The authority citation for part 904 is revised to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

20. Section 904.122 is revised, to read as follows:

§ 904.122 Statutory preferences.

In selecting applicants for assistance under this part, the LHA must give preference, in accordance with the authorized preference requirements described in §§ 960.211 through 960.215. Notwithstanding those preferences, the LHA can limit homeownership admission to eligible homeownership candidates.

PART 905—INDIAN HOUSING PROGRAMS

21. The authority citation for part 905 is revised to read as follows;

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee and 3535(d).

22. Section 905.301 is amended by removing from paragraphs (e)(1) and (e)(4) the phrase, "the Federal preferences contained in § 905.305" and adding in its place the phrase, "the federal preferences, ranking preferences, and local preferences in accordance with §§ 905.303 through 905.307"; by removing from paragraph (e)(2) the word "Fig."; by removing from paragraph (e)(4) the phrase "10 percent" and adding in its place the phrase "30 percent"; by removing from paragraph (e)(4) the phrase, ", as set out in § 905.305(b)(2)(ii)"; and by revising paragraph (a), to read as follows:

§ 905.301 Admission policies.

(a) *Admission policies.* (1) The IHA shall establish and adopt written policies for admission of participants. The policies shall cover all programs operated by the housing authority and, as applicable, will address the programs individually to meet their specific requirements (*i.e.*, Rental, MH, or Turnkey III). A copy of the policies shall be posted prominently in the IHA's office for examination by prospective participants and shall be submitted to the HUD field office promptly after adoption by the IHA. (See § 905.416 with respect to Mutual Help admission policies.)

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, residency that includes families with a broad range of incomes and that avoids concentrations of the most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants and homebuyers to applicants who qualify for a federal preference, ranking preference, or local preference, in accordance with §§ 905.303 through 905.307; and

(iv) To establish objective and reasonable policies for selection by the IHA among otherwise eligible applicants.

(3) The IHA admission policies shall include the following:

(i) Requirements for applications and waiting lists;

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the "federal preferences" (described in § 905.303) will be used;

(B) How any "ranking preferences" (described in § 905.303) will be used;

(C) How any "local preferences" (described in § 905.303) will be used; and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant;

(iv) Policies for resident transfer between units, projects, and programs. For example, an IHA could adopt a criterion for voluntary transfer that the resident had met all obligations under the current program, including payment of charges to the IHA and completion of maintenance requirements;

(v) Policies for compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify social security numbers at the time eligibility is determined and at later income reexaminations; and

(vi) Policies for compliance with 24 CFR part 760, which requires applicants

and participants to sign and submit consent forms for the obtaining of wage and claims information from State wage and information collections agencies.

(4) These selection policies shall:

(i) Be duly adopted; and

(ii) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or residents upon request, free or at their expense, at the discretion of the IHA.

(5) Such policies shall be submitted to the HUD field office upon request from that office.

(6) "Residency preference" means a preference for admission of families living in the jurisdiction of the IHA. Residency provisions are subject to the following:

(i) Residency requirements are not permitted;

(ii) A residency preference may not be based on how long the applicant has resided in the jurisdiction; and

(iii) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

* * * * *

23. New §§ 905.303 905.304, 905.306, and 905.307 are added and § 905.305 is revised, to read as follows:

§ 905.303 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 905.304(a).

(2) "Ranking preferences" are preferences that may be established by the IHA to use in selecting among applicants that qualify for federal preferences. See § 905.304(b).

(3) "Local preferences" are preferences that may be established by the IHA for use in selecting among applicants without regard to their federal preference status.

(b) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The IHA may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the IHA must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See § 905.102.

(2) *Local preference admissions.*

(i) If the IHA wants to use preferences to select among applicants without regard to their federal preference status, it may adopt a preference system for this purpose. These "local preferences" may only be adopted after the IHA has conducted a public hearing to establish preferences that respond to local housing needs and priorities. The IHA may only use local preferences in selection for admission if the IHA has conducted the required public hearing.

(ii) "Local preference limit" means thirty percent of total annual admissions to the program. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The IHA may not give a preference to an applicant (federal preference, local preference or ranking preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the IHA may give an admission preference in any of the following cases:

(i) If the IHA determines that the evicted person has successfully completed a rehabilitation program approved by the IHA;

(ii) If the IHA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the IHA determines that the evicted person no longer participates in any drug-related criminal activity.

(c) *Informing applicants about admission preferences.*

(1) The IHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. The IHA, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the IHA's framework for applying the preferences and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Nondiscrimination.*

(1) Any selection preference used by an IHA must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives.

(2) The Indian Civil Rights Act may apply to operations of the IHA.

(3) In addition, the following nondiscrimination requirements may apply:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(e) *Notice and opportunity for a meeting where preference is denied.*

(1) If the IHA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the IHA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the IHA to review the determination. The meeting may be conducted by any person or persons designated by the IHA, who may be an officer or employee of the IHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against in violation of requirements stated in paragraph (d) of this section.

(Approved by the Office of Management and Budget under OMB control number 2577–0105)

§ 905.304 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The IHA's admission policy may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The IHA could give preference to working families. (If an IHA adopts such a preference, an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A IHA also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. An IHA also could use its "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The IHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.* The IHA must use the following definitions of the federal preferences (as elaborated upon in §§ 905.305, 905.306, and 905.307) unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the IHA that the family qualifies for federal preference. The IHA must accept this certification, unless the IHA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the IHA must require the applicant to provide information needed by the IHA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) Once the IHA has verified an applicant's qualification for a federal preference, the IHA need not require the applicant to provide information needed by the IHA to verify such qualification again unless:

(A) The IHA determines reverification is desirable because a long time has passed since verification, or

(B) The IHA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

§ 905.305 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The IHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the IHA has given advance written approval. If the family is admitted, the IHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The IHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The IHA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

§ 905.306 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State or tribal law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 905.307 Federal preference: rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in § 905.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the IHA's programs, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

24. Section 905.416 is amended by removing from paragraph (d) the phrase, "Federal preference in accordance with § 905.305", and adding in its place the phrase, "federal preferences, ranking preferences, and local preferences, in accordance with §§ 905.303 through 905.307"; by removing the last sentence from paragraph (f); and by revising paragraph (a)(3), to read as follows:

§ 905.416 Selection of MH homebuyers.

(a) * * *

(3) *Different standards for MH program.* (i) The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH program should provide standards for determining a homebuyer's:

(A) Ability to provide maintenance for the unit; and

(B) Potential for maintaining at least the current income level.

(ii) The policies for the Mutual Help program must include procedures for determining the successor to a unit upon the death of a homebuyer (in the event that the homebuyer has not designated a successor or the successor fails to qualify).

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25. In § 905.1008, the introductory text and the first sentence of paragraph (a) is revised to read as follows:

§ 905.1008 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) Subject to the preference provisions of §§ 905.303 through 905.307 and any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller IHA, and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). * * *

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PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

26. The authority citation for part 906 is revised to read as follows:

Authority: 42 U.S.C. 1437c(h), 1437d, and 3535(d).

27. In § 906.8, the introductory text and the first sentence of paragraph (a) are revised to read as follows:

§ 906.8 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) Subject to the preference provisions of §§ 960.211–960.215 (except for the restriction against use of a ranking preference that would cause selection of a relatively higher income family and any additional eligibility and preference standards that are required or permitted under this section), a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller IHA, and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). * * *

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

28. The authority citation for part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

29. Section 960.203 is revised to read as follows:

§ 960.203 Nondiscrimination requirements.

(a) The tenant selection criteria and requirements used by a PHA must be established and implemented in accordance with the following authorities:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(2) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(3) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(5) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(6) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(b) Any tenant selection policies also must be consistent with HUD's affirmative fair housing objectives.

30. Section 960.204 is revised to read as follows:

§ 960.204 Tenant selection policies.

(a) *Selection policies.* (1) The PHA shall establish and adopt written policies for admission of tenants.

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, a tenant body in each project that is composed of families with a broad range of incomes and to avoid concentrations of the most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants to applicants who qualify for a federal preference, ranking preference, or local preference, in accordance with §§ 960.211 through 960.215; and

(iv) To establish objective and reasonable policies for selection by the PHA among otherwise eligible applicants.

(3) The PHA tenant selection policies shall include the following:

(i) Requirements for applications and waiting lists (see 24 CFR 1.4);

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the "federal preferences" (described in § 960.211) will be used;

(B) How any "ranking preferences" (described in § 960.211) will be used;

(C) How any "local preferences" (described in § 960.211) will be used; and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant; and

(iv) Policies for participant transfer between units, projects, and programs. For example, a PHA could adopt a criterion for voluntary transfer that the tenant had met all obligations under the current program, including payment of charges to the PHA.

(b) These selection policies shall:

(1) Be duly adopted; and

(2) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or tenants upon request, free or at their expense, at the discretion of the PHA.

(c) Such policies shall be submitted to the HUD field office upon request from that office.

(d) "Residency preference" means a preference for admission of families living in the jurisdiction of the PHA. Residency provisions are subject to the following:

(1) Residency requirements are not permitted;

(2) A residency preference may not be based on how long the applicant has resided in the jurisdiction; and

(3) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

32. In § 960.205, paragraphs (a) and (c) is revised to read as follows:

§ 960.205 Standards for PHA tenant selection criteria.

(a) The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. The PHA may use preferences based on the employment status of family members.

* * * * *

(c) The criteria to be established shall be reasonably related to attaining, to the maximum extent feasible, a tenant body in each project that is composed of families with a broad range of incomes. PHAs shall develop criteria, by local preference (see § 960.211) or otherwise, which will be reasonably calculated to attain the basic objective. (But see § 960.211(d).) The criteria developed shall be sufficiently flexible to assure administrative feasibility. A dwelling unit should not be allowed to remain vacant for the purpose of awaiting application by a family falling within the appropriate range.

* * * * *

§ 960.206 [Amended]

33. In § 960.206, the last sentence of paragraph (a) is amended by removing the term, "under § 960.211," and adding in its place the phrase, "a ranking preference, or a local preference, under §§ 960.211 through 960.215,".

§ 960.207 [Amended]

34. In § 960.207, paragraph (a) is amended by removing the last sentence, and by adding, before the period in the first sentence, the phrase, "(see § 960.211)"; and paragraph (b) is amended by removing the second sentence, and paragraphs (b)(1) and (b)(2).

35. Section 960.211 is revised and new §§ 960.212 through 960.215 are added, to read as follows:

§ 960.211 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 960.212(a).

(2) "Ranking preferences" are preferences that may be established by the PHA for use in selecting among applicants that qualify for federal preferences. See § 960.212(b).

(3) "Local preferences" are preferences that may be established by the PHA for use in selecting among applicants without regard to their federal preference status.

(b) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The PHA may match other characteristics of the applicant's family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the PHA must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families, as provided by subpart D.

(ii) *Singles preference.* See part 912 of this chapter.

(2) *Local preference admissions.*

(i) If the PHA wants to use preferences to select among applicants without regard to their federal preference status, it may adopt a preference system for this purpose. These "local preferences" may only be adopted after the PHA has conducted a public hearing to establish preferences that respond to local housing needs and priorities. The PHA may only use local preferences in selection for admission if the PHA has conducted the required public hearing.

(ii) "Local preference limit" means fifty percent of total annual admissions to the program. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The PHA may not give a preference (federal preference, local preference or ranking preference) to an applicant if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the PHA may give an admission preference in any of the following cases:

(i) If the PHA determines that the evicted person has successfully completed a rehabilitation program approved by the PHA;

(ii) If the PHA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the PHA determines that the evicted person no longer participates in any drug-related criminal activity.

(c) *Informing applicants about admission preferences.*

(1) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (c)(1) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the PHA's framework for applying the preferences and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Income-based admission.* The PHA may only give preference to select a relatively higher income family for admission if the preference is pursuant to a "local preference" admission. (For other income-related restrictions on selection, see 24 CFR 913.105.)

(e) *Notice and opportunity for a meeting where preference is denied.*

(1) If the PHA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the PHA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the PHA to review the determination. The meeting may be conducted by any person or persons designated by the PHA, who may be an officer or employee of the PHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2577–0105)

§ 960.212 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The PHA's admission policy may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The PHA may give ranking preference to working families—so long as the preference does not result in violation of the restriction of § 960.211(d) concerning income based admissions or the nondiscrimination provisions that protect against discrimination on the basis of age or disability. (If a PHA adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) The PHA also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market.

(2) The PHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.* The PHA must use the following definitions of the federal preferences (as elaborated upon in §§ 960.213, 960.214, and 960.215), unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the PHA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the PHA that the family qualifies for federal preference. The PHA must accept this certification, unless the PHA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the PHA must require the applicant to provide information needed by the PHA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) Once the PHA has verified an applicant's qualification for a federal preference, the PHA need not require the applicant to provide information needed by the PHA to verify such qualification again unless:

(A) The PHA determines reverification is desirable because a long time has passed since verification, or

(B) The PHA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be

denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(Approved by the Office of Management and Budget under OMB control number 2577–0105)

§ 960.213 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the PHA.

(2) (i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The PHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the PHA has given advance written approval. If the family is admitted, the PHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The PHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The PHA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

§ 960.214 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 960.215 Federal preference: rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in 24 CFR 913.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the PHA tenant-based program, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

Dated: June 3, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–16886 Filed 7–13–94; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Part 813, et al.
Section 8 Certificate and Voucher Programs Conforming Rule: Admissions; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 813, 882, 887, and 982

[Docket No. R–94–1628; FR–3727–F–01]

RIN 2577–AB47

Section 8 Certificate and Voucher Programs Conforming Rule: Admissions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends requirements for admission of eligible families to receive tenant-based Section 8 rental assistance under the rental certificate program and the rental voucher program. The rule includes procedures for waiting list and non-waiting list admission, including federal and local preferences for admission from the Housing Agency waiting list. The rule makes these changes to implement a statutory change and to reorganize and clarify the admissions process.The statutory change implemented by this rule decreases the number of families that must be admitted on the basis of qualifying for a federal selection preference and specifically authorizes adoption of local selection preferences by housing agencies. The rule also consolidates and clarifies existing policies concerning the admissions process.

EFFECTIVE DATES: Except for § 982.209(b), this rule is effective on October 18, 1994. Section 982.209(b) is effective January 18, 1995.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Director, Rental Assistance Division, Room 4204. Telephone numbers (202) 708–2841 (voice); (202) 708–0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB Control Number 2577–0169.

Background

On February 24, 1993, HUD published a comprehensive proposed rule to combine and conform the rules for tenant-based Section 8 rental assistance under the rental certificate program and the rental voucher program. [58 FR 11292]

This final rule only covers unified admission procedures for the tenant-based program. Admission procedures are contained in Subpart E of a new tenant-based rule at 24 CFR Part 982. As soon as possible, HUD will issue a comprehensive final rule covering all aspects of the tenant-based programs. The final rule may include further revisions of program admission procedures.

Eligibility

When HA Can Admit Non Very Low-Income Families

The proposed rule listed the categories of non very low-income families who may be selected for the tenant-based programs. Public comments state that the list is confusing, administratively cumbersome and unfair. Comments also claim HUD is improperly restricting admission of non very low-income families.

Under the law, there are different income limits for admission to the certificate and voucher programs. In the certificate program, the law permits assistance for low-income families (income below 80 percent of area median). However, in the voucher program, the law generally limits participation to very low-income families (income below 50 percent of area median). Families that are not very low-income can be admitted to the voucher program only in cases specified in the law—families who reside in specified types of housing affected by various HUD programs or activities.

A central goal of this rule is to unify regulatory requirements for the tenant-based certificate and voucher programs, except for differences that are required by the law. To this end, the rule largely sets the same eligibility requirements for the two tenant-based programs. For both programs, the rule allows admission of non very low-income families within the statutory categories prescribed by law for the Section 8 voucher program (such as a family previously assisted in public housing), and also within the statutory lower income limit for admission to the Section 8 non-voucher programs. Thus families that meet the uniform eligibility requirements under this rule are within the statutory eligibility limits for both the Section 8 voucher and certificate programs.

For the certificate program only, the rule permits admission of a low-income family that lives in a property sold by HUD or in a property sold at foreclosure of a HUD-held mortgage. This is the only difference between the uniform eligibility requirements for the tenant-based programs under this rule.

In the certificate and voucher programs, the law establishes the outer boundaries of statutory eligibility. However, the law does not assure assistance for any eligible family. Unlike entitlement programs, in which assistance is provided to any eligible person, the availability of Section 8 certificate or voucher assistance is constrained by the amount of funding appropriated by the Congress, and by the funding available to the HA at which a family applies. Many may apply, but the HA can only assist the number of families that can be supported with available funding.

In this context, the rule defines uniform eligibility criteria for admission of non very low-income families. The law does not require HUD to set eligibility limits at the boundaries of statutory program eligibility. Rather, the law specifically recognizes HUD's authority to limit admission of non very low-income families. [See 42 U.S.C. 1437n]

HUD agrees with comments which note that the list of specific eligibility categories (for non very low-income admissions) is clumsy and confusing. However, since the voucher law does not permit assistance for other non very low-income families, use of the statutory voucher categories is the only way to define a uniform standard for admission of low-income families other than very low-income families. HUD may not totally prohibit admission of low-income families other than very low income families. [42 U.S.C. 1437n(c)] In addition, the eligibility definition in this rule focuses most available assistance on very low-income families, while permitting assistance for other low-income families affected by specific HUD programs and activities.

Under this rule, a Housing Agency (HA) can only admit non very low-income families in the special categories defined in the rule. Before this rule, low-income families were, in theory, broadly eligible for admission to the certificate program. However, admission of such families was sharply restricted by HUD.

By law, only 15 percent (5 percent before a 1990 amendment) of Section 8 and public housing units added nationally since federal fiscal year 1982 can be leased to non very low-income families. [U.S.H. Act, § 16, 42 U.S.C. 1437n(b)(1)] The restrictions on leasing Section 8 units to non very low-income families are stated in a cross-cutting regulation for the various Section 8

programs. [24 CFR § 813.104 and § 813.105] For the certificate program, the limit is applied by regulation to families admitted to the certificate program since July 1984. [§ 813.105(c)] In practice, almost all Section 8 tenant-based units are covered by the regulatory restriction. In general, the HA may not admit a non very low-income (but statutorily eligible) family unless HUD has given the HA approval to grant an "exception".

In implementing the limit on non very low-income admissions, exceptions were routinely permitted by HUD for the types of non very low-income admissions allowed under this rule. In practice, non very low-income occupancies have represented less than five percent of the Section 8 and public housing programs as a whole, or of the certificate program or voucher program separately. Even in the categories for which exceptions have been granted by HUD, most families are very low-income at admission to the certificate and voucher programs.

For tenant-based assistance, this rule now lists the categories of non very low-income families that may be admitted to the program. For this reason, HUD has decided to delete the separate regulatory limitations (in Part 813) on non very low-income occupancy in the certificate programs, and to delete also the accompanying requirement to secure grant of a HUD "exception" permitting admission of non very low-income families. In essence, the exception cases are now built into the definition of income eligibility in the program rule. Since the number of non very low-income certificate and voucher admissions in these special categories is limited (in relation to the aggregate number of program admissions), experience indicates such admissions will continue to be well below 15 percent of certificate and voucher admissions, and will not jeopardize compliance with the global 15 percent limitation for the Section 8 and public housing programs as a whole. Deletion of the certificate and voucher procedures for restricting and tracking non very low-income occupancy will simplify program administration by HAs and HUD, but will not substantially affect actual levels of occupancy in these programs.

Applicable Income Limit

HUD establishes sets of income limits for each area of the country. The HA determines whether a family is income-eligible by comparing the family's annual income (gross income) and the HUD-established very low-income limit or low-income limit for the appropriate income limit area. The final rule codifies how the HA determines the applicable income limit area for a family admitted to the tenant-based assistance programs.

In the public housing program, and in the project-based Section 8 assistance programs, family income eligibility at admission to the program is governed by the income limit for the area where the project is located, and the family is initially assisted. In the tenant-based programs, at initial issuance of a certificate or voucher to a family, the HA does not know where the family will initially rent with assistance under the program.

At admission, a family may generally choose to rent a unit anywhere in the HA jurisdiction, and (if qualified for initial portability) may elect to rent a unit outside the HA jurisdiction under portability procedures. For some HAs, such as an HA with Statewide jurisdiction, the HA jurisdiction may include more than one income limit area. If the family moves to a different HA jurisdiction under portability, the receiving HA may be in a different income limit area (or areas) than the HA that admitted the family. The HA needs to know what income limit applies, both when the HA initially issues the family a certificate or voucher, and also when the HA initially executes a HAP contract for the family.

The rule provides that in determining the applicable income limit for issuance of a certificate or voucher upon selection for the program, the HA uses the highest income limit (for the family unit size) of all the income limit areas in the HA jurisdiction. However, the family may only use the certificate or voucher to rent a unit in an area where the family is income eligible at admission to the program (that is, when the HA executes a HAP contract for the unit selected by the family). The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted. [§ 982.201(b)(2)] For admission as a very low-income family, the family income must be within the very low-income limit for the area. For admission as a low-income family (which meets criteria for admission of a non very low-income family), the family income must be within the low-income limit for the area.

Continuously Assisted Family

The rule provides that the HA may assist a low-income family that is continuously assisted under the 1937 Housing Act. [§ 982.201(b)(1)(ii)(A)] The rule lists the 1937 Housing Act programs. ["1937 Housing Act program" defined at § 982.3] The 1937 Act programs include the public housing program and all of the Section 8 project and tenant-based programs (as well as the old Section 23 leased housing and Section 23 housing assistance payments programs).

Public comments express concern about the process for determining if families are "continuously assisted" under the 1937 Housing Act. Families do not know if they have been continuously assisted under a 1937 Act program. The HA would have to conduct investigations to determine if families qualify as continuously assisted. Comments ask for guidance on how to get this information.

If a family is currently assisted in a 1937 Act program of the same HA at which it is applying for assistance under the certificate or voucher program, the HA should usually have no difficulty getting this information. If the family was receiving assistance under one of the 1937 Housing Act programs from another HA or a private Section 8 owner, the family must generally provide the information to the HA. The HA may verify the information by inquiry to the HA or owner.

The rule provides that an applicant is considered to be continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program. [§ 982.201(d)(1)] The Department recognizes that in a variety of circumstances there may be a brief interruption in the transition from another 1937 Act program to assistance under the 1937 Act tenant-based programs. For example, tenant-based assistance may be provided for continued assistance to residents of a Section 8 project after the HAP contract expires or is terminated for owner breach, and there may be a short delay in arranging for continued assistance for project-residents.

This rule allows the HA flexibility to deal with brief breaks that do not interrupt the essential continuity of 1937 Act assistance to the family. The rule provides, as proposed, that an HA must establish policies concerning whether and to what extent a brief interruption between assistance under a 1937 Act program and admission to the HA's tenant-based program will be considered to break continuity of assistance. [§ 982.201(d)(2)] Comments approve this approach.

Limit on Assistance for Aliens

Comments suggest that proof of citizenship should be an eligibility

requirement, and that foreign students should be ineligible for the program.

Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) prohibits Section 8 assistance for persons other than United States citizens or eligible aliens. Section 214 will be implemented in a separate rule.

Definition of a Family

In the Section 8 and public housing programs, the statutory term "family" refers to a group or single person that can be assisted under the program. A 1992 law redefined the term "family". [42 U.S.C. 1437a(b)(3), as amended by the Housing and Community Development Act of 1992, section 621; 106 Stat. 3812] The February 24, 1993 proposed rule contained a new "family" definition based on the 1992 law. HUD did not propose to amend the general Section 8 definition of "family" and other related terms in 24 CFR 812.2. The statutory family definition was amended again, on April 11, 1994. [42 U.S.C. 1437a(b)(3)(B), amended by Section 301 of Public Law 103–233, 108 Stat. 342, 369]

Public comments raise important questions about the new definition of the term "family" under the 1992 law and proposed rule. The Section 8 and public housing programs are covered by the same statutory "family" definition in the U.S. Housing Act of 1937. Since there should be substantially uniform regulatory treatment of family eligibility in these programs, the Department is deferring implementation of any substantive changes because of the family redefinition under the 1992 law.

The 1992 law provided that the term "families" "*means* families with children". [106 Stat. 3812] Many public comments echo HUD's concern in the proposed rule, that this new statutory definition might not permit admission of a multi-person family without children, such as a married couple without children or two adults. In 1994, the law was amended to provide that "the term 'families' *includes* families with children".

This final rule does not give a new family definition. However, the rule restates how the family concept is used in determining program eligibility. The rule states that a "family" may receive assistance under the certificate or voucher programs. [§ 982.201(a)] The "family" may be either a single person or a group of persons. [§ 982.201(c)(1)] In accordance with the 1994 amendment, the rule is revised to provide that the group of persons constituting a family "includes a family with a child or children". [§ 982.201(c)(2)] This provision allows admission of a family with children, but does not preclude the admission of a multi-person family without children.

Over time, successive amendments of the U.S.H. Act "family" definition have widened the qualification of single individuals for assistance under the program. Originally, the term covered only aged, displaced or disabled single persons. Currently, any single person may qualify as a "family". Although the rule does not include a new family definition, the rule specifies that a single person family may be an elderly person, a disabled person, a displaced person or "any other single person". [§ 982.201(c)(4)(iv)]

Through successive statutory amendments, the 1937 Housing Act specified when a single person qualifies as a family, but did not contain a comprehensive definition stating when a group of persons (other than an elderly family or disabled family) qualifies as a family. HUD does not impose a national definition of a multi-person family, but has substantially left this term to local definition by individual HAs for application to their programs.

The rule confirms that "family" includes an elderly or disabled person or persons residing with a live-in aide who provides necessary supportive services. In accordance with historical practice and understanding, the rule provides that the HA determines if any other group of persons qualifies as a family. [§ 982.201(c)(3)]

A 1993 rule removed restrictions on assistance for singles who are not elderly, disabled or displaced. [58 FR 39658, July 26, 1993] HAs now have broad authority to house other single persons, but must house the elderly, disabled or displaced ahead of other singles.

Near-elderly

In accordance with the 1992 law, the family definition in the proposed rule contains several provisions on assistance to a "near-elderly" person—defined as a person from 50 to 61 years old. The proposed rule provides that a statutory "family" (the entity eligible for program assistance) includes a family whose head or spouse is near-elderly, and also provides that a single person family includes a near-elderly person. Comments approve assistance for the near-elderly. The comments generally appear to assume that qualification as near-elderly makes a single person eligible for assistance, or confers priority over younger single persons. Such comment indicates confusion as to the impact of the near-elderly designation on program eligibility. Since any single person may now qualify as a statutory family, the near-elderly designation is not necessary to confer single person program eligibility. Also, near elderly singles do not have a statutory priority for admission.

This rule does not include the proposed near-elderly definition and provisions on family eligibility of a near-elderly person. Under the 1992 law, the near-elderly characterization chiefly affects use of Section 8 project-based assistance in units or projects designated for the elderly. In the tenant-based programs, there are no projects or units designated for Section 8 elderly occupancy. Each family chooses a unit in the private market.

Temporary Absence of Foster Child

Comments asked HUD to clarify a rule which states that the temporary absence of a child from the home due to placement in foster care may not be considered in determining what constitutes a family. A 1990 law provides that: The temporary absence of a child from the home due to placement in foster child care shall not be considered in considering family composition and family size. [1990 NAHA, section 574, amending 42 U.S.C. 1437a(b)(3); 104 Stat. 4238]

In determining family composition, the temporarily absent child is considered to be part of the assisted household. For example, a single woman with two children who are currently and temporarily living in foster care homes, is considered as a family of three people, one adult and two children, instead of a single person family. The statutory provision is intended to promote family re-unification by permitting the family to rent a subsidized unit that will be big enough for the whole family when the absent child returns from foster care. To clarify this concept, the rule provides that: A child who is temporarily away from the home because of placement in foster care is considered a member of the family. [§ 982.201(c)(5)]

The statutory and regulatory provisions only pertain to the foster child's "temporary" absence from the home, but are not intended to artificially enlarge the space available for other family members.

Remaining Family Member

Comments ask HUD to clarify a proposed provision stating that the "remaining" members of an assisted family qualify as a "family". Since the beginning of the Section 8 program, the law has provided that a "family" includes a "remaining" member of the tenant family. [Definition now at 42

U.S.C. 1437a(b)(3)(A)] Under the existing regulatory definition of a "family", the term "family" includes the "remaining member of a tenant family" (at § 812.2, not amended by this rule).

If composition of an assisted family changes by death or departure of family members after initial admission to the program, the remaining members or individual member of the assisted family are a statutory "family". The definition of a "family" as including a "remaining" family member merely confirms that the HA may continue assistance on behalf of a remaining family member after departure of other members of the original assisted family. The "remaining" family member concept does not affect original eligibility or admission to the program—whether of a single individual or of a multi-person family.

Since this rule only covers HA admission processes (Part 982, Subpart E), the rule deletes the proposed provision on remaining family members. The final stage of this rulemaking will clarify that remaining family members constitute a family.

Disability

The family definition in the 1992 law includes a new definition of "person with disabilities" (essentially combining defining elements of three separate disability definitions under prior law). [106 Stat. 3812, amending 42 U.S.C. 1437a(b)(3)(E)] The law provides that "person with disabilities" may not exclude persons with the disease of acquired immunodeficiency syndrome (AIDS), or conditions resulting from the AIDS syndrome. The proposed rule would incorporate the new AIDS-related elements in the definition of "person with disabilities".

Comments ask HUD to clarify whether the disability definition includes a person who is HIV positive, but who does not exhibit symptoms or conditions associated with AIDS. Comments ask why persons with terminal illnesses other than AIDS are not included in the definition, and suggest that HUD expand the definition of the term disabled person to include persons in recovery programs for substance abuse or other conditions.

As indicated above, substantive changes in the "family" definition under the 1992 law will be implemented by HUD in a separate rulemaking for the whole universe of covered Section 8 and public housing programs. This rule does not include special provisions on eligibility of individuals with AIDS and related conditions. To qualify for assistance as a disabled person, a single person must meet the general disability standards carried forward from the prior law (and consolidated under the term "disabled person"). In addition, since the law and rule now permit assistance to any single person (not only the aged, disabled or displaced), disabled or non-disabled single persons are broadly eligible for Section 8 assistance.

The definition of "disabled person" includes a person with a disability as defined in section 223 of the Social Security Act. [Definition of "disabled person" in § 982.3; 42 U.S.C. 1437a(b)(3)(E)(i)] Comments state that the HUD rule should use the disabled definition in the Americans with Disabilities Act instead of the definition of disabled under section 223 of the Social Security Act. Since the disability definition in the 1937 Housing Act explicitly incorporates the disability definition in the Social Security Act, HUD has not followed this recommendation.

Live-in Aide

The rule defines the term "live-in aide". [§ 982.3] A live-in aide resides with the assisted family to care for a family member who is disabled or elderly. Section 8 family income does not include income of the live-in aide (either for determination of family eligibility at admission to the program, or for determination of the family share at admission and reexamination). If the Section 8 participant leaves the unit, the live-in aide is not considered a "remaining" family member or program participant, and does not receive any assistance for continued occupancy of the unit.

The definition of live-in aide in this rule substantially tracks the definition in other cross-cutting Section 8 rules that apply to the certificate and voucher programs. [24 CFR Parts 812 and 813] The 1992 law also authorizes the use of a live-in aide for a near-elderly person. This change will be implemented in the future rulemaking for programs affected by the 1992 family amendments.

The final rule deletes a proposed change of the live-in aide definition (not included in the parallel language of other Section 8 rules) to provide that a live-in aide may not be related by blood, marriage or operation of law to the persons receiving Section 8 assistance for occupancy of the unit. Comments objected to this proposal, stating that HUD should encourage a family relative to act as a live-in aide.

Single Persons: Preference for Admission of Elderly or Disabled

By law, a single person who is elderly (over 62), disabled or displaced must be admitted before other single person families. [42 U.S.C. 1437a(b)(3)(A)] This singles preference is implemented in the existing HUD rule on admission of single persons in the Section 8 programs. [§ 812.3, as amended at 58 Federal Register 39658–59, 7/26/93]

In HUD's existing rules, the statutory preference for a disabled or elderly single person is broadened to provide a preference for an "elderly family" or displaced person over other single persons. [§ 812.3(e)] An "elderly family" includes both a single person family consisting of a person who is disabled or over 62, and a multi-person family whose head or spouse is disabled or over 62. [Definition of "elderly family" in § 812.2]

The proposed rule merely states the bare statutory preference for an elderly, disabled or displaced single person over other single persons, without stating the preference for an "elderly" multi-person family. [Proposed § 982.201(a)(2)(ii)] In this rule, the statement of the preference has been conformed to the existing rule that gives preference to any family with an elderly or disabled head or spouse, not limited to a preference for elderly or disabled single person families.

The rule provides that: In selecting applicants, the HA must give preference to:

(1) A family (with or without federal preference):

(i) Whose single member is a displaced person or,

(ii) Whose head or spouse or single member is an elderly person or a disabled person, over

(2) A single person (with or without federal preference) who is not elderly, disabled or displaced. [§ 982.207(d)]

Comments note that the proposed rule does not explain how the statutory singles preference (for single persons who are elderly, disabled or displaced) relates to the statutory federal preferences (for single or multi-person families that are displaced, rent-burdened or live in substandard housing). Comments recommend that the rule should specify that the preference for singles applies between applicants with the same federal preference status (i.e., applicants with or without a federal preference). As HUD understands this proposal, the singles preference would require the admission of a federal preference single who is elderly, disabled or displaced before a federal preference single who is not elderly, disabled or displaced.

The statutes do not state the relation between the two types of statutory preference, nor prescribe which type of preference takes precedence. HUD has decided to provide that the federal statutory preference for elderly, disabled or displaced singles will take precedence over the so-called "federal preferences". Under this rule, the singles preference is not limited—as proposed by the comment—to applicants with the same federal preference status. The rule is revised to provide that the singles preference applies to a family "with or without a federal preference" over a single person with or without a federal preference. The rule requires admission of a single individual who is elderly, disabled or displaced, but does not qualify for federal preference, before a single individual who qualifies for federal preference, but is not elderly, disabled or displaced. [§ 982.207(d)]

Comments state that HAs should not be required to accept applications from non-elderly applicants, when these applicants will never be reached on the waiting list because of the preference for elderly or disabled persons.

The rule does not require the admission of "other" single persons, who are not entitled to the statutory singles preference. The rule also permits the HA to adopt a policy on opening or closing the waiting list to applications from such other singles. The HA may adopt local policy on who may apply for assistance when the waiting list is open. [§ 982.206(a)(3) and § 982.206(b)(1)] If singles with statutory preference will absorb available program openings, the HA may elect to stop accepting new applications from other single persons.

Verifying Eligibility

The proposed rule requires that an HA must verify family eligibility during the 90 day period before the family initially receives assistance under the program. Comments note that HAs will have difficulty in satisfying this requirement. The Department is also asked to clarify whether "initially receiving assistance" means the date a certificate or voucher is issued or the effective date of the HAP contract.

After considering comments, HUD has decided to require that the HA obtain information verifying family eligibility no more than 60 days before the HA initially issues a certificate or voucher to an applicant family. [§ 982.201(e)] This timing of the verification process will eliminate scheduling problems that might be caused if the time for eligibility verification is linked to the commencement of assistance (effective date of the HAP contract).

Comments state that the requirement to verify eligibility 90 days before commencement of assistance is inconsistent with handbook guidance providing that verifications are valid for 120 days from receipt by the HA. The 120 day validity period is and will remain applicable for annual reexaminations and interim redetermination of family income and composition after admission to the program. The program handbook will give additional guidance on how to administer the initial income eligibility verification deadline in this rule.

The proposed rule provides that the HA must make a preliminary eligibility determination before placing a family's name on the waiting list. Comments criticize HUD for trying to micro-manage the admission process. An HA should have discretion whether to make an eligibility determination before a family is added to the waiting list. Family circumstances change. A family that is ineligible at the time of application may become eligible before its name is reached on the waiting list. Comments also ask HUD to clarify that the HA is not required to verify family eligibility before adding a family's name to the waiting list.

An HA must determine and verify eligibility before a family is admitted. However, HUD agrees that HAs need flexibility to design an admission process and timing that fits the need of the local program. For most HAs, there are many qualified applicants and a long wait for entrance to the program. Families may move away or lose interest. Eligibility information must be current when the family is finally selected for admission to a program. The HA needs to balance administrative cost and problems against the need for an adequate pool of families for orderly admission to available program openings.

Various program requirements apply to the HA "waiting list", including the federal preference scheme, and provisions governing the relation of the Section 8 waiting list to waiting lists for other assisted housing programs. The proposed rule provides that the HA must make a preliminary eligibility determination before a family is placed on the Section 8 waiting list. This provision was intended to specify that the universe to which "waiting list" requirements apply is the universe of families for which the HA has made a preliminary determination of eligibility (which need not be verified at that time). The proposed requirement was not intended to accelerate the HA's preliminary eligibility determination, or to require the HA to verify family eligibility before adding the family to the waiting list.

In the rule, HUD does not require a preliminary eligibility determination before the HA puts the family on the waiting list.

Selecting Families

Family Size—Effect on Selection

In the tenant-based programs, HAs currently apportion available program funding resources by unit size (1 bedroom, 2 bedroom * * *). The HA selects an applicant for the unit size opening for which the family qualifies under the HA occupancy standards. To match available program resources for each bedroom size with families who qualify for a particular bedroom size, waiting lists are organized by bedroom size.

In the certificate program, an HA is currently required to use program resources in accordance with a HUD approved unit size distribution. The target unit distribution for the program is stated in the consolidated ACC for the program. Generally, HUD must approve substantial deviation from the distribution allowed under the ACC. In the voucher program, the HA has discretion to determine the bedroom distribution of the program units supported with available program resources.

In both programs, families are selected by bedroom size for available program openings for the appropriate bedroom sizes. In this respect, the current selection procedure for the tenant-based programs is the same as the selection procedure by which HAs and owners fill vacant units in project-based assisted housing programs. For example, when there is a vacant two bedroom unit in an assisted project, the HA or owner selects a family that needs a two bedroom unit. In the project-based programs, selection is inherently constrained by the existing configuration of the subsidized unit, and the need to assure an appropriate match between the size of the project unit and the housing needs of the assisted family.

In the tenant-based programs, however, there are no project units. The family chooses among units available for rent in the assisted housing market. Once admitted to the tenant-based program, a family that qualifies for any unit size can search for a suitable sized unit in the local rental market. The HA is limited by the total program funds available under the consolidated ACC. However, there is no inherent need to match the unit size needs of the family with any particular assisted unit, or

with program funds apportioned to support rental of a particular size unit.

In the tenant-based programs, the unit size for which the family qualifies determines the maximum subsidy for the family. For example, in the certificate program a four bedroom family must lease a unit that rents under the four bedroom fair market rent.

Under the existing program procedures, the distribution of available program resources by unit size may result in different waiting periods for the different unit sizes. For example, at a particular HA the wait for a four bedroom certificate may be three years, while the wait for a two bedroom certificate is only one year. In general, the length of the time a family has to wait for assistance is determined by the amount of funding allocated by the HA for a given unit size, and the number of waiting list families who qualify for that unit size. In this system, federal and other locally determined preferences determine the order of admission among waiting list families who qualify for a given unit size.

In this rulemaking, comments recommend that families should not be selected by unit size. Families should be chosen from the top of the waiting list without regard to unit size. HUD should not allocate funding by unit size.

After careful consideration, HUD has decided to prohibit HA selection of families for tenant-based assistance on the basis of the unit size needed by the family. HAs are no longer permitted to select families to meet a pre-determined program unit size distribution. Instead, families must be selected by the HA without regard to family size, or to the unit size for which a family qualifies under the HA occupancy policy. When selected, a family receives the appropriate subsidy for the family size. The HA selects families of any size in order from the waiting list, up to the limit of available funding. The program unit size distribution is no longer the basis for selection, but the result of selection.

To accomplish this important change in program selection procedures, the rule provides that "the order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the HA occupancy policy." [§ 982.204(d)(1)]

At the time when a family comes to the top of the waiting list, the HA may or may not immediately have enough funds to support the amount of subsidy required for the family. The new rule provides that if the HA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the HA may not skip the top waiting list family in order to admit an applicant family with a smaller family unit size (that can be immediately supported with available funding). [§ 982.204(d)(2)]

In eliminating selection by unit size, the rule also eliminates HA administrative problems in managing available assistance resources to meet a pre-determined unit distribution. Moreover, the rule has also eliminated the need and authority for the HA to establish priorities for families requiring different size units.

At any given funding level, the HA can assist more families with a smaller subsidy, and fewer families with a larger subsidy. This proposition is equally true of the old system and of the system established under this rule. However, under the prior system, the choice of the pre-determined program unit distribution is also a choice of how many families will be assisted in the program. Under the new rule, the number of assisted families is the number of families supported by the available funding.

HUD has developed a new form of consolidated annual contributions contract (ACC) for the certificate and voucher programs. The unified contract covers both tenant-based programs administered by an HA, and eliminates the HA's obligation to meet a pre-determined program unit size mix in administration of the certificate program under the old certificate program ACC form. HUD will also eliminate the current certificate handbook provision requiring HUD approval of unit size redistributions for more than 12 units.

Prohibited Admission Criteria

In deciding whether to admit a family, the rule does not permit the HA to consider certain types of "family characteristics" listed in the rule. [§ 982.202(b)(4)]

Discrimination Against Family With Children

The proposed rule provides that HA selection of families may not be based on "whether the family includes children (family status)". Comments state that presence or absence of children may be key to determining if a family is eligible for assistance. Contrary to the comment, program "eligibility" is not based on whether there are children in the family.

Comments note that waiting lists are organized by unit size, and that the unit size for which a family qualifies is determined by the number and relationship of family members. As discussed above, this rule eliminates waiting list selection based on the size of the unit for which a family qualifies under the HA occupancy policy. [§ 982.204(d)]

In response to comments, the rule is revised to clarify, as originally intended, that the HA is prohibited from using selection criteria which result in "*discrimination because* a family includes children (familial status discrimination)". [§ 982.202(b)(4)(i)(C)]

Employment or Education

The proposed rule would have prohibited the HA from basing selection of participants on the "employment history or education" of family members.

The final rule removes the proposed prohibition against selection based on employment history of family members. In addition, the rule now specifically permits the HA to give a preference among Federal preference holders for "working families". [§ 982.210(b)(3)(iv)] For admissions not subject to Federal preference, the HA may also give preference ("local preference") to working families.

In affording a preference for "working families," the HA is subject to the statutory and regulatory prohibitions against discrimination because of age or disability. To provide protection against such discrimination, the rule provides that an applicant family must be given the benefit of a working family preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.

Regulations for the tenant-based programs do not allow an HA to adopt a preference for admission of higher income waiting list families over families of lower income. [§ 982.202(b)(4)(ii)] For tenant-based programs, this restriction is Departmental policy, but is not required by statute. In accordance with this policy, the rule provides that when an HA elects to adopt a ranking preference for Federal preference-qualified "working families", the HA admission preference "may not give greater preference to an applicant based on the amount of employment income." [§ 982.210(b)(3)(iv)]

The final rule does not include the proposed prohibition of selection based on "education" of family members. An HA has discretion whether or not to adopt an admission policy with a preference for this purpose. For selection among federal preference holders, the rule explicitly provides that an HA admission policy may give

ranking preference for graduates of, or active participants in educational and training programs that are designed to prepare individuals for the job market. [§ 982.210(b)(4)] (However, the law and regulation prohibit a special preference for applicant families that agree to participate in the HA's family self-sufficiency program.)

Suitability for Tenancy

The rule restates the old rule requirement that the owner, not the HA, determines whether a family is suitable for tenancy. Admission to the program may not be based on a family's suitability for tenancy. [§ 982.202(b)(1)] Comments state that the HA determines suitability for tenancy when the HA denies assistance because of drug or violent crime by family members. Since 1990, program rules allow the HA to deny assistance if family members engage in drug crimes and crimes of violence. The rule has been revised to confirm that the HA may deny assistance to an applicant (under existing provisions of the program rule) because of drug-related criminal activity or violent criminal activity by family members. [§ 982.202(b)(1)]

Special Admission—Non Waiting List

Sometimes HUD gives an HA program funding for families living in specified units, for example, funding for families displaced because of demolition or disposition of a public housing project. The final rule provides that: "If HUD awards an HA program funding that is targeted for families living in specified units:

(1) The HA must use the assistance for the families living in these units.

(2) The HA may admit a family that is not on the HA waiting list, or without considering the family's waiting list position. The HA must maintain records showing that the family was admitted with HUD-targeted assistance." [§ 982.203(a)]

The rule also lists examples of types of cases in which HUD may give the HA program funding for a family living in a specified unit. [§ 982.203(b)] In general, these are cases where HUD provides certificate or voucher funding for continued assistance to low income residents of projects in various HUD programs. The funding is granted to an HA by HUD to provide assistance for families who would be displaced from a project by the termination of assistance or some other event. The HA must use the funding for that purpose. The HA is not free to "select" other families.

In the proposed rule, a non-waiting list admission is called a "special family *selection*". In the final rule, HUD now uses the term "special *admission*" to more accurately reflect the nature of these cases—which do not involve an authentic HA selection between eligible applicants. In the rule a "special admission" is defined as: "Admission of an applicant that is not on the HA waiting list, or without considering the applicant's waiting list position." [§ 982.3]

The proposed rule would have allowed special admission of: (1) families forced to vacate housing because of rehabilitation under the former rental rehabilitation grant program; (2) families living in Section 8 Moderate Rehabilitation or Project-based Certificate Projects in units that are too big or too small; (3) families living in such projects when an assistance contract expires; (4) when HUD gives the HA funding for settlement of litigation. Under the terms of the final rule, special admission is limited to cases when HUD provides the HA funding for families living in specified units.

Special Admission: Overcrowded or Overhoused Family in Federally-Assisted Project

Under the proposed rule, the HA would be permitted to make a non-waiting list admission of a family that lives in a project-based assisted unit that is too large or too small for the family (if there is no vacant unit of appropriate size in the project or program). This proposed provision would have applied to families living in project-based units assisted under certain HA-administered programs: a public housing unit, a moderate rehabilitation unit, or a project-based certificate unit.

Comments recommend that HUD should allow non-waiting list admission of a family living in an inappropriate-sized unit assisted under the Section 8 new construction or substantial rehabilitation programs. Comments also ask HUD to clarify that an HA has the option whether to use the authority for non-waiting list admission of families in units that are too big or too small.

HUD has decided to eliminate altogether the proposed authority for special admission of families who occupy assisted units that are not suitable for the actual family size. Instead, the HA has latitude to grant preference for such families in the context of the HA's general scheme for federal preference and non-federal preference admissions, or to open the waiting list for such families. In administering the limit on non-federal preference admissions, the HA may choose to grant a local preference for these families.

Special Admission: Proposal for Expansion

Comments ask HUD to permit additional categories of non-waiting list admission. Comments suggest that special admission should be allowed:

—For persons who are terminally ill.

—For moderate rehabilitation and project-based certificate program families whose health, welfare or safety is threatened, or families who have provided drug activity testimony.

—For families that need to move closer to medical or social services.

HUD has not adopted the recommendation to expand the list of non-waiting list categories (special admission). Each of the situations noted in the public comments may be a legitimate basis for preferential admission. Within the scheme of federal preference and non-federal preference admissions, the HA can employ admission techniques that expedite assistance for waiting list families with special and urgent needs described in the HA administrative plan. The HA may, for example, open a closed waiting list to such families. The HA may adopt "ranking" preferences for selection among federal preference holders, or "local" preferences for a local preference admission. Use of the HA local preference quota is the appropriate vehicle for rationing available local assistance resources among eligible families who do not qualify for federal preference. Non-waiting list treatment does not solve or avoid the burden of local choice in allocation of program resources.

Special Admission: Funding for Specific Families; Terminology

The rule provides that if HUD awards the HA funding that is targeted for families living in specified units, the HA must use the funding for the designated purpose. [§ 982.203(a)]

Comments suggest that the limit on use of targeted funding should only restrict the HA's initial use of the funding. This recommendation is not adopted. The HA must use targeted funding in accordance with the conditions imposed when the funds are awarded to and accepted by an HA. Sometimes HUD funding may be earmarked for specific families, even after turnover. In most cases, special admission funding is only restricted on initial use for a particular family. On turnover, such funding becomes available for general use in the HA

tenant-based program. HUD determines how long the HA is bound by the requirement to use special funding for the purpose awarded. If HUD does not require continued use of the funding for a special purpose, the funding is released from special use requirements.

Waiting List

Status of Applicant

The rule provides that an applicant does not have any right or entitlement to be listed on the waiting list, to any particular position on the waiting list, or to admission to the programs. Further, the rule states that this provision does not affect or prejudice any applicant right, independent of the certificate and voucher regulations, to bring a judicial action challenging an HA violation of a constitutional or statutory requirement. [§ 982.202(c)]

Comments ask HUD to delete this provision, asserting that qualified applicants have a right to be listed on and selected from a waiting list if funding is available. Other comments expressed concern that this rule could be construed to mean that an HA may be sued if HUD fails to take action to implement a statutory provision.

The rule language at issue substantially restates provisions of the current rule. [See 49 FR 12215, 12224, March 29, 1984] The language makes clear that the rule is not intended to create any right or entitlement of individual applicants to apply for or participate in the programs.

Metropolitan Area Admission Procedures

Comments recommend that HUD require the establishment of a metropolitan-wide waiting list and nonprofit clearinghouse to take and process tenant applications for all subsidized housing programs in a metropolitan area. Comments state that this type of process is needed to ensure equitable treatment of applicants, and to maximize fair housing opportunities.

The proposal to restructure metropolitan area admission procedures would affect operation of all HUD public and assisted housing programs. In this rulemaking, HUD will not require adoption of metropolitan-wide waiting lists for all subsidized programs, or the use of non-profit clearinghouses for processing applications.

HUD plans to develop and implement a metropolitanwide strategy for the delivery of HUD-assisted housing programs. Initially HUD expects to develop a model for implementation of a pilot program in up to three metropolitan areas.

Admission to Different Subsidized Housing Programs

This rule gives a unified statement of provisions on the relationship between admission to the Section 8 tenant-based programs, and provisions on admission to other subsidized housing programs. These provisions cover:

—The relation between the Section 8 tenant-based certificate and voucher programs. [§ 982.205(a)]

—The relation between the Section 8 tenant-based programs and other assisted housing programs. [§ 982.205 (b) and (c)]

Single Waiting List for Tenant-Based Programs

The rule provides that an HA which uses residency preferences for a county or municipality in the HA jurisdiction may use a separate waiting list for the county or municipality. [§ 982.205(a)(1)] However, an HA must use the same waiting list for admission to its tenant-based certificate and voucher programs. [§ 982.205(a)(2)] The HA may not have separate waiting lists for its certificate and voucher programs.

Refusing Tenant-Based Assistance

An applicant may decline an offer of admission to the certificate or voucher program, preferring to wait for admission to the other tenant-based program. However, if an applicant refuses offers of admission to both of the tenant-based programs, the HA may remove the applicant from the waiting list for tenant-based assistance. [§ 982.205(c)(2)]

Relation to Other Subsidized Housing Programs

The rule provides that a family may apply for, receive or refuse other housing assistance without losing the opportunity for listing on the Section 8 tenant-based waiting list. For this purpose, "other housing assistance" means a federal, State or local housing subsidy, as determined by HUD, including public or Indian housing. [§ 982.205(c)(1)] Of course, the family may not continue to receive two forms of housing subsidy after admission to the tenant-based program.

The proposed rule provided that an HA *must* combine the waiting list for the tenant-based programs with the waiting list for project-based certificate assistance, and that the HA *may* merge its tenant-based waiting list with the waiting list for its public or Indian housing program, or Section 8 moderate rehabilitation program. Comments object to requiring a common waiting list for tenant-based subsidy and the project-based certificate program. Comments note that many families on a common waiting list would only accept the offer of a tenant-based subsidy, and that it is cumbersome for the HA to administer a waiting list covering tenant-based and project-based units.

HUD concurs that the decision whether to combine the tenant-based and certificate project-based waiting lists should be left to local choice by individual HAs. The rule removes the proposed requirement to use the same waiting list for the tenant-based programs as for the HA's project-based certificate program.

The rule provides that an HA may merge the waiting list for tenant-based assistance with HA waiting lists for admission to other assisted housing programs—including project-based programs administered by the HA (such as the project-based certificate program or the public housing program). The decision whether to merge the program waiting lists rests in the discretion of the HA. If the HA elects to merge the program waiting lists, selection from the merged waiting list is subject to HUD regulations and requirements for each of the covered programs. [§ 982.205(b)(1)]

Management of the Waiting List

An HA must give public notice that the waiting list is open. The HA may adopt criteria defining who can apply, but the limitations must be stated in the public notice. [§ 982.206] The final rule adds a new provision clarifying that the HA may not arbitrarily refuse applications when the waiting list is open. The rule now provides that if the waiting list is open, the HA must accept applications from families who meet the criteria in the HA notice unless there is a "good cause" for not accepting the application, such as a denial of assistance for one of the grounds listed in the regulation. [§ 982.206(b)(2)]

Comments ask HUD to provide guidance on how and when to "purge" or "update" the waiting list. They state that the rule should not allow the HA to drop families who fail to demonstrate continued interest in assistance under the program. Comments state that the HA should have a rational process for updating the waiting list. They state that HAs should be required to establish procedures to protect applicants from being arbitrarily dropped from the waiting list.

HUD does not require an HA to purge its waiting list. Usually, an HA purges the waiting list when the list becomes unmanageable, or the HA is unable to contact families. HUD believes that the HA should retain discretion in management of the waiting list, in

determining when names should be dropped from the list, or in using a new or updated list. HUD has not adopted recommendations to add new restrictions on HA procedures for determining the active waiting list.

Individual applicant families do not have a right to be placed on the waiting list, or to a waiting list position. [§ 982.202(c)] The HA is charged with the task of distributing limited available assistance resources among eligible families. To this end, the HA is legitimately vested with broad discretion to develop reasonable local policies for managing the process for admission of eligible families. The HA policies may properly reflect local values and local choices.

The HA must comply with HUD requirements, including requirements for eligibility and preference. Within these requirements, HAs have wide latitude to develop a fair, orderly and economical process for admission of families. Because the universe of eligible families is generally much larger than the number of available slots, an HA needs to achieve a balance between the need to maintain a pool of families for admission to the program as openings occur, and the burden and expense entailed to support a waiting list that is disproportionate to available program resources. So long as the size of the HA waiting list is sufficient to fill available openings, an increase in the waiting list does not increase the number of families assisted. Rather, enlargement of the list absorbs funds that could otherwise be used for assistance to families—for example, by providing additional search assistance to selected families.

Under this rule, HAs may decide when and how to purge the waiting list. The exercise of this discretion does not affect any property or procedural rights of individual applicants. The rule provides that: "The HA administrative plan must state HA policy on when applicant names may be removed from the waiting list. For example, the policy may provide that the HA will remove names of applicants who do not respond to HA requests for information or updates, or who have refused offers of tenant-based assistance under both the certificate program and the voucher program." [§ 982.204(c)(1)]

The rule emphasizes that the HA's system for purging the waiting list may not prejudice the rights of a disabled applicant. The HA may not strike the name of a disabled applicant whose failure to respond to HA requests was caused by the applicant's disability. The HA must provide a reasonable accommodation that allows the disabled applicant a fair opportunity for response to the HA. [§ 982.204(c)(2)]

Comments ask HUD to require all HAs to accept completed applications by mail. The Department has not accepted this recommendation. HAs use many different methods of taking applications. The Department has no reason to impose a particular method for taking applications. HAs are encouraged to use various locally-determined methods of taking applications, including home visits to applicants who are unable to reach the HA office. However, HAs should be aware of their obligation to make the application process accessible to applicants with a full range of disabilities.

Preference in Admission

Residency Preference

As in the past, the rule provides that an HA may adopt a residency preference for admission of families on the HA waiting list. [§ 982.208] "Residency preference" means an HA preference for admission of families that reside in a specified area, including a family with a member who works or has been hired to work in the area. "Residency preference area" means the specified area where a family must reside to qualify for a residency preference. [§ 982.208(a)]

The final rule also clarifies when an HA may establish a residency preference for a part of the HA jurisdiction. If HUD approves, an HA may adopt a residency preference that establishes a county or municipality as a residency preference area. However, an HA may not establish a residency preference for an area smaller than a county or municipality. [§ 982.208(c)] An HA may elect to use a separate waiting list for a county or municipality. [§ 982.205(a)(1)]

In addition, the final rule provides that selection for admission to the program may not be based on where a family lives before admission to the program. As an exception to this prohibition, the rule provides that an HA may target assistance for families who live in public housing or other federally assisted housing. [§ 982.202(b)(2)]

The rule provides that an HA may use a residency preference either (1) as a "ranking preference"—to select among federal preference holders, or (2) as a "local preference"—to select among families that do not hold a federal preference. [§ 982.208(f)] Applicants with family members who work or who have been hired to work in the residency preference area must be treated the same as families that reside in the residency preference area. [§ 982.208(d)] A residency preference may not be based on how long the family has lived in or worked in the HA jurisdiction or the residency preference area. [§ 982.208(e)] A residency preference must be approved by HUD. [§ 982.208(b)]

Some public comments approve local residency preferences. Other comments object to such preferences.

Comments claim that HA residency preferences are not authorized under the preference statute, arguing that such preferences do not further any other national housing objective. HUD does not agree with this comment. Nothing in the preference statute precludes use of residency preferences.

In admission of families who qualify for the federal preference, federal law does not dictate the order of admission among preference holders. An HA may adopt a residency preference for admission of federal preference holders who are local residents before admission of federal preference holders who are not local residents.

In a non-federal preference admission, the law allows broad scope for HA adoption of local preferences to meet "local needs and priorities". The local need and priority may accommodate the desire to serve local residents before families who do not reside in the community. The law provides that the purposes of a local preference "may *include*" a preference adopted to achieve statutory objectives of national housing policy. The listing of preference purposes in the law is not an exclusive enumeration of the purposes for which the HA may adopt a local preference. In addition, the adoption of a local residency preference may be consistent with the objective of providing housing to local residents in accordance with the broad objectives of national housing policy. [§ 982.209(a)]

Comments state that an HA should use a single waiting list for the whole HA jurisdiction. Other comments state that HUD should not permit an HA to establish a separate waiting list for an area smaller than a county. Comments recommend that a large-area HA should be allowed to maintain a separate waiting list or preference for residents of a "reasonable subdivision" or region of the HA jurisdiction.

In the tenant-based programs, an HA residency preference affects entry to the housing program, and availability of the HA's housing subsidy resources for applicant families. However, the use of a residency preference does not affect geographic mobility of families once admitted to the program. During the first year after admission, all families may

move anywhere in the HA jurisdiction. After the first year in the program, families may move anywhere in the State or metropolitan area under statutory portability procedures. (For a family that lives in the HA's jurisdiction when the family applies for assistance, the right of portability applies as soon as the family is admitted to the program.)

Comments state that local residency preferences must comply with civil rights requirements, and should be approved in advance by HUD Fair Housing and Equal Opportunity. Comments also state that HUD should not approve a residency preference that would have a "racially exclusionary effect". The comments also allege that HUD routinely approves HA residency preferences, and that HUD approval is not founded on an adequate fair housing analysis.

HUD emphatically agrees that HA admission policies, including any residency or other preference, are subject to civil rights requirements. HA selection policies are included in the HA administrative plan and the HA equal opportunity plan.

As in the past, any residency preferences must be submitted for review and approval by HUD. The Department will be undertaking a full notice and comment rulemaking on standards or procedures for approval of HA residency preferences.

Federal Preference: General

Under federal law, a housing authority with a Section 8 certificate or voucher program must give preference for selection of families that are:

(1) Involuntarily displaced.

(2) Homeless or living in substandard housing.

(3) Paying more than 50 percent of income for rent.

These are known as the "federal preferences".

The law requires federal preference for at least 90 percent of the families who initially receive tenant-based assistance in a one-year period. For the other 10 percent of admissions, the HA is not required to award a federal preference.

The new rule establishes the same federal preference requirements and non-federal preference admission limit for the tenant-based certificate and voucher programs. The rule provides that at least 90 percent of total waiting list admissions to the Section 8 tenant-based programs in each successive one-year period must be families that qualify for federal preference (if federal preference holders are available on the waiting list). However, up to ten percent of such admissions during the year period may be families that do not qualify for federal preference. [§ 982.207(b)]

This rule amends requirements for federal preference selection of assisted families in the Section 8 certificate and voucher tenant-based programs. The National Affordable Housing Act of 1990 (NAHA) enacted changes concerning HA preferences in selecting Section 8 program participants. [1990 NAHA, Section 545, Pub. L. 101–625, 104 Stat. 4218–4220] Later legislation provides that the NAHA Section 8 preference changes must be implemented by April 26, 1993, through a notice and comment rulemaking. [Housing and Community Development Act of 1992, Section 104, Pub. L. 102–550, 106 Stat. 3684] This rule implements the NAHA preference changes for the certificate and voucher programs.

Comments state that an HA needs clarification of federal preference requirements for consistent program administration. The rule is re-written and re-organized for greater clarity in how to apply the statutory preferences. For the same reason, the rule also includes a number of new or revised definitions of preference terms.

However, the rule has left largely unchanged the regulatory definitions of the three statutory preferences. With HUD field office approval, an HA can adopt local modifications of the standard preference definitions.

The old rule stated procedures that could be used by an HA to verify the federal preference claimed by an applicant family. However, an HA was not required to use these procedures. Since the verification procedures are not mandatory, they need not be stated in the rule. The final rule deletes the description of optional verification procedures.

Limit on Non-Federal Preference Admissions

Under the law, federal preference applies for 90 percent of the families who "initially receive assistance in any 1-year period". [42 U.S.C. 1437f(d)(1)(A)(i) (certificates) and 1437f(o)(3)(B) (vouchers)] Public comments object to the 10 percent limit on non-federal preference admissions, and challenge the value of the statutory federal preference scheme. Comments state that assistance should be distributed first-come first-served. Comments state that the rule should increase the permitted percentage of non-federal preference admissions, so an HA can serve more families who do not qualify for federal preference—such as the working poor or families who need help to become economically self-sufficient; families at risk of becoming homeless; families in rural areas.

Comments state that the federal preference requirements produce much paperwork for little benefit. Almost all families that are income eligible also qualify for federal preference. By contrast, other comments assert that only a fraction of waiting list families qualify for federal preference, and that 10 percent of admissions is not a sufficient allowance for non-preference admissions. Commenters doubt that the preference requirements are effective in achieving self-sufficiency and equity. Others object to the difference in the percentage of non-preference admissions allowed by the law for public housing (50 percent), Section 8 project-based assistance (30 percent) and Section 8 tenant-based assistance (10 percent). Many comments are criticisms of the statutory preference requirements, rather than objections to HUD's implementation of the law.

Comments indicate that the regulation should clarify how to apply the limit on non-federal preference admissions. Should the limit be tracked program-by-program? Does the count of families that initially "receive assistance" include a family that receives a certificate or voucher from the HA, or only count if the HA has executed an assistance contract for the family? What is the time period for applying the local preference admission limit? Comments state that the rule should make clear that the requirement to admit a federal preference holder before a non-federal preference holder does not apply to a local preference admission within the 10 percent limit.

The rule provides that: "'Local preference limit' means ten percent of total annual waiting list admissions to the an HA's tenant-based certificate and voucher programs. In any year, the number of families given preference in admission to the HA tenant-based certificate program and voucher program over families with a federal preference may not exceed the local preference limit." [§ 982.207(b)(1)]

Under the old certificate and voucher program rules, the 10 percent limit on non-federal preference admissions was applied separately for admissions to each program. In this rule, the limit applies to total waiting list admissions to the HA tenant-based certificate and voucher programs, rather than as a limit on admission to each separate tenant-based program. The HA is not required to apply the 10 percent limit in each separate tenant-based program, so long

as the HA does not breach the limit for admissions to both programs together.

The statutory preference quota applies to a family that "initially receives assistance" in the certificate or voucher program. [42 U.S.C. 1437f(d)(1)(A)(i) (certificates) and 1437f(o)(3)(B) (vouchers)] Under this rule, "admission" for tenant-based assistance is defined as the effective date of the first HAP contract executed by the HA for a family in a tenant-based program. [§ 982.3] The HAP contract is effective on the first day of the initial lease term. The term of a HAP contract for tenant-based assistance follows the term of the lease between the family and the owner. Calculation of the local preference limit, and of non-federal preference admissions charged against the limit, does not include cases where the HA has only issued a voucher or certificate to an applicant family, but the initial lease term has not commenced.

Under this rule, the local preference limit on admission of families that do not qualify for federal preference only applies to admissions from the HA waiting list. The local preference limit does not apply to a "special admission" using funding awarded to the HA to provide assistance for specific families. For example, the federal preference requirement and local preference limit do not apply if HUD has given the HA funding for specific families in a specific project, such as a family living in a project sold by HUD. Non waiting list admissions are not included in the base of program admissions to which the federal preference percentage is applied. In addition, such admissions are not counted against the 10 percent limit on non federal preference admissions. [§ 982.207(b)(2)]

The law mandates a "preference" in selection of families. The law therefore implies that federal preference applies when the HA is exercising a choice between a qualifying family and a non-qualifying family. In such an admission, the HA must "prefer" a qualifying family over a non qualifying family. Conversely, however, if a qualified family is not available for admission, the HA is not presented with a choice between a qualifying and a non-qualifying family, and is not required to give preference to a qualifying over a non qualifying family.

Under the proposed rule, federal preference requirements would only apply to admissions where there is a choice between a federal preference holder and a non federal preference holder. Otherwise such an admission would not be included in the computation of families which initially receive assistance during the year (the base to which the statutory percentage applies), and selection of the family would not be counted against the 10 per cent limit on non federal preference selections.

For ease of administration and understanding, the final rule changes the proposed procedure for calculating and applying the limit on non federal preference admissions. In this rule, all waiting list admissions (that is, all admissions other than a "special admission") are included in the base used to determine the 10 per cent local preference limit on non federal preference admissions. The base is not limited to admissions where there is a choice between a federal preference holder and a non-federal preference holder.

However, if a federal preference holder is not available, the admission of a family that does not qualify for preference does not count against the federal preference limit. The final rule provides that the 10 percent local preference limit only applies to the admission of a non-qualifying family "over families with a federal preference." [§ 982.207(b)(1)] If a federal preference holder is available for admission, the admission of a non-federal preference family is counted against the 10 per cent local preference limit. Conversely, if a federal preference holder is not available for admission, the admission of a non-federal preference holder is not counted against the HA's 10 percent local preference limit.

The federal preference requirements and limit also do not apply when a family is received in an HA's tenant-based program under portability procedures. The rule clarifies that in applying local preference limit for a receiving HA, the beginning of assistance for the portability family is not counted against the receiving HA local preference limit. [§ 982.207(b)(3)] However, admission of the family is counted against the initial HA's local preference limit.

The local preference limit applies to admissions "in any 1-year period". The rule does not prescribe the HA choice of an appropriate year period for applying the limit, such as the calendar year, the federal fiscal year or the HA fiscal year.

Types of Preference

In the vocabulary of the proposed rule, HUD distinguished between "federal preferences" and other "local preferences". As used in the proposed rule, the term "local preferences" would refer to HA admission preferences adopted by an HA to meet local needs and priorities, including preferences used to select between families that qualify for federal preference (admissions that count toward the 90 per cent of federal preference admissions), as well as preferences used to select between families that do not qualify for federal preference (selections counted against the 10 per cent limit on non federal preference admissions).

In the text of the law for the Section 8 certificate program, the term "local preferences" refers to preferences used in selection of families who do not qualify for a federal preference (subject to the 10 per cent limit). For such "remaining assistance" the HA must give preference under a system of "local preferences" established by the public housing agency in writing and after public hearing to respond to local housing needs and priorities. [42 U.S.C. 1437f(d)(1)(A)(ii)] The voucher statute refers to a "system of preferences" established by the HA for this purpose. [42 U.S.C. 1437f(o)(3)(B)]

This final rule adopts the terminology used in the certificate statute. In the rule, the term "local preference" refers only to a preference used by the HA to select among waiting list families without regard to their federal preference status. [§ 982.3 and § 982.207(a)(3)(iii)] The rule has also added a new term "ranking preference", designating a preference used by the HA to select among families that qualify for a federal preference. [§ 982.3 and § 982.207(a)(3)(ii)] To summarize, the HA scheme for selection from the waiting list may comprise three types of preference: a federal preference directed by federal law for at least 90 percent of waiting list admissions, a ranking preference used to select among federal preference holders, and a local preference used to select among families that do not qualify for federal preference.

Drug Crime Eviction: Disqualification for Preference

The rule implements legislation that denies federal or local preference for a person or family evicted from Section 8 or public housing in the last three years because of drug-related criminal activity. [1990 NAHA, Section 545, 104 Stat. 4218–4220] The proposed rule would only have denied a federal preference. The rule is broadened to provide that the evicted family may not be granted a federal preference, local preference or ranking preference. [§ 982.207(f)] An applicant family may not be granted a preference if any member of the family was evicted in the last three years from Section 8 housing (project-based or tenant-based) or from

public or Indian housing because of drug-related criminal activity.

Public comments largely approve denying an admission preference to persons who were evicted from assisted housing for drug-related criminal activity. However, comments note that implementation of this requirement involves the HA in screening for prior behavior of applicants. In the Section 8 tenant-based programs, the HA is generally prohibited from screening program applicants as prospective tenants.

By law, the family may not be granted a federal or local preference if the family was evicted for drug-related criminal activity in the last three years. Comments urge HUD to set a "statute of limitations" on denial of preference for drug-related criminal activity, asserting that the rule should allow admission of person who have paid their debt to society.

This rule follows the limitation prescribed in the law. Under the law and this rule, preference is denied only if the family member was evicted in the last three years, but is not denied for an eviction prior to that time. The limitation in the law is pegged to the time of eviction for drug-related criminal activity, rather than the time when the crime was committed. The statutory scheme should not be complicated by adding a secondary limitation based on when the person committed a crime for which the person was evicted in the last three years.

Comments assert that families whose members engage in drug crime should be barred from the program, not merely denied an admission "preference". The HA should not be required to place the family on the waiting list.

The federal preference scheme governs the order of admission among families otherwise eligible and qualified for admission. However, the statute and regulation requiring denial of an admission "preference" because family members were evicted from assisted housing because of drug related criminal activity do not affect at all the independent authority of the HA to deny program admission for drug-related criminal activity, or for other bases allowed under the rule. The allowable grounds for denying assistance are explicitly listed in the program rules. (Currently at § 882.210 for the certificate program and § 887.403 for the voucher program. These provisions will be combined and conformed in the second stage of this unified rule.) Program regulations provide that the HA may deny assistance if a family member has engaged in drug-related or violent criminal activity. [For the certificate program, see § 882.118(b)(4) and § 882.210(b)(4)] If the HA has grounds for denial of assistance, the HA is not required to list the family on the waiting list, or to admit the family off the waiting list.

Comments state that the HA should be permitted to deny a preference even if the family was not evicted for drug-related criminal activity. They recommend that the HA should be permitted to deny preference if the family was evicted for other reasons, or moved out before eviction, or if the family violated program requirements.

If a family qualifies for a federal preference under the HA selection procedures (including the HA definition of the individual federal preferences), and was not evicted for drug-related criminal activities, the HA may not deny the federal preference. However, the HA may deny admission to the tenant-based programs for any of the grounds stated in the program regulations, such as failure to pay public housing rent, or fraud in a federal housing program. In addition, since preferences for selection among federal preference holders are not prescribed by federal law or program rules, the HA is free to adopt a system of ranking preferences to reflect local policies and concerns (so long as the preference system does not incorporate prohibited selection criteria).

Comments ask the meaning of "drug-related criminal activity". Comments note that there should be objective standards for determining when a family member has engaged in such activity, such as arrest or conviction. The term drug-related criminal activity is defined in the law and rule. [42 U.S.C. 1437f(f)(5); § 982.3] The definition covers both illegal dealing in drugs (manufacture, sale or distribution) and illegal use of drugs. The term embraces drug crimes that are illegal under State or federal law. The definition of a specific criminal drug crime is found in the State or federal criminal codes and caselaw that define the elements of a criminal act. In principle, the determination that a family member was evicted for drug-related criminal activity does not depend on an arrest or conviction, though the fact of an arrest or conviction may facilitate the HA determination whether the family member was evicted because of the crime.

Comments point out the practical problems in determining whether family members were evicted from Section 8 or public housing for drug-related criminal activity. Comments remark that it will be hard to implement the preference disqualification without a national tracking system. An HA does not know what happened in another program or jurisdiction.

HUD agrees that it will not be easy to enforce the statutory denial of preference for families evicted for drug-related criminal activity. For families evicted by a Section 8 owner, there may be no records, or readily accessible records, of such eviction. For example, local court records may show only that the court issued a judgment or order of eviction, but without stating the grounds, and may not identify the names of residents other than the defendant tenant. The HA is most likely to know about prior drug eviction only if the family lived in the HA's own public housing and was evicted by the HA itself. HAs may be forced to rely largely on the representation or certification by the applicant family that no family members were evicted for drug crime from a Section 8 or public housing program in the three preceding years.

By contrast, it may be easier for an HA to simply deny admission to the program because of drug-related or violent criminal activities by family members (rather than to deny a *preference* because of such activities, or because of an eviction for such activities). This HA determination does not require a finding that the family had also been evicted for the criminal activity.

The law provides that the HA may grant a federal or local preference if the evicted "tenant" has completed an HA-approved rehabilitation program. In this context, HUD construes the word "tenant" as referring to a person who engaged in drug-related criminal activity at a prior residence. The rule provides that the HA may grant a selection preference to a family with a member evicted in the last three years for drug-related criminal activity "if the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA". [§ 982.207(f)(1)]

The law also provides that the HA may "waive" the preference prohibition under standards established by HUD. 42 U.S.C. 1437f(d)(1)(A)(iii) and 42 U.S.C. 1437f(o)(3)(B). The standards must permit the HA to grant a waiver for an individual who "clearly did not participate in and had no knowledge of" the drug-related criminal activity, or when "circumstances leading to eviction no longer exist". The rule provides that the HA may waive the federal preference prohibition if the HA determines either that the evicted person "clearly did not participate in or

know about the drug-related criminal activity", or that the evicted person "no longer participates in any drug-related criminal activity". [§ 982.207(f) (2) and (3)]

Comments note that it is hard for an HA to determine if a family member has "successfully completed" a rehabilitation program, or knew of drug-related criminal activity in a prior unit. Comments recommend that HUD define the meaning of successful completion. HUD agrees that it will be hard for HAs to render a sound judgment on these questions. However, these problems are inherent in the waiver law as enacted by the Congress. Ultimately, the decision on whether to grant relief from the preference prohibition rests in the judgment of the HA. The HA may require the family to present information or testimony that will satisfy the HA. HUD will not prescribe additional definitions or instructions. Each HA is free to work out the most practical ways of dealing with these questions.

Denying Admission to Preference Holder

Comments ask if the HA can deny assistance to a family that was previously terminated from the Section 8 program, but applies for readmission and now qualifies for federal preference. The HA may deny admission to the tenant-based programs for the grounds listed in the program rules. (This rule on program admissions does not affect the current program rules on grounds for denial or termination of assistance in the certificate and voucher programs. This subject will be covered in the second phase of this rule.) As previously remarked, the federal preference scheme affects the order of admission of otherwise qualified families, but does not affect the determination of who may be qualified for admission. The allowable grounds for terminating assistance to a participant are also grounds for denial of assistance. If there are proper grounds for denial, the HA may refuse listing on the waiting list without regard to the family's federal preference status.

Under the current program rule, behavior in a prior tenancy is not a ground for denial of assistance. Comments state that a family that causes damage or infestation to a prior residence should not qualify for federal preference. The proposed rule provided that a participant in the tenant-based programs is responsible for family-caused damage to an assisted unit, and for infestation caused by poor family housekeeping. [See Subpart L of the February 24, 1993 proposed rule. 58 FR 11352 et seq.]

Provisions on family obligations, and on grounds for denial of assistance will be included in the second phase of this rule. At this time, family-caused damage or infestation in a prior assisted or unassisted unit is not a ground for denial of assistance. Moreover, such behavior is not grounds for denying a statutory federal preference for which the family is otherwise qualified. In development of the rule, HUD will consider whether the HA should be authorized to deny admission for such behavior in prior assisted or unassisted occupancy, not just for such behavior as a participant in the Section 8 tenant-based programs.

Denying Claim of Federal or Other Preference: Procedure

Comments state that the rule should require the HA to provide the same procedural protections when the HA denies a claim of Federal preference as for a denial of assistance. The rule provides that the HA must give the applicant a brief statement of the reasons for a determination that the applicant does not qualify for federal preference, and must afford the applicant an opportunity to meet with an HA representative to review the HA determination. [§ 982.210(d)(1)] The same procedures are used under the existing rule. In addition, the final rule provides that the HA must give an applicant the same opportunity for review of the HA's decision denying a ranking preference (among Federal preference holders), or a local preference (among families that do not qualify for Federal preference).

HUD believes the procedures provide adequate opportunity for a second look at an HA determination denying a federal, local or ranking preference. The HA must determine federal or other preference for the great mass of program applicants, in the routine processing of each individual application for admission. A decision granting a preference does not assure ultimate admission. Most HAs have long waiting lists. After listing, federal and other preference holders may wait years for admission to the program.

Federal Preference: Definitions

Federal law requires a preference for displaced families, families living in substandard housing and families with an excessive rent burden. The preference rule defines each of these preferences. Comments recommend some revisions of these definitions. Comments state that an HA should have authority to grant exceptions to the standard preference definitions in the rule.

For the most part, this rule does not substantially change the existing regulatory preference definitions. Under the rule, the HA has room to tailor the definition of each federal preference to local circumstances and local preference policy. If the HA wants to use a different or modified preference definition, the HA may submit an alternative definition for review and approval by the local HUD office. [§ 982.210(a)] In addition, the HA may adopt its own procedures to verify that an applicant qualifies for a federal preference. [§ 982.210(c)(3)(ii)] The HA does not have to get HUD approval before implementing its own verification procedures.

Comments note that HAs need guidance in interpreting the rule. In a program handbook, HUD will furnish additional guidance on how to interpret and apply the rule.

Involuntary Displacement Preference

Displacement by domestic violence. The definition of involuntary displacement gives federal preference to a family that is forced to move because of physical violence by a member of the household. [§ 982.211(b)(4)] This preference allows other household members to move away from a spouse or other person who has abused members of the family.

The applicant must certify that the former abuser will not reside with the applicant family unless the HA has given advance written approval. If the abuser returns to the family, household members are again exposed to the threat of domestic violence. [§ 982.211(b)(4)(iii)(B)] The purpose of the certification is two-fold: to minimize or sanction cases where there is a bogus claim for federal preference because of domestic violence, as well as cases where the abuser's return to the household defeats the purpose of the federal preference.

Comments support the certification requirement, but recommend that the rule provide that violation of the certification is grounds for termination from the program. The recommendation is adopted. The rule provides that if a family is admitted on the basis of this preference (involuntary displacement because of domestic violence), the HA may deny or terminate assistance for breach of this certification. Composition of the assisted family must be approved by the HA. The HA must approve return of the former abuser to the assisted household. Thus the HA may also deny or terminate assistance where the family has not asked and obtained HA

permission for occupancy by a former family member.

In any individual case, the decision to deny or terminate assistance for this reason lies in the discretion of the HA. The HA "may" terminate assistance, but is not required to exercise this authority. Even if the family was admitted with federal preference, so that the family can escape a threat of domestic violence, changes in family circumstance after admission may justify continued assistance for the family, for example, if the former abuser has received therapy or counselling that appears to minimize likelihood of recurrence.

Displacement by owner action. The definition of involuntary displacement gives preference to applicants forced to vacate a dwelling unit by certain types of owner action, such as owner action that withdraws the unit from the rental market. [§ 982.211(b)(3)]

Comments recommend that involuntary displacement should not cover a displacement because a landlord evicts the family, but should only cover displacement because of disaster, displacement by a government program, or displacement because of spousal abuse.

No change is required. Under the rule, a family that is evicted by an owner for violation of the lease does not qualify for preference. To qualify for preference, the family must have "met all previously imposed conditions of occupancy". [§ 982.211(b)(3)(ii)(B)] In addition, with HUD approval, an HA may adopt an alternative definition that specifically excludes displacement because of owner eviction.

Comments suggest that in a case where an adult "child" is forced out of the parent's unit, the child should not be treated as involuntarily displaced unless there was a prior rental agreement between the owner and child. This comment may reflect concern that in a family context an alleged involuntary displacement may not be genuine. However, HUD is not persuaded that this change should be included in the national definition of involuntary displacement. In any case, an individual HA may incorporate the suggested modification in the local definition.

Displacement by government action. The definition of involuntary displacement in the rule gives preference to a family displaced by government action in connection with code enforcement, or with a public improvement or development program. [§ 982.211(b)(2)] Comments argue that displacement because of code enforcement results from private action, and should not be treated as displacement by government action. Comments claim that the regulatory definition rewards the building owner, as well as a family which "elects" to live in a building that violates the code.

HUD does not agree that the grant of federal preference for a family that is forced to live in sub-code housing is an inappropriate "reward" for a family that is forced to live in such circumstances. Moreover, the preference is not a reward for the owner of the housing. The family has the right to move to any available standard unit, not just to another unit of the same landlord. The issuance of a certificate or voucher helps the family move from substandard housing.

Some HAs claim that families move into substandard housing in order to qualify for federal preference, and thereby speed up access to subsidized housing. It is likely that such cases occur only or principally for HAs that do not have long waiting lists of federal preference holders, and where federal preference qualification may lead to rapid entry to the programs. HAs that want to minimize possible abuse of the federal preferences for persons displaced by code enforcement, or for residents of substandard housing, may adopt ranking preferences based on duration of a family's residence in substandard housing. Alternatively, with HUD approval, the HAs could adopt modified preference definitions designed to deal with this problem.

Displacement to avoid reprisals. The definition of involuntary displacement is amended to permit the HA to grant federal preference status if there is a danger of reprisal against a family member who provides information on criminal activities to a law enforcement agency. The HA may only grant a preference on this basis if the law enforcement agency has carried out a threat assessment, and recommends rehousing a family to avoid or minimize a risk of violence against family members. [§ 982.211(b)(5)]

Displacement by hate crimes. The definition of involuntary displacement is amended to permit the HA to grant federal preference status for a family displaced by a "hate crime"—defined as actual or threatened violence or intimidation against a person or the person's property because of race, color, religion, sex, national origin, handicap or familial status. [§ 982.211(b)(6)] An applicant qualifies for preference if a family member is a hate crime victim, and the family has been forced to vacate its housing, or fear has destroyed the family's peaceful enjoyment of its home. The HA must determine that the hate crime occurred recently or is of a continuing nature.

Displacement: Need for accessible unit. The definition of involuntary displacement is amended to provide that an applicant is involuntarily displaced if:

—A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

—The owner is not legally obligated to make changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation. [§ 982.211(b)(7)]

Displacement: HUD disposition of multifamily project. A recent law amends requirements governing HUD disposition of multifamily rental projects (that were previously insured or assisted under the National Housing Act or were subject to a loan under Section 202 of the Housing Act of 1959). [Pub. L. 103–233, 108 Stat. 342, April 11, 1994] This law amends the various federal preference statutes to specify that the preference for families that are involuntarily displaced applies to displacement "because of disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978". [Multifamily Housing Property Disposition Reform Act of 1994. Section 101(c) ("Clarification of Federal preferences"), 108 Stat. _____, amending 42 U.S.C. 1437f(d)(1)(A)(i) (certificates) and 1437f(o)(3)(B) (vouchers)]

The rule is amended to reflect this statutory change. [§ 982.211(b)(8)] A family that is displaced because of the HUD disposition may be assisted either as a federal preference admission from the HA waiting list in accordance with the new law, or as a special admission (non-waiting list) with funding provided by HUD for this purpose [§ 982.203(b)(2)].

Substandard Housing

Substandard housing—Definition. The statute and rule give admission preference to families that are homeless or live in substandard housing. The rule defines when a unit is considered substandard. [§ 982.212(a)]

Public comments recommend several changes in the definition of substandard housing. In the existing preference rule, and in this final rule, substandard housing is described by the physical attributes of the unit. Conversely, substandardness is not defined by who occupies or will occupy the unit. Comments recommend that the HA should be allowed to treat as substandard—housing that is "over-

crowded", or that is occupied by more than one family, or that does not meet HA occupancy standards (for the configuration of persons occupying the unit).

HUD has not followed the recommendations. A definition based on unit occupancy patterns, as recommended by comment, would be more subject to manipulation. Families can claim over-occupancy to accelerate admission to the program. Over-crowding is harder to verify than the physical condition of the unit. With HUD approval, an individual HA can elect to adopt a local definition of substandard housing that covers housing that is over-crowded.

Comments state that a disabled person who needs a home adapted for disabled occupancy should be treated as an occupant of substandard housing. However, a unit is not substandard merely because the unit is inappropriate for its disabled occupant. Instead, it is more appropriate to treat a disabled person who cannot continue to live in an unsuitable unit as a person who has been involuntarily displaced, and to afford a federal preference on this basis. In addition, for admissions not subject to federal preference (10 percent of annual waiting list admissions), an HA may adopt a local preference for admission of disabled persons.

Substandard Housing: Family in Public Housing

If a family is living in public housing, and the family's apartment is in fact substandard, the family qualifies for federal preference. Comments agreed that a family should not be denied a federal preference simply because the unit where the family lives is public housing. In the certificate program, the law provides that a family may not be denied a preference "solely because the family resides in public housing". [42 U.S.C. 1437f(d)(1)(A)(i)]

Comments note that a family living in substandard public housing may not be able to verify that the unit is substandard. However, if the family is living in public housing run by the same HA (to which the family is applying for Section 8), the HA is the family's present landlord. An HA can readily verify if its own public housing unit is substandard.

Of course, an HA may be embarrassed by the claim that the family's public housing unit is substandard. However, the HA cannot properly refuse verification for this reason, or refuse to take actions to determine whether the unit is substandard.

Preference for Homeless

1990 legislation confirms that the preference for families in substandard housing applies to families that are homeless or living in a shelter for the homeless. Pub. L. 101–625 (Cranston-Gonzalez National Affordable Housing Act), 11/28/90, section 545, 104 Stat. 4218–4219. Since HUD's rules already provide that homeless families qualify for the federal preference, no substantive change is required in this rulemaking. [§ 982.212(c)]

The existing rule defines the term "homeless family". Comments state that each locality should be allowed to define homelessness. An HA may ask HUD approval to use local definitions of federal preference terms, including local definitions of "substandard housing" and "homeless family". [§ 982.210(a)]

Comments state that HA admission of a homeless family should be based on the family's current status, but should not be based on the cause of homelessness. HUD has not adopted this comment. In addition, in admission of homeless families, the HA may use ranking preferences based on the cause of homelessness.

Federal or Local Preference for Resident of Temporary or Transitional Housing

A family may currently reside in a homeless shelter or another form of temporary housing. Under the HA preference system, the family may qualify for a federal or local preference.

The proposed rule provides that the HA may adopt a local preference for families that move from "transitional housing or a homeless shelter". The 1990 preference law explicitly permits non-federal preference admission of families who "reside in transitional housing . . ." (that is assisted under the Mckinney Act). [42 U.S.C. 1437f(d)(1)(A)(ii) (certificates) and 1437f(o)(3)(B) (vouchers)]

Comments assert that a resident of transitional housing should be given a local preference. Other comments correctly point out that a family residing in a homeless shelter will generally qualify for federal preference, and state that the family should not be admitted under the authority for local preference.

The rule does not list examples of the statutory local preference, including the HA option to grant a local preference for residents of transitional housing. The HA does not need to use its local preference admissions quota for families who qualify for federal preference. Under existing preference rules, a family that is living in transitional housing or a homeless shelter may qualify for federal preference.

The old preference rule provides that the definition of a "homeless family" includes a family living in a supervised "shelter" that is designed to provide "temporary living accommodations". The old rule also specifies that such shelters "include" certain types of housing, such as "transitional housing for the mentally ill". However, the listing of these shelter types is illustrative, not exclusive, and includes transitional housing for populations other than the mentally ill. The existing homeless family definition also allows the HA to give a preference for persons in a "temporary residence" for persons to be institutionalized—a category also embraced in the broader preference for persons in temporary living accommodations.

In this rulemaking, the preference for persons living in temporary accommodations is left substantially unchanged. However the list of shelter type examples is revised to explicitly cover "transitional housing" broadly, instead of referring to transitional housing "for the mentally ill". [§ 982.212(c)(2)(ii)(A)] This revision does not change the substantive import of the rule, and is merely intended to make clear that the preference is not restricted to residents of transitional housing for the mentally ill, but applies broadly to residents of temporary housing accommodations, including transitional housing.

Comments suggest that when the HA offers a certificate or voucher to a family in transitional housing, the family should be allowed to wait for completion of transitional housing services without losing its place on the waiting list. HUD will not change the rule in response to this comment. The decision whether to hold a family's waiting list place should be left to the HA. However, the HA procedure may not discriminate against persons with disabilities.

Rent Burden

Treatment of energy assistance payments. Federal law gives an admission preference to families that pay more than 50 percent of income for rent. For this purpose, the rule defines "income" and "rent". [§ 982.213(b)]

A family may draw benefits under a program that helps the family pay for energy costs (utilities). The rule provides that if energy assistance payments are not included in family income, the payments are also subtracted in calculating the family's rent burden. [§ 982.213(b)(3)] This provision is not changed from the prior rule. Comments ask why energy

assistance payments are subtracted from rent.

The purpose of the rent burden calculation is to determine how much of a family's available income is consumed for payment of the family's rent. Energy assistance payments cover a portion of family utility costs. Energy costs that are covered by energy assistance payments are not an additional rent burden for the family.

The calculation of family income excludes payments under the HHS Energy Assistance Program. [58 FR 41287, 41288, August 3, 1993 (paragraph (v) on list of federally mandated exclusions)] Since such payments are not included in income, inclusion in rent burden of costs covered by the HHS payments would distort calculation of the family rent burden (essentially by double-counting energy costs: first by deducting from income, and second by counting as rent burden against the balance of family income).

Amount of rent. Comments ask if the HA can verify the amount *paid* as rent, instead of the amount *due* as rent. The statute is framed as a preference for families that "are paying" more than 50 percent of income for rent. Under the definition of "rent" in the existing rule, rent is the "actual amount due" under the family's lease.

In implementing the statutory rent burden preference, HUD defines "rent" as the amount a tenant is contractually bound to pay the owner as rent, not necessarily the amount that the tenant actually pays the owner against the monthly rent due under the lease. [§ 982.212(b)(2)(i)] A family's contractual obligation to pay rent is a better gauge of the family's rent burden, than the amount the family is able to scrape up for payment to the landlord. A family may be unable to pay the full rent, and may be under the shadow of eviction for non-payment. If the amount actually paid to the landlord is less than 50 percent of income, the family would not qualify for a preference based on the actual amount "paid" to the landlord. (The smaller the amount "paid" as rent, the more difficulty in qualifying for the rent burden preference.) In the present rule, as in the existing rule, the determination of rent burden is based on rent owed to the landlord.

Rent burden in rural areas. Comments state that some families don't qualify for rent burden preference because rural areas have lower rent. The comments urge flexibility in determining rent burden for rural families.

The percentage rent burden (50 percent) needed to qualify for preference is set by law. HUD does not have authority to allow use of a lower percentage in rural areas. If rural or non-rural families can rent units for less than the preference threshold, they do not qualify for the preference.

Preference for Public Housing Residents

Summary of Law and Rule

For the certificate program, a 1990 law provides that a family may not be denied federal preference or "delayed or otherwise adversely affected" in receiving tenant-based assistance "solely because the family resides in public housing". [42 U.S.C. 1437f(d)(1)(A)(i); 1990 National Affordable Housing Act, Section 545, 104 Stat. 4218–4219] The amendment was introduced by Congressman Bartlett to preserve Section 8 federal preference status of families on the Section 8 waiting list when admitted to public housing. [Transcript of May 21, 1990 markup by Housing Subcommittee of Housing Banking Committee] Another law provides that in selecting families for Section 8 certificate or voucher assistance a housing agency may not "exclude or penalize" a family solely because the family resides in a public housing project. [42 U.S.C. 1437f(s)]

For both tenant-based programs, the rule provides that if a public housing family was on the HA Section 8 tenant-based waiting list when admitted to the HA's public housing (since April 26, 1993), the HA federal preference determination must be based on the situation of the applicant at the time of admission to public housing (beginning of initial public housing lease). [§ 982.210(c)(4)(ii)]

Example

At the time a family is admitted to an HA's public housing program, the family is on the HA's waiting list for Section 8 tenant-based assistance. The family also qualifies for federal preference as a homeless family. The family keeps its federal preference status (homeless) on the Section 8 waiting list.

Preference Retention: Purpose and Effect

The new rule implements the law which provides that a family may not be denied federal preference or "otherwise adversely affected" in admission to the certificate program "solely because" the family resides in public housing. [42 U.S.C. 1437f(d)(1)(A)(i)] The law is a statutory exception to the broad federal preference requirement (that 90 percent of certificate admissions must be families who *currently* qualify for federal preference). The statutory exception does not apply to the voucher program. However, under the voucher law, for good cause HUD may permit an HA to admit more than 10 percent non-federal preference holders before families who qualify for federal preference. [42 U.S.C. 1437f(o)(3)(B)] HUD finds that the need for uniformity in administration of the tenant-based programs is good cause to require that HAs give preference for voucher admission of public housing residents who would not otherwise currently qualify for federal preference.

The new rule applies the same requirements for both Section 8 tenant-based assistance programs. An applicant for an HA's Section 8 program that is currently living in public housing of the same HA qualifies for Section 8 federal preference if the applicant was qualified for preference *at the time the applicant was admitted to public housing.* [§ 982.210(c)(4)(ii)] This provision only applies if the applicant:

(1) Was admitted to public housing on or after April 26, 1993—the statutory deadline for implementation of preference requirements in the National Affordable Housing Act of 1990. [Pub. L. 102–550, Section 104, October 28, 1992, 106 Stat. 3684]

(2) Was qualified for federal preference at the time of such admission.

(3) Was on the HA's Section 8 tenant-based waiting list at the time of admission to the same HA's public housing.

Preference Retention: Family Need

Federal preferences direct housing assistance resources to families with urgent housing needs. Usually, public housing residents do not currently qualify for federal preference. For the most part, public housing residents are not displaced, do not pay over fifty percent of income for rent (most public housing families pay 30 percent of adjusted income), and do not live in substandard housing.

Under the rule, federal preference for the public housing resident is based on the family's federal preference situation at the time when the family was admitted to public housing (if the family was on the HA's Section 8 waiting list when admitted to the HA's public housing program on or after April 26, 1993). Thus a family that was homeless when admitted to public housing, but is now living in secure and decent public housing, is treated the same as a homeless family on the street. Both families benefit from the federal preference for admission of families living in substandard housing.

In some cases, a public housing family will qualify for federal preference because of the family's current situation. For example, a family may currently live in a public housing unit that is substandard. Thus a public housing family may receive federal preference for admission to the Section 8 tenant-based assistance programs either (1) because of the family's preference situation when admitted to public housing, or (2) because of the family's current federal preference status. The rule provides that the HA may not deny any admission preference for which the applicant is currently qualified (federal, local or ranking preference) because the applicant already resides in public or other assisted housing. [§ 982.205(c)(1)]

HUD received many public comments on the proposed provision that allows a family to retain its federal preference status at the time of admission to public housing. Most comments strongly oppose this requirement. Comments state that scarce housing resources should be directed to families with the greatest need, not to families already residing in decent, safe and sanitary public housing. Some comments acknowledge that the regulation follows the intention of the law.

Comments assert that the language of the law does not support grant of a preference based on the family's situation at a past time, before the family entered public housing. Comments claim that the required preference retention unfairly delays or denies assistance to other families. The family's need and preference should be based on the condition of the family's current housing.

Comments state that the preference for public housing residents is unfair and harmful to:

—families that currently qualify for federal preference.
—families without federal preference.
—families living in other project-based assisted housing (non-public housing).
—families living in private housing.
—families not currently receiving any form of housing assistance.

Other comments commend HUD's implementation of the requirement for retention of federal preference. The comments state that the preference is essential so a public housing family is not locked into public housing projects which are highly segregated or disproportionally minority.

HUD notes that the grant of federal preference to public housing families that would not otherwise qualify for preference will necessarily operate to limit Section 8 openings for other families. Program selection is the competitive distribution of available openings. By requiring the retention of a family's original preference status, at the time of admission to public housing, the Section 8 rule carries out the specific purpose of the law—that a family may not be denied federal preference or "otherwise adversely affected" in admission to the Section 8 program because the family resides in public housing.

Preference Retention: Administration

Comments state that preference retention increases the HA administrative burden. To implement this requirement, the HA must track and verify the family's original preference status. By allowing HA public housing families to move to the HA Section 8 program, the rule will create public housing vacancy, turnover and financial burden.

Comments object that the preference retention rule treats public housing as transitional housing. The rule implies that public housing is bad housing, from which families are allowed to escape by operation of an artificial preference. Operation of the preference undercuts initiatives for improvement of public housing.

HUD agrees that the preference retention will cause public housing turnover and associated HA administrative costs. However, the rule faithfully implements the purpose of the law as expressed in committee markup. The law is designed to facilitate a family's move from public housing to Section 8. HUD is seeking repeal of the law. However, at this time, there is no way to avoid the costs and administrative burden of carrying out the law.

An HA must determine and verify the family's federal preference status at admission to the HA's public housing program. At the subsequent admission to Section 8, the HA can rely on information obtained for the prior determination and verification.

Comments state that the preferential admission of public housing families should not apply to more than five percent of annual admissions to the HA Section 8 program. This recommendation is not adopted. Under the law, HUD is not authorized to set a limit on the percentage of Section 8 housing admissions for which the HA is prohibited from denying a federal preference because a family resides in public housing.

Preference Retention: For Families on Section 8 Waiting List

Under the proposed rule, the retention of federal preference would apply if a family was on the Section 8 waiting list when admitted to public housing on or after *September 1, 1991*. Under this final rule, the retention of federal preference will apply to a family on the Section 8 waiting list when admitted to public housing on or after *April 26, 1993*. This date is the statutory deadline for rulemaking to implement the 1990 preference law (six months from enactment of the Housing and Community Development Act of 1992). [Pub. Law 102–550, October 28, 1992, Section 104, 106 Stat. 3684]

Comments object that the retention of federal preference only applies if a family is (1) on the Section 8 waiting list (2) at the time of admission of public housing (3) after a specified date. The comments state that preference retention should also apply to families which apply for Section 8 after admission to public housing.

Comments state that the preference retention should cover families admitted to public housing at any time in the past, or admitted since passage of the Cranston-Gonzalez National Affordable Housing Act (NAHA) on November 28, 1990 (prohibits denial of preference because a family resides in public housing). Comments state that the rule favors new public housing residents over older residents.

The Housing and Community Development Act of 1992 provides that the preference amendments under the Cranston-Gonzalez Act must be implemented through notice and comment rulemaking by expiration of the 180-day period beginning on the date of enactment of the 1992 law (October 28, 1992). The 180-day period expired on April 26, 1993. Although the Department did not complete the rulemaking by this deadline, the final rule provides that the retention of federal preference status applies to Section 8 waiting list families admitted to public housing on or after that date. Such families would have qualified for preference if the rule had been issued by the deadline date.

HUD has not adopted recommendations to go beyond the requirements of the law—by covering families that were admitted to public housing before April 26, 1993, or who applied for Section 8 after admission to public housing.

Public Housing Family: Denial of Preference

The rule provides that the fact that a family lives in public or other assisted

housing may not be used as a ground for denying a federal, local or ranking preference for which the applicant is currently qualified. [§ 982.205(c)(1)] If the family's public housing unit is substandard, the family qualifies for federal preference, the same as a resident of private substandard housing. Comments generally approve allowing a federal preference for a public housing resident who currently qualifies for federal preference.

Comments assert that the rule favors public housing residents over applicants in private housing, and is therefore unfair. The rule does not direct favored treatment for public housing residents (other than by implementing the law that allows a public housing family to keep the same preference status as at admission to public housing). Conversely, however, the rule does not prohibit the adoption of a ranking or local preference for residents of public housing. The rule provides that the HA may target assistance for families who live in public or other federally assisted housing. [§ 982.202(b)(2)]

Family Receiving HOME Tenant-Based Assistance

In the HOME Program, HUD allocates funds to State and local governments for support of affordable housing. [24 CFR part 92] A participating jurisdiction may choose to use HOME funds to provide tenant-based rental assistance for low-income families during a period of up to 24 months. Since the period of HOME rental assistance is limited, Section 8 tenant-based assistance may be used to provide continued rental assistance for a family after termination of the HOME subsidy.

A family may meet Section 8 federal preference criteria at the time the family begins tenant-based assistance under the HOME Program. Usually, the family does not qualify for preference while receiving the HOME subsidy. To facilitate the transition from short-term tenant-based assistance under the HOME Program, the HOME statute provides that recipients of HOME tenant based rental assistance qualify for Section 8 tenant selection preferences to the same extent as when they initially received the HOME rental assistance. [42 U.S.C. 12742(a)(3)(D)] As in the case of the public housing preference retention provisions discussed above, the HOME statute permits the family to retain its prior federal preference situation.

This rule provides that if a Section 8 applicant is currently receiving tenant-based assistance under the HOME program, the HA determines whether the applicant qualifies for Section 8 federal preference based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program. [§ 982.210(c)(4)(i)] The family must show that it qualifies for preference on this basis.

Local Preference

For non-federal preference admissions, the law provides that the HA may use a system of local preferences "to respond to local housing needs and priorities". In the vocabulary of this rule, the term "local preference" means a preference used by the HA to select among applicant families that do not qualify for federal preference. [§ 982.3, § 982.207(a)(3)(iii)] Each year, ten per cent of admissions can be families that do not qualify for federal preference.

The HA is not required to use or exhaust the 10 percent quota of admissions not subject to federal preference. The HA may elect to admit federal preference holders without drawing on the limit for local preference admission.

Preference Hearing

The law provides that local preferences must be established in writing and after public hearing. [42 U.S.C. 1437f(d)(1)(A)(ii) and 1437f(o)(3)(B); amended by 1990 NAHA, Section 545 (104 Stat. 4219), and 1992 Housing Act, Section 144 (106 Stat. 3714)] The law does not contain any parallel public hearing requirement for HA policies implementing the federal preference, or for HA preferences in selecting among federal preference holders (called "ranking preferences" in this rule). In the proposed rule, HUD proposed to require public hearing both for adoption of preferences used to select among federal preference holders, and also for adoption of preferences used to select among families not qualifying for the federal preference.

Comment: Some comments approve the requirement to conduct a public hearing on HA selection preferences, asserting that the hearing process will provide valuable input. Other comments oppose the hearing requirement. Comments claim that the hearing will be an administrative burden, or that the hearing will attract attention of special interest groups. HAs are able to establish other local policies without hearing. HUD review of the HA preference policy is a sufficient check on the HA policy.

Comments request that HUD relieve HAs of the hearing requirement in communities where there is a "CHAS" (Community Housing Affordability Strategy) that determines local needs and priorities. Comments suggest that HUD allow an HA to use a published local notice, instead of a public meeting or hearing. Comments ask whether, if the HA serves a large area, a hearing in one part of the area is sufficient.

Response: The solicitation of public comments may elicit helpful ideas or information, but necessarily entails some burden for the HA. In the final rule, a hearing is only required for adoption of preferences used in a non-federal preference admission, as required by the law. This rule provides that local preferences may be adopted after public hearing to respond to local housing needs and priorities. [§ 982.209] The HA is not required to adopt a hearing process for adoption of ranking preferences for selection among federal preference holders (representing 90 percent or more of HA admissions).

At this time, HUD will not attempt to dictate a set hearing procedure. The essence of the hearing requirement is that there should be a reasonable process for soliciting representative comment by interested publics, and for the comment to be "heard" (i.e., considered) by the HA. A variety of processes can be devised to satisfy the hearing requirement, and the process used need not be elaborate or expensive. The HA may consider appropriate ways of giving public notice—whether by publication in the local press, posting in HA offices and projects, notice to legal services offices or other service organizations, or notice to applicants. The rule does not require that the hearing must necessarily be cast as a "meeting" between HA representatives and the public, so long as the HA has a procedure for gathering and considering public comment. If the HA elects to frame the hearing process as an open public meeting, the rule does not prescribe any number of meetings or the number of hearing venues within the HA jurisdiction.

Comments object to requiring public hearings for local preferences already contained in the HUD-approved administrative plan, or ask if hearing will only be required for new proposed preferences. Comments state that hearing should only be required for a change in existing local preferences.

Under this rule, the local preference hearing requirements will be effective six months after publication of the rule (see "effective date" provision of rule). The hearing requirements apply to local preference admissions after expiration of the six month period. (The hearing requirements are stated in § 982.209(b).) After that point, the HA may not continue to use existing local

preferences until the HA has conducted the public hearing required by law and this rule.

Hearings are only required for HA selection preferences that are used for admission of families that do not qualify for federal preference. In admitting families that qualify for federal preference, HAs can continue to apply the scheme of federal and ranking preferences in the HA's administrative plan.

In a separate rulemaking, HUD proposed revisions of federal preference requirements for the public housing program (and for other assisted housing programs). [58 FR 44968 (August 25, 1993)] HA representatives asked whether an HA can hold a single hearing to consider at the same time local preferences to be used both in the HA's public housing program, and in its certificate and voucher programs. Nothing prevents an HA from conducting a single hearing for this purpose.

Purpose of Local Preference

For local preference admissions, the law leaves broad authority for an HA to develop a local preference system to meet local housing needs and priorities. The local needs and priorities "may *include*" certain possible purposes listed in the law, or "other objectives" of national housing policy. The law does not contain any comprehensive or exclusive enumeration of allowable local "needs and priorities". The law merely states that the "specific purposes" and "other objectives" are included among the local needs and priorities that may be served by adoption of a local preference.

In the proposed rule, HUD listed some examples of the purposes for which the HA may establish a system of local preferences, including preferences designed to achieve "other objectives of national housing policy".

Comments approve allowing HA discretion to adopt local selection preferences. Comments state that HUD should offer examples of the national housing policy objectives for which the HA may adopt a local preference. Comments stress that the HA should not be limited by the "examples" listed in the rule.

This final rule provides that the HA may establish a system of local preferences "to respond to local housing needs and priorities". [§ 982.209(a)] The law states that the local preference system may be designed to achieve "objectives of national housing policy affirmed by the Congress".

The local needs and priorities may include the objective to remedy unsafe and unsanitary housing conditions, and to improve housing opportunities for residents of the United States, particularly disadvantaged minorities, on a nondiscriminatory basis, or may promote other objectives of national housing policy affirmed by the Congress. For example, see the statements of national housing policy in the United States Housing Act of 1937 (which contains Section 8) [42 U.S.C. 1437]; and in the Cranston-Gonzalez National Affordable Housing Act of 1990 [Pub. L. 101–625, November 28, 1990, Section 102(3), 42 U.S.C. 12702(3).

An HA has broad discretion to adopt local preferences in accordance with local circumstances and local judgment. The final rule does not give examples of local preference purposes. The HUD program handbook will give examples of possible local preferences, and advice on how to set up a local preference system.

Other comments state that the HA preferences must not violate fair housing requirements, and should be subject to HUD review and approval. The HA policies for selection of program participants, including local preferences and ranking preferences, must be contained in the HA's administrative plan or equal opportunity plan. The selection policy must meet fair housing requirements. Residency preferences must be approved by HUD.

Particular Preferences

Comments recommend that the HA should have discretion to grant preference for an elderly person who lives in an assisted project, but who needs to move closer to family members or medical facilities. An HA may adopt a ranking or local preference for this purpose.

Comments recommend that HUD require the HA to grant a preference for a disabled veteran who is eligible for discharge from a hospital or nursing home. Under the rule, the HA may choose to adopt a ranking or a local preference for a disabled veteran who needs a rental subsidy to lease accessible standard housing. However, the rule does not force the HA to adopt such a preference.

The law provides that an HA may grant a local preference for the purpose of assisting "youth" after discharge from foster care. The proposed rule recited this optional local preference. Comments ask if the "youth" would have to live with an adult. The adoption of such a preference does not require any change in the criteria for admission of families to the HA program. If the HA chooses to adopt such a local youth preference, the HA may limit the preference to cases where a minor will live with a parent or guardian or other person capable of establishing and managing a household. The HA has the authority and responsibility to define the operation of its local preference.

Comments recommend that the rule allow a preference for the "near-elderly" (a person from 50 to 61 years of age). The HA has wide latitude to fashion its systems of ranking and local preference, and could adopt a ranking or local preference for admission of the near elderly.

Comments recommend that the rule allow HA's with a large jurisdiction to award preference to a family that wants to live in a certain "region" of the HA jurisdiction. This suggestion is not adopted. The rule continues traditional program policy that admission may not be based on where the family will live with assistance under the program. [§ 982.202(b)(3)] The tenant-based programs are designed to maximize the ability of poor families to choose where they want to live, and also to maximize opportunities for economic advancement by free choice of housing. An assisted family may move anywhere in the HA jurisdiction, or anywhere outside the HA jurisdiction under portability procedures.

The HA preference system may limit the number of families that may qualify for any ranking or local preference. [§ 982.207(a)(3)(iv)]

Selection by Random Choice or Time of Application

The proposed rule provides that date and time of application govern selection among families with the same preference status. Comments asked if the HA may select by "lottery" instead of date and time of application.

The proposed rule was not intended to prohibit selection by techniques of random choice among families on the waiting list. HUD agrees that use of a variety of random choice procedures may be a fair and workable way to distribute program openings among a large number of applicants. The rule clarifies, as originally intended, that use of date and time of application is not the only permitted technique for sorting among applicants in a given preference category. The final rule specifically sanctions use of random choice procedures for selection among applicants with the same preference status.

The rule provides that the HA must use one of two techniques to select among applicants with the same preference status (federal, ranking or

local preference): (1) Date and time of application, or (2) A drawing or other random choice technique.
[§ 982.207(e)(1)] In all cases, the selection process must be consistent with the preferences required by federal law and regulation (both the federal preference requirements, and the preference for elderly, disabled or displaced over other singles).
[§ 982.207(e)(2)] Whatever the process for selection of applicants, the HA must use procedures which provide a clear audit trail, that permits verification that each applicant has been selected in accordance with the method specified in the administrative plan.
[§ 982.207(e)(3)]

Findings and Certifications

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in connection with the proposed rule in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW. Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. The rule specifies to what extent preferences for admission of particular categories of applicants that are established by the local housing agency, in accordance with a statutorily-prescribed hearing procedure, may be used to admit participants. The only guidelines stated for the local agency's discretion are those required by the statute: the preferences are to respond to local housing needs and priorities. Since the rule merely carries out a statutory mandate and does not create any new significant requirements, it is not subject to review under the Executive Order.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule carries out the mandate of federal statute with respect to admission preferences.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing authorities or housing owners.

Regulatory Agenda

This rule was listed as sequence number 1691 under the Office of the Assistant Secretary for Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20471) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC 20410.

List of Subjects

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, chapters VIII and IX of title 24 of the Code of Federal Regulations are amended as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for part 813 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

§ 813.104 [Amended]

2. In § 813.104, paragraph (b)(2) is removed, and paragraph (b)(3) is redesignated as paragraph (b)(2).

§ 813.105 [Amended]

3. Section 813.105 is amended as follows:

a. In the first sentence of paragraph (a) introductory text, the words "five percent" are removed and the words "fifteen percent" are added in their place.

b. Paragraph (c) is removed and reserved.

c. Paragraphs (e)(2) and (e)(4) are removed, and paragraph (e)(3) is redesignated as paragraph (e)(2).

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

4. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

5. In § 882.103, the introductory text of § 882.103 is removed, and paragraph (b) is revised to read as follows:

§ 882.103 "Finders-keepers" policy.

* * * * *

(b) The PHA may not, either in the provision of assistance to any Family in finding a unit or by any other action,

directly or indirectly reduce any Family's opportunity to choose among the available units in the housing market.

* * * * *

6. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for participation; selection of applicants; verification of family income and other factors relating to eligibility and amount of assistance; and maintenance of a waiting list;

* * * * *

§ 882.207 [Removed and reserved]

7. Section 882.207 is removed and reserved.

8. In § 882.209, paragraph (a) is revised to read as follows:

§ 882.209 Selection and participation.

(a) *Selection for participation.* For provisions on selection of participants for the Section 8 certificate and voucher programs, see Part 982, Subpart E of this title.

* * * * *

§ 882.216 [Amended]

9. In § 882.216, paragraph (a)(4) is removed.

§ 882.219 [Removed and reserved]

10. Section 882.219 is removed and reserved.

11. In § 882.335, paragraph (a)(2)(i) is revised to read as follows:

§ 882.335 Special requirements for related lease shared housing.

(a) * * *

(2) * * *

(i) The PHA must require an applicant Family that is issued a Certificate on the basis of its willingness to share a unit with a particular Family to use the Certificate for occupancy of a unit with that Family under a Contract for Related Lease Shared Housing. However, if the Family later wants to move to another dwelling unit with continued participation in the PHA's program, the Family may select a dwelling unit in any area where the PHA is not legally barred from entering into Contracts.

* * * * *

12. In § 882.701, paragraph (c) is revised to read as follows:

§ 882.701 Purpose and applicability.

* * * * *

(c) Except as otherwise expressly modified or excluded by this subpart G, project-based assistance under this subpart G is subject to all provisions of subparts A and B of part 882, and of part 982 of this title.

* * * * *

13. In § 882.753, paragraph (a) is revised to read as follows:

§ 882.753 Family participation.

* * * * *

(a) *Participation.* For purposes of this subpart G, a Family becomes a participant on the effective date of the first lease with the owner (first date of initial lease term).

* * * * *

PART 887—HOUSING VOUCHERS

14. The authority citation for part 887 is revised to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 887.5 [Amended]

15. Section 887.5 is amended by removing paragraph (c).

16. In § 887.59, paragraphs (c) (1) and (d) are revised to read as follows:

§ 887.59 Equal opportunity housing plan.

* * * * *

(c) * * *

(1) Outreach and public notice to eligible families;

* * * * *

(d) The plan must include any special rules for use of HUD-targeted housing vouchers.

* * * * *

§ 887.105 [Amended]

17. Section 887.105 is amended as follows:

a. By removing from paragraph (b)(1) the phrase "(see § 887.107)".

b. By removing from paragraph (b)(2) the phrase "in accordance with § 887.157".

§ 887.107 [Removed and reserved]

18. Section 887.107 is removed and reserved.

19. In Part 887, the title of Subpart D is revised to read as follows:

"Subpart D—Issuing Housing Vouchers"

20. In Subpart D of Part 887, § 887.151 is revised to read as follows:

§ 887.151 Selection for participation.

For provisions on selection of participants for the Section 8 certificate and voucher programs, see Part 982, Subpart E of this title.

§§ 887.152—887.157 [Removed and reserved]

21. In Subpart D of Part 887, §§ 887.153, 887.155, and 887.157 are removed and reserved.

22. In § 887.565, paragraph (c) is revised to read as follows:

§ 887.565 Portability: responsibilities of the receiving PHA.

* * * * *

(c) The receiving PHA must recertify the family's income initially and at least annually thereafter for purposes of determining the housing assistance payments.

* * * * *

23–24. Part 982, consisting of §§ 982.1 through 982.213, is added to chapter IX to read as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

Subpart A—General Information

Sec.

982.1 General program description.
982.2 Applicability.
982.3 Definitions.

Subparts B–D—[Reserved]

Subpart E—Admission to Tenant-Based Program

982.201 Eligibility.
982.202 How applicants are selected: General requirements.
982.203 Special admission (non-waiting list): Assistance targeted by HUD.
982.204 Waiting list: Administration of waiting list.
982.205 Waiting list: Different programs.
982.206 Waiting list: Opening and closing; public notice.
982.207 Waiting list: Use of preferences.
982.208 Waiting list: Residency preference.
982.209 Waiting list: How applicant qualifies for local preference.
982.210 Waiting list: How applicant qualifies for federal preference.
982.211 Federal preference: Involuntary displacement.
982.212 Federal preference: Substandard housing.
982.213 Federal preference: Rent burden.

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General Information

§ 982.1 General program description.

In the HUD rental voucher program and the HUD rental certificate program, a rent subsidy is paid to help eligible families afford rent for decent, safe, and sanitary housing. Both programs are administered by State, local governmental or tribal bodies called housing agencies (HAs). HUD provides funds to an HA for rent subsidy on behalf of eligible families. HUD also provides funds for HA administration of the programs.

§ 982.2 Applicability.

Part 982 is a unified statement of requirements for admission to the

tenant-based housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based rental certificate program and the Section 8 rental voucher program.

§ 982.3 Definitions.

Admission. The effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program. This is the point when the family becomes a participant in the program.

Annual income. Defined in 24 CFR 813.106.

Applicant (or applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

Certificate. A document issued by an HA to a family selected for admission to the rental certificate program. The certificate describes the program, and the procedures for HA approval of a unit selected by the family. The certificate also describes the obligations of the family under the program.

Certificate or voucher holder. A family holding a voucher or certificate with unexpired search time.

Certificate program. Rental certificate program.

Continuously assisted. An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

Disabled person. A person who is any of the following:

(1) A person who has a disability as defined in section 223 of the Social Security Act. (42 U.S.C. 423)

(2) A person who has a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that ability to live independently could be improved by more suitable housing conditions.

(3) A person who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

Displaced person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under federal disaster relief laws.

Drug-related criminal activity. The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

Elderly person. A person who is at least 62 years of age.

EO plan. Equal opportunity housing plan. The EO plan establishes HA policies for implementing civil rights requirements.

Fair Market Rent. FMR. Defined in 24 CFR 882.102.

Family. Defined in 24 CFR 812.2. Family composition is discussed at § 982.201(c) of this chapter.

Family unit size. The appropriate number of bedrooms for a family. Family unit size is determined by the HA under the HA occupancy standards.

Federal preference. A preference under federal law for admission of applicant families that are any of the following:

(1) Involuntarily displaced.

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless).

(3) Paying more than 50 percent of family income for rent.

Federal preference holder. An applicant that qualifies for a federal preference.

FMR. Fair market rent.

HA. Housing Agency.

HAP contract. Housing assistance payments contract.

Housing agency (HA). A State, county, municipality or other governmental entity or public body authorized to administer the program. The term "HA" includes an Indian housing authority (IHA). ("PHA" and "HA" mean the same thing.)

HUD. The U.S. Department of Housing and Urban Development.

Indian housing authority (IHA). A housing agency established either:

(1) By exercise of the power of self-government of an Indian Tribe, independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians.

Live-in aide. A person who resides with an elderly person or disabled person and who:

(1) Is determined to be essential to the care and well-being of the person.

(2) Is not obligated for the support of the person.

(3) Would not be living in the unit except to provide necessary supportive services.

Local preference. A preference used by the HA to select among applicant families without regard to their federal preference status.

Local preference limit. Ten percent of total annual waiting list admissions to the HA's tenant-based certificate and voucher programs. The local preference limit is used to select among applicants without regard to their federal preference status.

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. For admission to the certificate program, HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

1937 Housing Act. The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.). The HUD tenant-based programs are authorized by Section 8 of the 1937 Housing Act (42 U.S.C. 1437f).

1937 Housing Act program. Any of the following programs:

(1) The public housing program or Indian housing program.

(2) Any program assisted under Section 8 of the 1937 Act (42 U.S.C. 1437f) (including assistance under a Section 8 tenant-based or project-based program).

(i) The Section 23 leased housing program.

(ii) The Section 23 housing assistance payments program. ("Section 23" means Section 23 of the United States Housing Act of 1937 prior to enactment of the Housing and Community Development Act of 1974.)

Occupancy standards. Standards established by an HA to determine the appropriate number of bedrooms for families of different sizes and compositions. See definition of "family unit size".

Participant. A family that has been admitted to the HA's certificate program or voucher program. The family becomes a participant on the effective date of the first HAP contract executed by the HA for the family (first day of initial lease term).

PHA. Public housing agency. See definition of "HA". ("PHA" and "HA" mean the same thing.)

Program. The tenant-based certificate program or voucher program.

Public housing agency (PHA). A State, county, municipality or other governmental entity or public body authorized to administer the programs. The term "PHA" includes an Indian housing authority (IHA). ("PHA" and "HA" mean the same thing. In this rule, a "PHA" is referred to as a "housing agency" (HA)).

Ranking preference. A preference used by the HA to select among

applicant families that qualify for federal preference.

Rental certificate. Certificate.

Rental certificate program. Certificate program.

Rental voucher. Voucher.

Rental voucher program. Voucher program.

Residency preference. An HA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Special admission. Admission of an applicant that is not on the HA waiting list, or without considering the applicant's waiting list position.

Unit. Dwelling unit.

United States Housing Act of 1937 (1937 Housing Act). The basic law that authorizes the public and Indian housing programs, and the Section 8 programs. (42 U.S.C. 1437 et seq.)

Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish very low-income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Voucher (rental voucher). A document issued by an HA to a family selected for participation in the rental voucher program. The voucher describes the program, and the procedures for HA approval of a unit selected by the family. The voucher also states the obligations of the family under the program.

Voucher program. Rental voucher program.

Waiting list admission. An admission from the HA waiting list.

Subparts B–D—[Reserved]

Subpart E—Admission to Tenant-Based Program

§ 982.201 Eligibility.

(a) *When applicant is eligible: general.* The HA may only admit an eligible family to a program. To be eligible, the applicant must be a "family", and must be income-eligible.

(b) *Income.*

(1) To be income eligible, the family must be either:

(i) A "very low-income" family; or

(ii) A "low-income" family in any of the following categories:

(A) A low-income family that is "continuously assisted" under the 1937 Housing Act.

(B) A low-income family physically displaced by rental rehabilitation activity under 24 CFR part 511.

(C) A low-income non-purchasing family residing in a HOPE 1 (HOPE for Public and Indian Housing Homeownership) or HOPE 2 (HOPE for Homeownership of Multifamily Units) project.

(D) A low-income non-purchasing family residing in a project subject to a homeownership program under 24 CFR 248.173.

(E) A low-income family displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract under 24 CFR 248.165.

(F) For the certificate program only, a low-income family residing in a HUD-owned multifamily rental housing project when HUD sells, forecloses or demolishes the project.

(2) The HA determines whether the family is income-eligible by comparing the family's annual income (gross income) with the HUD-established very low-income limit or low-income limit for the area. The applicable income limit for issuance of a certificate or voucher when a family is selected for the program is the highest income limit (for the family unit size) for areas in the HA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. The family may only use the certificate or voucher to rent a unit in an area where the family is income eligible at admission to the program.

(c) *Family composition.* (1) A "family" may be a single person or a group of persons.

(2) A "family" includes a family with a child or children.

(3) A group of persons consisting of two or more elderly persons or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides is a family. The HA determines if any other group of persons qualifies as a "family".

(4) A single person family may be:

(i) An elderly person.

(ii) A displaced person.

(iii) A disabled person.

(iv) Any other single person.

(5) A child who is temporarily away from the home because of placement in foster care is considered a member of the family.

(d) *Continuously assisted.* (1) An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

(2) The HA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the certificate or voucher program will be considered to break continuity of assistance under the 1937 Housing Act.

(e) *When HA verifies that applicant is eligible.* The HA must receive information verifying that an applicant is eligible within the period of 60 days before the HA issues a certificate or voucher to the applicant.

(f) *Decision to deny assistance.*

(1) *Notice to applicant.* The HA must give an applicant prompt written notice of a decision denying admission to the program (including a decision that the applicant is not eligible, or denying assistance for other reasons). The notice must give a brief statement of the reasons for the decision. The notice must also state that the applicant may request an informal review of the decision, and state how to arrange for the informal review.

(2) *Grounds for decision.* For a discussion of the grounds for denying assistance because of action or inaction by the applicant, see § 882.210 (certificate program) of this title and § 887.403 (voucher program) of this title

§ 982.202 How applicants are selected: General requirements.

(a) *Waiting list and other admission* The HA may admit an applicant for participation in the program either:

(1) As a special admission (see § 982.203).

(2) As a waiting list admission (see § 982.204 through § 982.210).

(b) *Prohibited admission criteria.*

(1) *Family suitability for tenancy.* The owner selects the tenant. The owner decides whether the family is suitable for tenancy. The HA decision whether to admit an applicant to the program may not be based on an applicant's suitability for tenancy. The HA may deny assistance to an applicant because of drug-related criminal activity or violent criminal activity by family members. (See § 882.210(b) (certificate program) of this title and § 887.403(b) (voucher program) of this title.)

(2) *Where family lives.* Admission to the program may not be based on where the family lives before admission to the program. However, the HA may target assistance for families who live in public housing or other federally assisted housing.

(3) *Where family will live.* Admission to the program may not be based on

where the family will live with assistance under the program.

(4) *Family characteristics.*

(i) Admission to the program may not be based on:

(A) Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;

(B) Discrimination because a family includes children (familial status discrimination);

(C) Discrimination because of age, race, color, religion, sex, or national origin;

(D) Discrimination because of disability; or

(E) Whether a family decides to participate in a family self-sufficiency program.

(ii) The HA may not adopt a preference for admission of higher income families over families of lower income.

(c) *Applicant status.* An applicant does not have any right or entitlement to be listed on the HA waiting list, to any particular position on the waiting list, or to admission to the programs. The preceding sentence does not affect or prejudice any right, independent of this rule, to bring a judicial action challenging an HA violation of a constitutional or statutory requirement.

(d) *Admission policy.* The HA must admit applicants for participation in accordance with HUD regulations and other requirements, and with policies stated in the HA administrative plan and EO plan. The HA admission policy must state the system of admission preferences that the HA uses to select applicants from the waiting list, including any federal preference, ranking preference, local preference and residency preference.

§ 982.203 Special admission (non-waiting list): Assistance targeted by HUD.

(a) If HUD awards an HA program funding that is targeted for families living in specified units:

(1) The HA must use the assistance for the families living in these units.

(2) The HA may admit a family that is not on the HA waiting list, or without considering the family's waiting list position. The HA must maintain records showing that the family was admitted with HUD-targeted assistance.

(b) The following are examples of types of program funding that may be targeted for a family living in a specified unit:

(1) A family displaced because of demolition or disposition of a public or Indian housing project;

(2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;

(3) For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 (41 U.S.C. 4101 et seq.):

(i) A non-purchasing family residing in a project subject to a homeownership program (under 24 CFR 248.173); or

(ii) A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract (as provided in 24 CFR 248.165);

(4) A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and

(5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project.

§ 982.204 Waiting list: Administration of waiting list.

(a) *Admission from waiting list.* Except for special admissions, participants must be selected from the HA waiting list. The HA must select participants from the waiting list in accordance with admission policies in the HA administrative plan and EO plan.

(b) *Organization of waiting list.* The HA must maintain information that permits the HA to select participants from the waiting list in accordance with the HA admission policies. The waiting list must contain the following information for each applicant listed:

(1) Applicant name;

(2) Family unit size (number of bedrooms for which family qualifies under HA occupancy standards);

(3) Date and time of application;

(4) Qualification for federal preference;

(5) Qualification for any ranking preference or local preference; and

(6) Racial or ethnic designation of the head of household.

(c) *Removing applicant names from the waiting list.*

(1) The HA administrative plan must state HA policy on when applicant names may be removed from the waiting list. For example, the policy may provide that the HA will remove names of applicants who do not respond to HA requests for information or updates, or who have refused offers of tenant-based assistance under both the certificate program and the voucher program.

(2) The system for removing applicant names from the waiting list may not violate the rights of a disabled person under HUD regulations and requirements. For example, if an applicant's failure to respond to HA requests for information or updates was caused by the applicant's disability, the HA must provide reasonable accommodation to give the applicant an opportunity to respond.

(d) *Family size.* (1) The order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the HA occupancy policy.

(2) If the HA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the HA may not skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available.

(e) *Funding for specified category of waiting list families.* When HUD awards an HA program funding for a specified category of families on the waiting list, the HA must select applicant families in the specified category.

(Approved by the Office of Management and Budget under OMB control number 2577–0169.)

§ 982.205 Waiting list: Different programs.

(a) *Tenant-based programs: Number of waiting lists.*

(1) An HA may use a single waiting list for admission to its tenant-based certificate and voucher programs, or may use separate waiting lists for a county or municipality.

(2) An HA must use the same waiting list for admission to its tenant-based certificate and voucher programs.

(b) *Merger and cross-listing.*

(1) *Merged waiting list.* An HA may merge the waiting list for tenant-based assistance with the HA waiting list for admission to another assisted housing program, including a federal or local program. In admission from the merged waiting list, admission for each federal program is subject to federal regulations and requirements for the particular program.

(2) *Non-merged waiting list: Cross-listing.* If the HA decides not to merge the waiting list for tenant-based assistance with the waiting list for the HA's public or Indian housing program, project-based certificate program or moderate rehabilitation program:

(i) If the HA's waiting list for tenant-based assistance is open when an applicant is placed on the waiting list for the HA's public or Indian housing program, project-based certificate program or moderate rehabilitation program, the HA must offer to place the applicant on its waiting list for tenant-based assistance.

(ii) If the HA's waiting list for its public or Indian housing program, project-based certificate program or moderate rehabilitation program is open when an applicant is placed on the waiting list for its tenant-based program, and if the other program includes units

suitable for the applicant, the HA must offer to place the applicant on its waiting list for the other program.

(c) *Other housing assistance: Effect of application for, receipt or refusal.*

(1)(i) The HA may not take any of the following actions because an applicant has applied for, received or refused other housing assistance:

(A) Refuse to list the applicant on the HA waiting list for tenant-based assistance;

(B) Deny any admission preference for which the applicant is currently qualified; or

(C) Remove the applicant from the waiting list.

(ii) For this purpose, "other housing assistance" means a federal, State or local housing subsidy, as determined by HUD, including public or Indian housing. However, the HA may remove such applicants from the waiting list in accordance with § 982.204(c).

(2) If an applicant refuses offers of tenant-based assistance under both the certificate program and the voucher program, the HA may remove the applicant from the waiting list for tenant-based assistance.

(3) See § 982.210(c)(4) for provisions concerning retention of federal preference by an applicant that either:

(i) Receives assistance under the HOME program, or

(ii) Resides in the HA's public or Indian housing.

§ 982.206 Waiting list: Opening and closing; public notice.

(a) *Public notice.* (1) When the HA opens a waiting list, the HA must give public notice that families may apply for tenant-based assistance. The public notice must state where and when to apply.

(2) The HA must give the public notice by publication in a local newspaper of general circulation, and also by minority media and other suitable means described in the EO plan. The notice must comply with the HUD-approved EO plan and with HUD fair housing requirements.

(3) The public notice must state any limitations on who may apply for available slots in the program.

(b) *Criteria defining what families may apply.*

(1) The HA may adopt criteria defining what families may apply for assistance under a public notice.

Example A

The HA decides that applications will only be accepted from families that qualify for federal preference, or from homeless federal preference families.

Example B

In admission to the program, the HA must give preference to elderly families, displaced families and displaced persons over other single persons (24 CFR 812.3). The HA decides that applications from other single persons will not be accepted.

(2) If the waiting list is open, the HA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as a denial of assistance because of action or inaction by members of the family) for the grounds stated in § 882.210 (certificate program) of this title and § 887.403 (voucher program) of this title).

(c) *Closing waiting list.* (1) If the HA determines that the existing waiting list contains an adequate pool for use of available program funding, the HA may stop accepting new applications, or may accept only applications meeting criteria adopted by the HA.

(2) Even if the HA is not otherwise accepting additional applications, the HA must accept applications from applicants who claim a federal preference unless the HA determines that the waiting list already contains an adequate pool of applicants who are likely to qualify for a federal preference.

§ 982.207 Waiting list: Use of preferences.

(a) *Types of preferences.* (1) There are three types of admission preferences:

(i) "Federal preferences."

(ii) "Ranking preferences."

(iii) "Local preferences".

(2) *Federal preference.* (i) "Federal preferences" are required by federal law. Under federal law, the HA must give preference for admission of applicants that are:

(A) Involuntarily displaced;

(B) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(C) Paying more than 50 percent of family income for rent.

(ii) The federal preference requirements determine how many selected applicants must be families with a federal preference, and how many selected applicants may be families without a federal preference.

(3) *Other preferences.* (i) In addition to the federal preferences, the HA may establish "ranking preferences" or "local preferences" to meet local needs and priorities.

(ii) "Ranking preferences" are used in selecting among applicants that qualify for federal preference.

(iii) "Local preferences" are used in selecting among applicants without regard to their federal preference status.

(iv) The HA preference system may limit the number of applicants that may qualify for any ranking preference or local preference.

(b) *Limit on local preference admission.* (1) "Local preference limit" means ten percent of total annual waiting list admissions to an HA's tenant-based certificate and voucher programs. In any year, the number of families given preference in admission to the HA tenant-based certificate program and voucher program pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(2) The local preference limit only applies to admission of an applicant from the HA waiting list. A special admission is not counted against the local preference limit.

(3) The local preference limit does not apply when an applicant is received in an HA program under portability procedures. The admission of a portability family by a receiving HA does not count against the receiving HA local preference limit. The admission of such a family (not qualified for federal preference) counts against the local preference limit of the initial HA.

(c) *Use of preferences in admission.* (1) In selecting applicants, the HA determines if an applicant qualifies for a federal preference, ranking preference or local preference.

(2) Ranking preference governs selection among applicants that qualify for a federal preference.

(3) Local preference governs selection among applicants that do not qualify for a federal preference.

(d) *Singles preference: Admission of elderly, disabled or displaced over other singles.* In selecting applicants, the HA must give preference to:

(1) A family (with or without federal preference):

(i) Whose single member is a displaced person; or,

(ii) Whose head or spouse or single member is an elderly person or a disabled person, over

(2) A single person (with or without federal preference) who is not elderly, disabled or displaced.

(e) *Methods for selection.* (1) The HA must use the following to select among applicants on the waiting list with the same preference status:

(i) Date and time of application, or

(ii) A drawing or other random choice technique.

(2) The method for selecting applicants from preference categories must be consistent with requirements governing federal preference, and the singles preference (described in paragraph (d) of this section).

(3) The method for selecting applicants from preference categories must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the administrative plan.

(f) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The HA may not give a preference to an applicant (federal preference, ranking preference or local preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the HA may give an admission preference in any of the following cases:

(1) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA.

(2) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity.

(3) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(g) *Fair Housing requirements.* (1) Any admission preferences that are used by an HA must be established and administered in accordance with the following authorities, and HUD implementing regulations:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(ii) The Fair Housing Act (42 U.S.C. 3601–3619);

(iii) Executive Order 11063 on Equal Opportunity in Housing (27 FR 11527 (3 CFR, 1959–1963 Comp., p. 652);

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213).

(2) Preferences must be consistent with HUD's affirmative fair housing objectives. The HA may not discriminate against families or family members on the basis of race, color, religion, sex, national origin, age, familial status or disability.

(h) *Informing applicants about admission preferences.* The HA must inform applicants about available preferences. The HA must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference or local preference).

§ 982.208 Waiting list: Residency preference.

(a) "Residency preference" is a preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area. The area where families must reside to qualify for the preference is called a "residency preference area".

(b) Any residency preference must be approved by HUD.

(c) If approved by HUD, the HA may adopt a residency preference that establishes a county or municipality as a residency preference area. An HA may not adopt a residency preference for an area smaller than a county or municipality.

(d) A residency preference must apply to families with a member who works or has been hired to work anywhere in a residency preference area. In applying the residency preference, such families must be treated like families that reside in the residency preference area.

(e) A residency preference may not be based on how long the applicant has resided in or worked in the HA jurisdiction or residency preference area.

(f) The HA may use a HUD-approved residency preference as a ranking or local preference.

§ 982.209 Waiting list: How applicant qualifies for local preference.

(a) *Local preference: Use and purpose.* "Local preferences" are used to select among applicants that do not qualify for a federal preference. The HA may adopt a system of local preferences to respond to local housing needs and priorities.

(b) *Procedure.* Local preferences may only be adopted or amended after the HA has conducted a public hearing. The HA may only use local preferences in selection for admission if the HA has conducted the required public hearing.

§ 982.210 Waiting list: How applicant qualifies for federal preference.

(a) *Applicable definitions.* Unless HUD has reviewed and approved alternative definitions, the HA must use the definitions of the following terms in this part:

(1) "Standard, permanent replacement housing".

(2) "Involuntary displacement".

(3) "Substandard housing".

(4) "Homeless family".

(5) "Family income".

(6) "Rent".

(b) *Ranking preferences: Selection among federal preference holders.* (1) The HA admission policy may provide for use of ranking preferences to select among applicants that qualify for federal preference.

(2) The HA may limit the number of applicants who may qualify for any ranking preference.

(3) The HA ranking preferences may determine the relative weight of the federal preferences through means such as:

(i) Aggregating the federal preferences (*such as,* two federal preferences outweigh one and three outweigh two).

(ii) Ranking the federal preferences. For example, the HA admission policy may provide that an applicant who lives in substandard housing has preference over an applicant who qualifies for a rent burden preference (paying more than 50 percent of income for rent).

(iii) Ranking the definitional elements of a federal preference. For example, the HA admission policy may provide that an applicant living in substandard housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government has preference over an applicant whose housing is substandard only because the housing does not have a usable bathtub or shower inside the unit for the exclusive use of the family.

(iv) The HA admission policy may give ranking preference for working families. However, the preference may not violate the prohibitions against discrimination on the basis of age or disability. An applicant must be given the benefit of the preference for working families if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work. If an HA adopts a ranking preference for working families, the admission policy may not give greater preference to an applicant based on the amount of employment income.

(4) The HA admission policy may give ranking preference for graduates of, or active participants in, educational and training programs that are designed to prepare individuals for the job market.

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the HA that the family qualifies for federal preference. The HA must accept this certification, unless the HA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before an applicant is admitted on the basis of a federal preference, the applicant must provide information needed by the HA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the certification and selection for admission, including a change from one federal preference category to another.

(ii) The HA may adopt its own verification procedures.

(iii) Once the HA has verified an applicant's qualification for a federal preference, the HA need not require the applicant to provide information needed by the HA to verify such qualification again unless:

(A) The HA determines reverification is desirable because a long time has passed since verification; or

(B) The HA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Retention of preference.* (i) If a Section 8 applicant is currently receiving tenant-based assistance under the HOME program (24 CFR part 92), the HA determines whether the applicant qualifies for Section 8 federal preference based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program.

(ii) If an applicant seeking admission to an HA's tenant-based program currently resides in public or Indian housing of the same HA, and was on the HA's tenant-based program waiting list when admitted to the HA's public or Indian housing on or after April 26, 1993, the HA determines whether the applicant qualifies for Section 8 federal preference based on the situation of the applicant at the time the applicant was admitted to the HA's public or Indian housing program (beginning of initial public housing lease).

(d) *Notice and opportunity for a meeting where federal preference is denied.* (1) If the HA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the HA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with an HA representative to review the determination. The meeting may be conducted by any person or persons designated by the HA, who may be an officer or employee of the HA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

§ 982.211 Federal preference: Involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing.

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) For an applicant to qualify as involuntarily displaced because of domestic violence:

(A) The HA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the HA has given advance written approval. If the family is admitted, the HA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency, and

(B) Based on a threat assessment, the law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The HA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The HA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under Section 203 of the Housing and Community Development Amendments of 1978.

§ 982.212 Federal preference: Substandard housing.

(a) *When a unit is substandard.* A unit is substandard if the unit:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit or government.

(b) *Dilapidated unit.* A housing unit is dilapidated if:

(1) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(2) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(c) *Homeless family.* (1) An applicant that is a homeless family is considered to be living in substandard housing.

(2) A "homeless family" includes any person or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and also

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(B) An institution that provides a temporary residence for persons intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(d) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because the unit does not contain sanitary or food preparation facilities.

§ 982.213 Federal preference: Rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program; or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(4) For an applicant who owns a manufactured home, but who rents the space upon which it is located, rent includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(5) For members of a cooperative, rent means the charges under the occupancy agreement between the members and the cooperative.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days;

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z–1).

Dated: June 24, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
1–699	(869–022–00004–7)	22.00	Jan. 1, 1994
700–1199	(869–022–00005–5)	19.00	Jan. 1, 1994
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:			
0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
53–209	(869–022–00011–0)	23.00	Jan. 1, 1994
210–299	(869–022–00012–8)	32.00	Jan. 1, 1994
300–399	(869–022–00013–6)	16.00	Jan. 1, 1994
400–699	(869–022–00014–4)	18.00	Jan. 1, 1994
700–899	(869–022–00015–2)	22.00	Jan. 1, 1994
900–999	(869–022–00016–1)	34.00	Jan. 1, 1994
1000–1059	(869–022–00017–9)	23.00	Jan. 1, 1994
1060–1119	(869–022–00018–7)	15.00	Jan. 1, 1994
1120–1199	(869–022–00019–5	12.00	Jan. 1, 1994
1200–1499	(869–022–00020–9)	30.00	Jan. 1, 1994
1500–1899	(869–022–00021–7)	30.00	Jan. 1, 1994
1900–1939	(869–022–00022–5)	15.00	Jan. 1, 1994
1940–1949	(869–022–00023–3)	30.00	Jan. 1, 1994
1950–1999	(869–022–00024–1)	35.00	Jan. 1, 1994
2000–End	(869–022–00025–0)	14.00	Jan. 1, 1994
8	(869–022–00026–8)	22.00	Jan. 1, 1994
9 Parts:			
1–199	(869–022–00027–6)	29.00	Jan. 1, 1994
200–End	(869–022–00028–4)	23.00	Jan. 1, 1994
10 Parts:			
0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
51–199	(869–022–00030–6)	22.00	Jan. 1, 1994
200–399	(869–022–00031–4)	15.00	[6] Jan. 1, 1993
400–499	(869–022–00032–2)	21.00	Jan. 1, 1994
500–End	(869–022–00033–1)	37.00	Jan. 1, 1994
11	(869–022–00034–9)	14.00	Jan. 1, 1994
12 Parts:			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–022–00036–5)	16.00	Jan. 1, 1994
220–299	(869–022–00037–3)	28.00	Jan. 1, 1994
300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
14 Parts:			
1–59	(869–022–00042–0)	32.00	Jan. 1, 1994
60–139	(869–022–00043–8)	26.00	Jan. 1, 1994
140–199	(869–022–00044–6)	13.00	Jan. 1, 1994
200–1199	(869–022–00045–4)	23.00	Jan. 1, 1994
1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–4)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–022–00058–6)	19.00	Apr. 1, 1994
*280–399	(869–022–00059–4)	13.00	Apr. 1, 1994
400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
20 Parts:			
1–399	(869–022–00063–2)	20.00	Apr. 1, 1994
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–022–00065–9)	31.00	Apr. 1, 1994
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–022–00069–1)	7.00	Apr. 1, 1994
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
*800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
1300–End	(869–022–00074–8)	13.00	Apr. 1, 1994
22 Parts:			
*1–299	(869–022–00075–6)	32.00	Apr. 1, 1994
300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
*1700–End	(869–022–00082–9)	17.00	Apr. 1, 1994
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0–1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869–019–00089–5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
*§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
*2–29	(869–022–00096–9)	24.00	Apr. 1, 1994
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–019–00102–6)	8.00	Apr. 1, 1993
27 Parts:			
1–199	(869–019–00103–4)	37.00	Apr. 1, 1993
200–End	(869–022–00104–3)	13.00	Apr. 1, 1994
28 Parts:			
1–42	(869–019–00105–1)	27.00	July 1, 1993
43–end	(869–019–00106–9)	21.00	July 1, 1993
29 Parts:			
0–99	(869–019–00107–7)	21.00	July 1, 1993
100–499	(869–019–00108–5)	9.50	July 1, 1993
500–899	(869–019–00109–3)	36.00	July 1, 1993
900–1899	(869–019–00110–7)	17.00	July 1, 1993
1900–1910 (§§ 1901.1 to 1910.999)	(869–019–00111–5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869–019–00112–3)	21.00	July 1, 1993
1911–1925	(869–019–00113–1)	22.00	July 1, 1993
1926	(869–019–00114–0)	33.00	July 1, 1993
1927–End	(869–019–00115–8)	36.00	July 1, 1993
30 Parts:			
1–199	(869–019–00116–6)	27.00	July 1, 1993
200–699	(869–019–00117–4)	20.00	July 1, 1993
700–End	(869–019–00118–2)	27.00	July 1, 1993
31 Parts:			
0–199	(869–019–00119–1)	18.00	July 1, 1993
200–End	(869–019–00120–4)	29.00	July 1, 1993
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–019–00121–2)	30.00	July 1, 1993
191–399	(869–019–00122–1)	36.00	July 1, 1993
400–629	(869–019–00123–9)	26.00	July 1, 1993
630–699	(869–019–00124–7)	14.00	[5] July 1, 1991
700–799	(869–019–00125–5)	21.00	July 1, 1993
800–End	(869–019–00126–3)	22.00	July 1, 1993
33 Parts:			
1–124	(869–019–00127–1)	20.00	July 1, 1993
125–199	(869–019–00128–0)	25.00	July 1, 1993
200–End	(869–019–00129–8)	24.00	July 1, 1993
34 Parts:			
1–299	(869–019–00130–1)	27.00	July 1, 1993
300–399	(869–019–00131–0)	20.00	July 1, 1993
400–End	(869–019–00132–8)	37.00	July 1, 1993
35	(869–019–00133–6)	12.00	July 1, 1993
36 Parts:			
1–199	(869–019–00134–4)	16.00	July 1, 1993
200–End	(869–019–00135–2)	35.00	July 1, 1993
37	(869–019–00136–1)	20.00	July 1, 1993
38 Parts:			
0–17	(869–019–00137–9)	31.00	July 1, 1993
18–End	(869–019–00138–7)	30.00	July 1, 1993
39	(869–019–00139–5)	17.00	July 1, 1993
40 Parts:			
1–51	(869–019–00140–9)	39.00	July 1, 1993
52	(869–019–00141–7)	37.00	July 1, 1993
53–59	(869–019–00142–5)	11.00	July 1, 1993
60	(869–019–00143–3)	35.00	July 1, 1993
61–80	(869–019–00144–1)	29.00	July 1, 1993
81–85	(869–019–00145–0)	21.00	July 1, 1993
86–99	(869–019–00146–8)	39.00	July 1, 1993
100–149	(869–019–00147–6)	36.00	July 1, 1993
150–189	(869–019–00148–4)	24.00	July 1, 1993
190–259	(869–019–00149–2)	17.00	July 1, 1993
260–299	(869–019–00150–6)	39.00	July 1, 1993
300–399	(869–019–00151–4)	18.00	July 1, 1993
400–424	(869–019–00152–2)	27.00	July 1, 1993
425–699	(869–019–00153–1)	28.00	July 1, 1993
700–789	(869–019–00154–9)	26.00	July 1, 1993
790–End	(869–019–00155–7)	26.00	July 1, 1993
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–019–00156–5)	10.00	July 1, 1993
101	(869–019–00157–3)	30.00	July 1, 1993
102–200	(869–019–00158–1)	11.00	[5] July 1, 1991
201–End	(869–019–00159–0)	12.00	July 1, 1993
42 Parts:			
1–399	(869–019–00160–3)	24.00	Oct. 1, 1993
400–429	(869–019–00161–1)	25.00	Oct. 1, 1993
430–End	(869–019–00162–0)	36.00	Oct. 1, 1993
43 Parts:			
1–999	(869–019–00163–8)	23.00	Oct. 1, 1993
1000–3999	(869–019–00164–6)	32.00	Oct. 1, 1993
4000–End	(869–019–00165–4)	14.00	Oct. 1, 1993
44	(869–019–00166–2)	27.00	Oct. 1, 1993
45 Parts:			
1–199	(869–019–00167–1)	22.00	Oct. 1, 1993
200–499	(869–019–00168–9)	15.00	Oct. 1, 1993
500–1199	(869–019–00169–7)	30.00	Oct. 1, 1993
1200–End	(869–019–00170–1)	22.00	Oct. 1, 1993
46 Parts:			
1–40	(869–019–00171–9)	18.00	Oct. 1, 1993
41–69	(869–019–00172–7)	16.00	Oct. 1, 1993
70–89	(869–019–00173–5)	8.50	Oct. 1, 1993
90–139	(869–019–00174–3)	15.00	Oct. 1, 1993
140–155	(869–019–00175–1)	12.00	Oct. 1, 1993
156–165	(869–019–00176–0)	17.00	Oct. 1, 1993
166–199	(869–019–00177–8)	17.00	Oct. 1, 1993
200–499	(869–019–00178–6)	20.00	Oct. 1, 1993
500–End	(869–019–00179–4)	15.00	Oct. 1, 1993
47 Parts:			
0–19	(869–019–00180–8)	24.00	Oct. 1, 1993
20–39	(869–019–00181–6)	24.00	Oct. 1, 1993
40–69	(869–019–00182–4)	14.00	Oct. 1, 1993
70–79	(869–019–00183–2)	23.00	Oct. 1, 1993
80–End	(869–019–00184–1)	26.00	Oct. 1, 1993
48 Chapters:			
1 (Parts 1–51)	(869–019–00185–9)	36.00	Oct. 1, 1993
1 (Parts 52–99)	(869–019–00186–7)	23.00	Oct. 1, 1993
2 (Parts 201–251)	(869–019–00187–5)	16.00	Oct. 1, 1993
2 (Parts 252–299)	(869–019–00188–3)	12.00	Oct. 1, 1993
3–6	(869–019–00189–1)	23.00	Oct. 1, 1993
7–14	(869–019–00190–5)	31.00	Oct. 1, 1993
15–28	(869–019–00191–3)	31.00	Oct. 1, 1993
29–End	(869–019–00192–1)	17.00	Oct. 1, 1993
49 Parts:			
1–99	(869–019–00193–0)	23.00	Oct. 1, 1993
100–177	(869–019–00194–8)	30.00	Oct. 1, 1993
178–199	(869–019–00195–6)	20.00	Oct. 1, 1993
200–399	(869–019–00196–4)	27.00	Oct. 1, 1993
400–999	(869–019–00197–2)	33.00	Oct. 1, 1993
1000–1199	(869–019–00198–1)	18.00	Oct. 1, 1993
1200–End	(869–019–00199–9)	22.00	Oct. 1, 1993
50 Parts:			
1–199	(869–019–00200–6)	20.00	Oct. 1, 1993
200–599	(869–019–00201–4)	21.00	Oct. 1, 1993
600–End	(869–019–00202–2)	22.00	Oct. 1, 1993
CFR Index and Findings Aids	(869–022–00053–5)	38.00	Jan. 1, 1994

Title	Stock Number	Price	Revision Date
Complete 1994 CFR set		829.00	1994
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Subscription (mailed as issued)		244.00	1994
Individual copies		2.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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