

## Federal Emergency Management Agency, DHS

## § 362.3

362.3 Criteria for determining acceptance.

AUTHORITY: 42 U.S.C. 7701, 7705c.

SOURCE: 59 FR 35631, July 13, 1994, unless otherwise noted.

### § 362.1 Purpose.

This part establishes criteria for determining whether the Administrator may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazards Reduction Program (NEHRP), under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c.

### § 362.2 Definitions.

As used in this part—

*Gifts of property* means a gratuitous, voluntary transfer or conveyance of ownership in property by one person to another without any consideration, including transfer by donation, devise or bequest.

*Gifts of services* means a gratuitous, voluntary offer of labor or professional work by one person to another without any compensation for that labor or professional work.

*Program Agencies* means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

*Property* means real or personal property, tangible or intangible, including money, certificates of stocks, bonds, or other evidence of value.

*Services* means labor or professional work performed for the benefit of another or at another's command.

*Solicit* means to endeavor to obtain by asking or pleading.

### § 362.3 Criteria for determining acceptance.

The following criteria shall be applied whenever a gift of property or gift of services is offered to the Administrator for the benefit of the National Earthquake Hazards Reduction Program.

(a) The gift of property or gift of services must clearly and directly further the objectives of the National Earthquake Hazards Reduction Program, as defined in 42 U.S.C. 7702.

(b) All gifts of property must be offered unconditionally, with sole discretion of use, administration and disposition of such property to be determined by the Administrator or his designee.

(c) The Administrator may accept and use gifts of services of voluntary and uncompensated personnel, and may provide transportation and subsistence as authorized by 5 U.S.C. 5703 for persons serving without compensation.

(d) Employees of FEMA or the Program agencies may not solicit gifts of property, or gifts of services.

(e) Acceptance of gifts of property, or gifts of services must first be approved by the Office of the Chief Counsel, FEMA, for conformance with all applicable laws and regulations.

(f) In all cases where it is determined that the acceptance of a gift may create a conflict of interest, or the appearance of a conflict of interest, the gift will be declined.

**PARTS 363–399 [RESERVED]**



## CHAPTER IV—DEPARTMENT OF COMMERCE AND DEPARTMENT OF TRANSPORTATION

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## **PART 401—SHIPPING RESTRICTIONS (T-1)**

Sec.

401.1 Prohibited transportation and discharge.

401.2 Application for adjustment or exceptions.

401.3 Reports.

401.4 Records.

401.5 Defense against claims for damages.

401.6 Violations.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. app. 2154, as amended; Interpret or apply secs. 101, 705, 64 Stat. 799, as amended; 50 U.S.C. app. 2071; E.O. 10480, 3 CFR, 1949-1953 Comp., p. 962.

SOURCE: Transportation Order T-1, 30 FR 9092, July 21, 1965; 32 FR 15831, Nov. 17, 1967, unless otherwise noted. Redesignated at 45 FR 44574, July 1, 1980.

### **§ 401.1 Prohibited transportation and discharge.**

No person shall transport in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States any commodity at the time not identified by the Symbol B in the last column of the Commodity Control List (339.1 of the Comprehensive Export Schedule, issued by the Bureau of International Commerce, Department of Commerce (15 CFR parts 368 through 399), any article designated as arms, ammunition, and implements of war in the United States Munitions List (22 CFR parts 121 through 128), or any commodity, including fissionable, materials controlled for export under the Atomic Energy Act of 1954, as amended, to any destination at the time in country groups X, Y, or Z as set forth in the Comprehensive Export Schedule (15 CFR 370.1(g)(2)), and no person shall discharge from any such ship or any such aircraft any such commodity or article at any such port or place or at any other port or place in transit to any such destination, unless a validated export license under the Export Control Act of 1949, as amended, under section 414 of the Mutual Security Act of 1954, as amended, or under the Atomic Energy Act of 1954, as amended, has been obtained for the shipment, or unless authorization for the shipment has been obtained from the Assistant Secretary for Domestic and International

Business. This prohibition applies to the owner of the ship or aircraft, the master of the ship or aircraft, or any other officer, employee or agent of the owner of the ship or aircraft who participates in the transportation. The consular officers of the United States are furnished with current copies of the Commodity Control List.

### **§ 401.2 Application for adjustment or exceptions.**

Any person affected by any provisions of this order may file an application for an adjustment or exception upon the ground that such provision works an exceptional hardship upon him, not suffered by others, or that its enforcement against him would not be in the interest of the national defense program. Such an application may be made by letter or telegram addressed to the Assistant Secretary for Domestic and International Business, Department of Commerce, Washington, DC, 20230, reference T-1. If authorization is requested, any such application should specify in detail the material to be shipped, the name and address of the shipper and of the recipient of the shipment, the ports or places from which and to which the shipment is being made and the use to which the material shipped will be put. The application should also specify in detail the facts which support the applicant's claim for an exception.

### **§ 401.3 Reports.**

Persons subject to this order shall submit such reports to the Assistant Secretary for Domestic and International Business as he shall require, subject to the terms of the Federal Reports Act.

### **§ 401.4 Records.**

Each person participating in any transaction covered by this order shall retain in his possession, for at least 2 years, records of shipments in sufficient detail to permit an audit that determines for each transaction that the provisions of this order have been met. This does not specify any particular accounting method and does not require alteration of the system of records customarily maintained, provided such records supply an adequate basis for

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audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

### § 401.5 Defense against claims for damages.

No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this order or any provision thereof, notwithstanding that this order or such provision shall thereafter be declared by judicial or other competent authority to be invalid.

### § 401.6 Violations.

Any person who wilfully violates any provisions of this order or wilfully conceals a material fact or furnishes false information in the course of operation under this order is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

## PART 402—SHIPMENTS ON AMERICAN FLAG SHIPS AND AIRCRAFT (T-1, INT. 1)

Sec.

402.1 Shipments from the United States.

402.2 Restricted commodities.

402.3 Addition of commodities to the Positive List.

402.4 Calls at restricted ports en route to an unrestricted port with restricted cargo.

402.5 Forwarding commodities previously shipped.

402.6 Relation to Transportation Order T-2.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. app. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. app. 2071, E.O. 10480, 3 CFR, 1949-1953 Comp., p. 962.

SOURCE: Transportation Order T-1, Interpretation 1, 15 FR 9145, Dec. 21, 1950; 32 FR 15831, Nov. 17, 1967, unless otherwise noted. Redesignated at 45 FR 44574, July 1, 1980.

### § 402.1 Shipments from the United States.

Transportation Order T-1 applies to shipments from the United States, as well as to shipments from foreign

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ports, on American flag ships and aircraft.

### § 402.2 Restricted commodities.

The restrictions of Transportation Order T-1 apply to the transportation or discharge of (a) commodities on the Positive List (15 CFR part 399) (as amended from time to time) of the Comprehensive Export Schedule of the Office of International Trade, Department of Commerce, (b) articles on the list of arms, ammunition and implements of war coming within the meaning of Proclamation No. 2776 of March 26, 1948, and (c) commodities, including fissionable materials, controlled for export under the Atomic Energy Act of 1946. The restrictions imposed by Transportation Order T-1 do not apply to other commodities, not within these restricted classes at the time of transportation or discharge, even though authorization for the export of the commodity from the United States to the particular destination is required under regulations of the Office of International Trade or under other Federal law or regulation. In this respect, Order T-1 is different from Order T-2 which applies to all commodities destined to Communist China. Order T-1 does not relax or modify any of the requirements of any other regulation or law.

### § 402.3 Addition of commodities to the Positive List.

Order T-1 applies to the transportation or discharge of commodities which are restricted at the time of transportation or discharge. Accordingly, if a commodity is added to the Positive List while the commodity is being transported on an American flag ship or aircraft, the restrictions of Order T-1 immediately apply and the commodity may not be transported to or discharged at any of the restricted ports or discharged in transit to one of the restricted ports, unless authorization under Order T-1 is obtained.

### § 402.4 Calls at restricted ports en route to an unrestricted port with restricted cargo.

Order T-1 does not prohibit an American flag ship or aircraft from going to or calling at one of the restricted

ports, even though it has on board a commodity which could not be discharged at that port. (Note, however, that Order T-2 prohibits American flag ships and aircraft from calling at any port or other place in Communist China.) For example, an American flag ship may call at one of the restricted ports (except one in Communist China), even though it has on board the following classes of commodities:

(a) A Positive List commodity manifested to a destination outside the restricted area, with an export license and an export declaration showing the unrestricted destination at the ultimate destination, (b) a Positive List commodity destined for the restricted port of call which cannot be discharged there because there is no export license or authorization from the Assistant Secretary for Domestic and International Business permitting discharge at the restricted port of call, (c) a commodity of any kind destined for Communist China (the transportation and discharge of which is covered by Order T-2). None of these commodities may be discharged at the restricted port of call. Discharge of any of these commodities at the port covered by the restrictions of Order T-1 is prohibited and subject to penalty, regardless of the circumstances under which the discharge of the cargo at the restricted port occurs, unless appropriate authorization is obtained.

**§ 402.5 Forwarding commodities previously shipped.**

Order T-1 applies to transportation on or discharge from ships documented under the laws of the United States and aircraft registered under the laws of the United States. These restrictions apply either in the case of a discharge at one of the restricted ports or to discharge at any other port in transit to a

restricted destination. The restrictions of Order T-1 do not apply to transportation by foreign carriers, as long as there is no prohibited transportation or discharge by or from a United States flag ship or aircraft after the issuance of Order T-1. Accordingly, if an American flag ship or aircraft, before the issuance of Order T-1, had transported restricted commodities manifested to restricted destinations, and had completed the transportation to a foreign intermediate point and had completed the discharge from the American flag ship or aircraft before the issuance of Order T-1, no violation of that order would have occurred, but Order T-1 would prohibit further shipment on an American flag ship or aircraft unless authorization under Order T-1 is obtained.

**§ 402.6 Relation to Transportation Order T-2.**

Transportation Order T-1 applies to the transportation of commodities to, or in transit to, destinations in Sub-Group A, Hong Kong or Macao. It applies, however, only to commodities on the Positive List of the Office of International Trade, arms and ammunition, and commodities controlled under the Atomic Energy Act (see section 2 of this interpretation). Transportation Order T-2 applies to the transportation of commodities of any kind which are destined to Communist China (Order T-2 also prohibits American ships and aircraft from calling at any port or place in Communist China). Since Communist China is in Sub-Group A, the restrictions of both orders apply to the transportation of commodities to Communist China or to any other point in transit to Communist China.

**PARTS 403-499 [RESERVED]**