

Transportation, Room 6500, Trans Point Building, 2100 Second Street SW., Washington, D.C.

Application No.	Applicant	Renewal of special permit or exemption
3305-X	Reichhold Chemicals, Inc., Austin, Tex.	3305
3744-X	MC/B Manufacturing Chemists, Norwood, Ohio.	3744
4239-X	Fenwal Incorporated, Ashland, Mass.	4239
6517-X	Amos B. Metz, Woodland, Calif.	6517
6712-X	Air Products and Chemicals, Allentown, Pa.	6712
6932-X	Fauvel-Girel, Paris, France.	6932
7005-X	Phillips Petroleum Co., Bartlesville, Okla.	7005
7010-X	Great Lakes Chemical Corp., Alexandria, Va.	7010
7010-X	Dow Chemical Co., Midland, Mich.	7010
7082-X	Igloo Corp., Houston, Tex.	7082
7418-X	Seatrains Lines, Inc., New York, N.Y.	7418
7431-X	Naticco, Inc., Chicago, Ill.	7431
7440-X	Roux Laboratories, Inc., Jacksonville, Fla.	7440
7446-X	Kaiser Aluminum & Chemical Corp., Erie, Pa.	7446
7470-X	Hooker Chemicals & Plastics Corp., Niagara Falls, N.Y.	7470

Application No.	Applicant	Renewal of special permit or exemption
7489-X	Micor Company, Inc., Milwaukee, Wis.	7489
7810-X	Allied Chemical Corp., Morristown, N.J.	7810
6554-P	Kiefer McNeil Division, McNeil Corp., Medina, Ohio.	6554
6014-P	Georgia-Pacific Corp., Montebello, Calif.	6614
7792-P	Vistron Corp., Cleveland, Ohio.	7792-N

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on August 1, 1977.

J. R. GROTHE,
Chief, Exemptions Branch, Office of Hazardous Materials Operations.

DEPARTMENT OF TRANSPORTATION PROPOSED HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

42 FR 40003, August 8, 1977

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 173, 174, 178, 179]

[Docket No. HM-139 Notice No. 77-7]

INDIVIDUAL EXEMPTIONS, CONVERSION TO REGULATION OF GENERAL APPLICABILITY

Transportation of Hazardous Materials

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau is considering amending the regulations governing the transportation of hazardous materials to incorporate a number of changes based on existing exemptions which have been granted to individual applicants allowing them to perform particular functions in a manner that varies from that specified by the regulations. Adoption of these exemptions as rules of general applicability would provide wider access to the benefits of transportation innovations recognized as effective and safe.

DATES: Comments by September 6, 1977.

ADDRESS COMMENTS TO: Section of Dockets, Office of Hazardous Materials Operations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. It is requested that five copies be submitted.

FOR FURTHER INFORMATION CONTACT:

Dr. C. Hugh Thompson, Chief Regulations Division, Office of Hazardous Materials Operations, 2100 Second Street SW., Washington, D.C. 20590 (202-426-2075).

SUPPLEMENTARY INFORMATION:

Each of the proposed amendments described in the table below is founded upon either: (1) Actual shipping experience gained under an exemption, or (2) the data and analysis supplied in the application. In each case the resulting level of safety being afforded the public is considered at least equal to the level of safety provided by the current regulations. Primary drafters of this proposal are Darrell L. Raines, and John C. Allen, Office of Hazardous Materials Operations, and George W. Tenley, Jr., Office of the Assistant General Counsel for Materials Transportation Law.

These proposals would not significantly affect the costs of regulatory enforcement, nor would additional costs be imposed on the private sector, consumers, or Federal, State or local governments, since these proposals would merely authorize the general use of shipping alternatives previously available to only a few users under exemptions. The safety record of shipments under the identified exemptions demonstrates that significant environmental impacts would not result from the proposals.

Adoption of an amendment derived from an existing exemption would obviate the need for that exemption and effectively terminate it. Upon such termination, the holder of the exemption and parties thereto would be individually

notified. Adoption of an amendment derived from an application for exemption should provide the relief sought, in which event the exemption request would be denied and the applicant so notified. In the event the Bureau decides not to adopt any of these proposals each pertinent application would be evaluated and acted upon in accordance with the applicable provisions of the exemption procedures in 49 CFR Part 107, Subpart B. Consequently, persons commenting on proposed amendments may wish to address both the proposed amendment and the exemption application. Consideration of comments of the merits of including within an amendment modes of transportation other than those for which the exemption application requested is anticipated. Each mode of transportation for which a particular exemption is authorized or requested is indicated in the "Nature of Exemption or Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. The status of the exemption action is indicated in the column titled Identification Number where prefix "E" means an exemption has been issued and prefix "SP" means a special permit exists under previous authorities. The suffix "No" means no applications for exemptions are pending, but the Bureau is taking action by this proposal; the suffix "X" means a renewal application is pending; the suffix "P" means one or more party status applications are pending; and the suffix "N" means a new application for exemption is pending.

Proposed amendments of hazardous materials regulations to terminate special permits and exemptions

Application No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
E 4041-No	U.S. Department of Defense; United Technologies; Hercules Inc.	173.65(a).....	Authorizes shipments of ammonium perchlorate particlesize of 5 to 15 μ m as high explosives in DOT specification 17H or 37A steel drums each having a minimum of 0.093 in thick polyethylene liner. Maximum capacity 30 gal. (Modes 1 and 2)	To revise paragraph (a)(3) to read: (3) Specification 17H or 37A (secs. 178.118 and 178.131 of this subchapter). Metal drums (single-trip). Authorized only for ammonium perchlorate in the 5 to 15 μ m range. Maximum capacity 30 gal.
E 5208-No	U.S. Department of Defense.	172.101, 173.54 (b), 173.89 (a), (b).	Authorizes shipments of ammunition for cannon with tear gas projectiles, class A and ammunition for cannon with tear gas projectiles, class B in accordance with 49 CFR 173.54(a). (Modes 1 and 2).	To amend sec. 172.101 to add ammunition for cannon with tear gas projectiles, class A and ammunition for cannon with tear gas projectiles, class B to read as in footnote below. To revise sec. 173.54 to read: sec. 173.54 Ammunition for cannon. (a) Ammunition for cannon. (a) Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, or shell must be packed and properly secured in strong wooden or metal containers, or in plastic containers of approved military specifications complying with sec. 173.7(a). (b) Each outside package must be plainly marked "AMMUNITION FOR CANNON WITH EXPLOSIVE PROJECTILES," "AMMUNITION FOR CANNON WITH SMOKE PROJECTILES," "AMMUNITION FOR CANNON WITH INCENDIARY PROJECTILES," "AMMUNITION FOR CANNON WITH ILLUMINATING PROJECTILES," OR "AMMUNITION FOR CANNON WITH TEAR GAS PROJECTILES," as appropriate. To revise sec. 173.89 to read: Sec. 173.89 Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles, tear gas projectiles, or without projectiles or shell. (a) Ammunition for cannon with empty projectiles, inert-loaded projectiles, solid projectiles, tear gas projectiles, or without projectiles or shell, must be well packed and properly secured in strong wooden or metal containers. (b) Each outside package must be plainly marked "AMMUNITION FOR CANNON WITH EMPTY PROJECTILES," "AMMUNITION FOR CANNON WITH INERT-LOADED PROJECTILES," "AMMUNITION FOR CANNON WITH SOLID PROJECTILES," "AMMUNITION FOR CANNON WITHOUT PROJECTILES," OR "AMMUNITION FOR CANNON WITH TEAR GAS PROJECTILES" as appropriate.
E 5573-No	Austin Powder Co.....	173.182(c)(4).....	Authorizes shipment of nitro carbo nitrate in DOT 23G specification cylindrical fiberboard boxes as prescribed by sec. 173.182(c)(4) except maximum net weight is 65 lb instead of 50 lb. (Modes 1 and 2.)	To revise paragraph (c)(4) to read: (4) Specification 23G (sec. 178.218 of this subchapter). Cylindrical fiberboard box. Maximum net weight not over 65 lb.
E 6145-No	Kerr-McGee Chemical Corp.; Union Carbide Corp.	173.154(a).....	Authorizes shipments of sodium perchlorate or magnesium perchlorate, wet with 10 pct or more of water, equally distributed within the cargo tank in DOT specification MC 303, MC 304, MC 306, MC 311, or MC 312 cargo tank with additional requirements. (Mode 1.)	To add paragraph (a)(4) to read: (4) Specification MC 303, MC 304, MC 306, MC 311, or MC 312 (secs. 178.341, 178.342, and 178.343 of this subchapter). Tank motor vehicles. Tanks must comply with sec. 178.340-8. Discharge valves must be located inside the tank or at a point outside the tank where the line enters or leaves the tank. Valve seat must be located inside the tank or within the welded flange, its companion flange, nozzle, or coupling. Each product discharge opening shall have a secondary closing means, remote from tank filling or discharge openings, for operation in event of fire or other accident. Tanks may have heating coils if an inorganic heating medium is used. Authorized only for sodium perchlorate or magnesium perchlorate, wet, with 10 pct or more of water, equally distributed within the cargo tank.
E 6628-No	E. I. du Pont de Nemours & Co., Inc.	173.2 (i)(22).....	Authorizes shipments of sulfuric acid in DOT specification 111A100W6 tank cars constructed of type 304-L stainless steel. NOTE.—This change is to prohibit the use of a car having bottom outlets and was inadvertently omitted in Docket No. HM-139 dated June 2, 1977. (Mode 2.)	To add a sentence at the end of par. (i)(22) to read: Bottom outlets prohibited.
E 6662-No	Hercules Inc., Pennwalt Corp.	173.154(a).....	Authorizes shipment of diacetyl peroxide and an organic peroxide, solid, n.o.s. in DOT specification 67 metal portable tanks. Tanks must have a fusible plug having a fusing temperature between 70° C., and 90° C. (Modes 1 and 2.)	To add par. (a)(3) to read: (3) Specification 67 (sec. 178.253 of this subchapter). Portable tanks. Tanks must have a fusible plug having a fusing temperature between 70° C. and 90° C. Authorized only for diacetyl peroxide, dry and <i>a,a'</i> -bis(<i>t</i> -butylperoxy) diisopropylbenzene, solid.
E 6662-No	Foot Mineral Co.....	173.308(a).....	Authorizes shipment of lithium metal foil wound on nonsparking spools, packed in hermetically sealed, tin-coated steel cans, and overpacked in DOT specification 21C fiber drums. (Modes 1 and 2.)	To add par. (a)(3) to read: (3) Specification 21C (sec. 178.224 of this subchapter). Fiber drums with inside hermetically sealed tin-coated steel cans with a minimum wall thickness of 0.015 in. Not more than 4 spools made of nonsparking material may be packed in each inside container with not more than 2½ lb net weight of product in each inside container. Each metal can shall be individually separated with double-faced corrugated partitions and noncombustible packing material. Authorized only for lithium metal in ribbons.
E 6941-No	Mohay Chemical Corp.; Allied Chemical Corp.; BASF Wyandotte Corp.	173.346(a)(12).....	Authorizes shipments of toluene diisocyanate in tank motor vehicles that comply with DOT specifications MC 304, and MC 307 except bottom discharge outlets are equipped with external ball valves of the Hill-McCanna type or equivalent. (Mode 1.)	To amend par. (a)(12) to read: (12) Specifications MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 (secs. 178.341, 178.342, and 178.343 of this subchapter). Tank motor vehicles. Tank motor vehicles designed and constructed to specification MC-304 or MC-307 except for bottom outlets equipped with external ball valves may be used only for toluene diisocyanate.

Application No.	Applicant or holder	Regulation affected	Nature of exemption or application	Nature of proposed amendment
E 6943-No	Mason & Hanger-Silas Mason Co., Inc.; Rockwell International Corp.; ERDA; Lawrence Livermore Lab	173.65(d).....	Authorizes shipment of triaminotri-nitrobenzene (TATB), trichloro-nitrobenzene (TCTNB), and hexanitrostilbene (HNS) as reagents in accordance with 49 CFR 173.65(d). (Modes 1, 2, and 4.)	To revise par. (d) to read: (d) The following materials may be shipped dry, in quantities not exceeding 4 oz in 1 outside package, by rail freight, or highway, as drugs, n.o.s., or medicines, n.o.s., without any other requirements when in securely closed bottles or jars cushioned to prevent breakage: (1) Ammonium picrate. (2) Dipteryamine. (3) Dipicryl sulfide. (4) Dinitrophenylhydrazine. (5) Nitroguanidine. (6) Picramide. (7) Picric acid. (8) Picryl chloride. (9) Trinitroanisole. (10) Trinitrobenzene. (11) Trinitrobenzoic acid. (12) Trinitro-m-cresol. (13) Trinitronaphthalene. (14) Trinitroresorcinol. (15) Trinitrotoluene. (16) Urea nitrate. (17) Triaminotri-nitrobenzene. (18) Trichlorotri-nitrobenzene. (19) Hexanitrostilbene. Not authorized for transportation by air.
E 7507-No	Witco Chemical Corp.	173.119(m)(8)..... 173.221(a)(9).....	Authorizes shipment of certain flammable liquids which are also corrosive, and organic peroxide solutions in 12P/2U composite packaging as prescribed in the regulations except capacity may be 6 gal instead of 5. (Modes 1 and 3.)	To revise paragraph (m)(8) to read: (8) Specification 12P (sec. 178.211 of this subchapter). Fiberboard boxes with inside specification 2U (sec. 178.24 of this subchapter) polyethylene containers not over 6 gal capacity each. Authorized only for material which will not react dangerously with or cause decomposition of polyethylene. Not authorized for transportation by air. To revise paragraph (a)(9) to read: (9) Specification 12P (sec. 178.211 of this subchapter). Fiberboard boxes with inside specification 2U (sec. 178.24 of this subchapter) polyethylene containers not over 6 gal capacity each. Wire staples are not authorized for assembly or closure of boxes, except when polyethylene container is completely enclosed in inside boxes free of wire staples or other projections that could cause failures.
E 7514-No	Olin Corp.	173.217(a).....	Authorizes shipment of certain oxidizing materials in a DOT specification 12B fiberboard box with 2 inside polyethylene bottles each with a net weight not over 16 lb. (Modes 1, 2 and 3.)	To add paragraph (a)(7) to read: (7) Specification 12B (sec. 178.205 of this subchapter). Fiberboard boxes with inside polyethylene bottles with a minimum wall thickness of 0.015 in. Not more than 2 polyethylene bottles may be packed in 1 box and each bottle shall contain not more than 16 lb net weight of commodity. Container must be such that it will not react dangerously with or be decomposed by the commodity.
E 7525-No	Connecticut Valley Arms, Inc.	173.107(d).....	Authorizes percussion caps in DOT specification 12B fiberboard box with inside plastic cans packed tightly inside chipboard boxes. (Modes 1 and 2.)	To add paragraph (d)(2) to read: (2) Specification 12B (sec. 178.205 of this subchapter). Fiberboard box. Caps must be packed in inside plastic cans containing not more than 100 caps each. Cans must then be packed in a chipboard box with not more than 8 such chipboard boxes tightly packed in the 12B fiberboard box. The completed package must be such that the explosion of part of the caps will not cause the explosion of all the caps.
E 7537-No	Pennwalt Corp.	173.157(b)(3).....	Authorizes shipments of benzoyl peroxide wet with at least 20 pct water by weight in accordance with 49 CFR 173.157(b)(3) except the net weight (dry weight) in each outside box may not exceed 50 lb. (Mode 1.)	To revise par. (b)(3) to read: (3) Specification 12B (sec. 178.205 of this subchapter). Fiberboard box with securely closed inside plastic containers made of polyethylene film at least 0.004 in thick. Net weight (dry weight) in each inside container may not exceed 10 lb. Each inside container must be surrounded by asbestos or an equivalent fire resistant cushioning material. Net weight (dry weight) in each outside box may not exceed 50 lb.
E 7602-No	Gaspro, Inc.	173.850.....	Authorizes shipment of calcium oxide, an O.F.M.-B material, in non-DOT specification dry bulk containers not over 40,000 lb net weight by cargo vessel. (Mode 3.)	To add par. (a)(7) to read: (7) Bulk freight container with net weight not over 40,000 lb.
E 7626-No	Commercial Metals Co.; Johnson Scan Star.	173.1025.....	Authorizes shipments of nonferrous metal borings, shavings, turnings, or cuttings in plastic lined freight containers. Freight containers with open tops must have lading protected from weather and water. Lading must be at or below 150° F. when loaded. (Mode 3.)	To amend sec. 173.1025 to read: Metal borings, shavings, turnings or cuttings, when offered for transportation by water, must be prepared for shipment in compliance with sec. 173.510 and must be packaged in a metal barrel or drum, or, for nonferrous material only, in compressed bales wrapped in burlap provided the burlap shows no sign of oil, or, in plastic lined freight containers. Freight containers with open tops must have lading protected from weather and water and the lading must be at or below 150° F when loaded.
E 7640-N	Ford Motor Co.	173.306(d).....	Requests authority to ship a nonflammable, compressed gas in authorized DOT specification cylinders in the trunks of passenger automobiles when the container is part of a tire inflator system.	To add paragraph (d)(4) to read: (4) A cylinder which is part of a tire inflator system in a motor vehicle, charged with a nonliquefied, nonflammable compressed gas is excepted from the requirements of pts. 170-189 of this subch. except: (i) Unless otherwise authorized by the Department, each cylinder must be in compliance with 1 of the cylinder specifications in pt. 178 and authorized for use in Sec. 173.302 for the gas it contains. (ii) Each cylinder must be in compliance with the filling requirements of Sec. 173.301. (iii) Each cylinder must be securely installed in the trunk of the motor vehicle and the valve must be protected against accidental discharge.
E 7656-No	Tennessee Eastman Co.	173.119(m).....	Authorizes shipment of a flammable liquid which is also corrosive in a DOT specification 19A wooden box with an inside 1-gal polyethylene jug. (Mode 1.)	To revise par. (m)(2) to read: (2) Specifications 15A, 15B, 15C, 16A, or 19A (sec. 178.168, 178.169, 178.170, 178.185, and 178.190 of this subchapter). Wooden boxes with inside containers which must be glass, earthenware, or polyethylene, not over 1-gal capacity each, cushioned with non-combustible packing material in sufficient quantity to absorb the contents of the inner container.
E 7782-N	Eastman Kodak Co.	178.800(a).....	Waves the general stowage requirements specified in 49 CFR 178.800(a) for hazardous materials in limited quantities when loaded in transport vehicles and freight containers. (Mode 2.)	To revise paragraph (a) to read: (a) Each package of a corrosive material being transported on a vessel must be stowed well away from living quarters, foodstuffs, and cargo of an organic nature except when in limited quantities and loaded in transport vehicles and freight containers.
7797-N	Food Materials Corp.	172.100(g).....	Requests an exemption to ship certain flammable liquids with a flash point greater than 73° F in 1-gal and 55-gal quantities per package aboard passenger and cargo-only aircraft respectively, as now generally authorized for flammable liquids, n.o.s. (Modes 4 and 5.)	To revise par. (g)(3) to read: (3) For flammable liquids the net quantity limitation for carriage aboard a passenger-carrying aircraft or railroad is 1 gal per package, and for cargo-only aircraft is 55 gal per package if: (i) The material has a flash point of 73° F or higher; (ii) The material does not meet the definition of any other hazard class as defined in this part, and (iii) The flash point, or an indication that the flash point is 73° F or higher, is marked on the outside package.

¹ See the following table:

Sec. 172.101 Hazardous materials table—(continued)

(1) *W/A	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(4) Label(s) required (if not excepted)	(5) Packaging		(6) Maximum net quantity 1 package		(7) Water shipments		
				(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
(Add)...	Ammunition for cannon with tear gas projectile.	Class A explosive.	Explosives A.	None.	173.54	Forbidden.	Forbidden.	6	5	
	Ammunition for cannon with tear gas projectile.	Class B explosives.	Explosives B.	do.	173.89	do.	do.	1, 2	5	

NOTE: The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., August 1, 1977.

ALAN I. ROBERTS,

Director, Office of Hazardous Materials Operations.

MATERIALS TRANSPORTATION BUREAU QUESTIONS AND ANSWERS ON HAZARDOUS MATERIALS REGULATIONS

Following is a list of questions and answers which has been developed concerning the Department's Hazardous Materials Regulations in order to assist the general public in understanding and complying with these regulations:

Q. May a shipment of hazardous materials destined for export be shipped from its point of origin within the United States to a marine facility using only the descriptions given in the International Maritime Dangerous Goods Code (IMCO Code) on the shipping papers?

A. No, a hazardous material may not be transported within the United States, by air, highway, or rail using only IMCO descriptions on the shipping papers unless the IMCO descriptions are identical with the proper shipping names found in Section 172.101 or the material is classed as an ORM material and therefore, not subject to highway or rail requirements when so transported. The proper shipping name prescribed for the material, by 49 CFR 172.101, must appear on the shipping paper. However, except Class A Explosives and Radioactive materials, a material may be classed and labeled in accordance with the IMCO Code. See 49 CFR 171.12.

Q. For an aerosol product which is described as a Compressed Gas, n.o.s., does the name of the propellant satisfy the requirement for entering the technical name in parenthesis on the shipping papers for export shipments?

A. Only when the aerosol contains no other hazardous material as defined in 49 CFR Parts 170-189. When the aerosol is a mixture of hazardous materials, all of the components which contribute to the hazard of the material, including the propellant, must be identified. For example: Compressed Gas, n.o.s. (Toluene, Dichlorodifluoromethane) Flammable gas.

Q. Must the words "NO LABEL REQUIRED" appear on the shipping papers for limited quantity shipments of hazardous material in the water mode?

A. The words "NO LABEL REQUIRED" are not required on the shipping papers. The words are used by the old Chemical and Hazardous Materials Regulations (49 CFR 170-189) to indicate that the material is not subject to the labeling requirements of 49 CFR 172.101. The new regulations (49 CFR 170-189) do not require the use of these words.

replaced by the words "Limited Quantities" or "Ltd. Qty." See 49 CFR 172.203(b).

Q. May the descriptions of hazardous materials given in the IMCO Code be used in preparing the dangerous cargo manifest?

A. When preparing the dangerous cargo manifest, the carrier has the option of using either the proper shipping name and hazard class as given in the Hazardous Materials Table (49 CFR 172.101), or the "correct technical name" and classification, as given in the IMCO Code, with the exception of Explosives and Radioactive materials. See 49 CFR 176.11 and 176.30.

Q. What is the correct hazard class for poisonous gases? May the hazard class "Poison Gas" be used on the dangerous cargo manifest?

A. Under DOT Regulations, the proper hazard class for poisonous gases is "Poison A." "Poison Gas" is not a proper hazard class under 49 CFR, however, it should be used to amplify the numerical classification given in the IMCO Code.

Q. Should the classification of a hazardous material under IMCO include the division number?

A. The required classification of hazardous materials under IMCO should include the division number when it is specified by the IMCO Code, such as "IMCO class 4.2." It is recommended that the class name be added as amplifying information, such as, "IMCO class 4.2, Spontaneously Combustible Substances."

Q. May information other than that prescribed by 49 CFR 176.30 be listed on the dangerous cargo manifest?

A. Other amplifying information not required by 49 CFR 176.30 may appear on the dangerous cargo manifest, however, materials of a nonhazardous nature may not be listed.

Q. May a material which is classed as a flammable liquid under the IMCO Code, but is classed as a combustible liquid under DOT Regulations, be classified as a flammable liquid on the dangerous cargo manifest?

A. Yes, if the material is classified as a flammable liquid under DOT Regulations, it may be listed as a flammable liquid on the dangerous cargo manifest. If the material is classified as a combustible liquid under DOT Regulations, it may be listed as a combustible liquid on the dangerous cargo manifest.

ty. In this situation, it is recommended that the IMCO "correct technical name" be used.

Q. Are the DOT Specification packages referenced in Column 5 of 49 CFR 172.101 always acceptable for transport by water?

A. The specification packages are acceptable except when they are specifically prohibited in Column 7 (c) of 49 CFR 172.101 or in the individual packaging sections.

Q. In understanding the exclusion applicable to Explosives and Radioactive materials contained in 49 CFR 171.12, 176.11, what class and label should be applied to a package containing a material which is classed as a flammable solid under DOT Regulations, but is classed as an explosive under the IMCO Code?

A. The shipper has the option of complying with either DOT or IMCO with respect to hazard class and label for domestic transport, but not both. However, the proper shipping name as prescribed by 49 CFR 172.101 must be marked on the package and listed on the shipping papers. The exclusion applicable to Explosives and Radioactive materials applies only to those materials meeting the DOT class definitions.

Q. What is the difference between a DOT Exemption, a Coast Guard Commandant approval, a Coast Guard Special Permit, and an IMCO Competent Authority Certificate of Approval?

A. (a) A DOT Exemption is a form of administrative relief from the Hazardous Materials Regulations (49 CFR Parts 170-189 and 46 CFR 146) which is issued by the Materials Transportation Bureau in accordance with 49 CFR 107.

(b) A Coast Guard Commandant Approval is an approval for a specific action or method of transporting hazardous materials which is issued by the Commandant (G-MHM). The specific cases for which approval authority is delegated to the Coast Guard are set forth in 49 CFR 176 and 46 CFR 146. An example of this is approval for transporting Class A Explosives in a freight container by vessel as specified in 49 CFR 176.75(a).

(c) A Coast Guard Special Permit is a form of administrative relief from Coast Guard Regulations for the carriage of dangerous solids in bulk (46 CFR 148) and for shipboard fumigation (46 CFR 147A). These Special Permits are issued by the Commandant (G-MHM).

(d) An IMCO Competent Authority Certificate of Approval is an approval for specific actions or methods of transporting dangerous goods as authorized by the IMCO Code. These approvals are issued by the Competent Authority(ies) of the country(ies) concerned. The specific cases for which a Competent Authority Approval is permitted are set forth in the IMCO Code. The IMCO Competent Authority for the United States is the Commandant (G-MHM), U.S. Coast Guard.

EPA ADVANCE DRAFT OF PESTICIDE REGULATIONS

Title 40 — Protection of Environment

CHAPTER 1 — ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E — PESTICIDE PROGRAMS

PART 162 — REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

(OPP — 30015)

Optional Procedures for Classification of Pesticide Uses by Regulation

AGENCY: Office of Pesticide Programs, Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation amends 40 CFR Part 162 by adding a new section, 162.30, which establishes optional procedures for the classification by regulation of uses of pesticide products for restricted use.

EFFECTIVE DATE: Date of publication of this regulation.

FOR FURTHER INFORMATION CONTACT:

James H. White, Project Leader (WH-570)
Office of Pesticide Programs
Environmental Protection Agency
Room E509A
401 M Street, S.W.
Washington, D.C. 20460
Telephone: 202-755-8297

SUPPLEMENTARY INFORMATION:

The Agency is also publishing three other related documents in this separate Part. Comments pertaining to all four documents from the FIFRA Scientific Advisory Panel

and the U.S. Department of Agriculture (USDA), and the responses of the Deputy Assistant Administrator for Pesticide Programs to these comments are published as an appendix to this rulemaking document.

One of the documents (OPP-30016) adds subsections to §162.30 relating to compliance, amendments of registrations, labeling, hearing rights, and enforcement. Although these subsections are also procedural in nature, they will not apply until after the promulgation of a final rule under §162.30 (c) (3). Accordingly, the Agency has determined, in the public interest, to promulgate the additional subsections as proposed regulations and to specifically solicit public comment.

Another document (OPP-30017) is a proposed rule listing 23 active ingredients which have been reviewed by the Agency thus far. Some of the uses of these active ingredients have been classified for restricted use; others remain unclassified.

The fourth document (OPP-30018) is an advance notice of proposed rulemaking which presents a list of active ingredients which the Agency intends to review and classify. Additional information is being solicited.

Section 3 (d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that as part of the registration of a pesticide the Administrator shall classify its uses as being for general use or restricted use. It further provides that a use shall be classified as restricted if the Administrator determines that the use of the pesticide, when applied in accordance with its directions for use, warnings and cautions, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator. The regulatory restriction may take the form of a requirement that the product having a restricted use be

applied only by or under the direct supervision of a certified applicator, or such other requirement as the Administrator may provide by regulation.

The Act further provides that the Administrator is to reregister and classify all previously registered pesticides by October 21, 1977, and must implement State programs for the certification of applicators by that same date. However, unforeseen difficulties with the reregistration process have seriously delayed progress, and current projections for the completion of reregistration and classification extend well beyond the October 1977 deadline. Nevertheless, classification of a substantial number of pesticide products is desirable in order to lessen the risks involved in pesticide use, to preserve the integrity of the certification program, and to provide needed support for the States in this area. Accordingly, the Agency has decided to proceed with classification apart from the reregistration process.

In order to accomplish this goal as expeditiously as possible, the Administrator has established an optional procedure which will allow him, at his discretion, to classify uses by means of rulemaking. This procedure will not necessarily apply to individual products or individual uses of individual products, but rather will provide for classification of uses by groups of products. Thus, the Administrator may describe a group comprised of all products which contain a particular active ingredient, or contain a particular active ingredient in a particular concentration range, formulation type, or combination of concentration range and formulation type. He may then classify for restricted use some or all uses of the products in that group. This approach will be consistent with the generic registration authority being requested of the Congress.

The Agency wishes to emphasize that the establishment of this optional procedure for classification by regulation does not alter the status of classification as an integral part of the registration or reregistration processes. This is merely an optional procedure and, as explained more fully below, it will focus on the "incremental" risk/benefit analysis established by §162.11(c). This will involve a comparison of restricted and unrestricted use, and a use will be classified if the risks of unrestricted use outweigh the benefits of unrestricted use. Classification is also appropriate if it will avoid the need to cancel a use of a pesticide in a situation where, but for the classification and imposition of restrictions, the risks of that use would exceed the benefits. That decision will require an evaluation of the overall risks and benefits associated with a use, and will be accomplished during the "rebuttable presumption against registration" (R-PAR) process set forth in §162.11 (a) and (b). Evaluations of overall risks and benefits will also occur in making decisions whether to register or reregister products, and classification decisions made in those contexts also may focus on reduction of overall risks. Moreover, since this optional procedure only involves an incremental, and not an overall risk/benefit analysis, a decision under the optional procedure to restrict (or not to restrict) a use of a product will not in any way imply that the product will (or will not) ultimately satisfy the statutory standards governing registration or reregistration.

In determining whether to classify a use of a group of products as restricted under this procedure, the Administrator shall apply the criteria specified in §162.11 (c) (1), (2), and (4). If these criteria for general use are not met, the Administrator will perform the incremental risk/benefit analysis outlined in §162.11(c). This incremental risk/benefit analysis requires the Administrator to compare the incremental benefits of unrestricted use (those over and above the benefits of restricted use) with the incremen-

tal risks of unrestricted use (those over and above the risks of restricted use).

In evaluating the incremental risks of unrestricted use, the Administrator will focus on those risks which could be reduced by restriction. This would include reduction of risk to the applicator (by a requirement that the applicator be certified or under the direct supervision of a trained, certified applicator) as well as reduction of risk to non-applicators, fish and wildlife, and non-target species. Conversely, in evaluating the incremental benefits of unrestricted use, the Administrator will focus on benefits which would be lost if the use were restricted. The predominant factor here will be the extent to which the imposition of a restriction will limit access to, or the availability of, a product.

If the Administrator determines that the incremental risks of unrestricted use outweigh the incremental benefits from unrestricted use, he will classify the use as restricted. Before reaching a final decision to classify, however, the Administrator will also consider whether specific standardized language can be developed for incorporation on the labels of products in the affected groups, which would be adequate to reduce the risk of unreasonable adverse effects on the environment so as to eliminate the need for restricted classification of use(s) of any product so labeled. If the Administrator affirmatively determines that such language has been developed, he shall not classify the use for restricted use.

If the Administrator tentatively determines to classify a use of a group of products as restricted, he will publish a notice of proposed rulemaking in the Federal Register describing the category of products, identifying the use proposed to be classified as restricted, and setting forth the nature of the proposed restrictions. These restrictions may include a limitation to application by or under the direct supervision of a certified applicator, or may take the form of any other regulatory restriction, including those described in §161.11(c)(5). The notice will also contain a summary of the basis for the proposed classification and will state how an interested person may obtain further information concerning the basis for the proposed action.

After publication of the notice, there will be a comment period of at least 45 days during which a registrant or any other interested party may submit written comments on the proposed classification and the proposed restriction(s). These comments may specifically include any pertinent test data, including data relating to the criteria specified in §161.11(c)(1), (2), and (4), and may suggest proposed label and labeling language for the group which, if contained in the label and labeling of any product in the group would, in the opinion of the commenter, eliminate the need for restricted use classification of that product. It should be stressed that any suggested language must be of general applicability to the entire group of products; the Agency will generally not review proposed modifications on an individual product-by-product basis as a part of this rulemaking.

After consideration of the comments received, the Administrator may publish a final rule in the Federal Register classifying a use of all products within a product group as restricted and establishing the use restrictions pertaining to that use. The final rule may also specify standardized language which, if contained in the label or labeling of any product in the group, will eliminate the need for restricted use classification of that product. The Administrator is required to notify by certified mail all registrants whose products may be affected by the restriction.

The Administrator has determined that there are compelling public interest reasons for these regulations to be made