1,1-dichloroethane and 1,1,2,2-tetrachlorethane shall be completed and the final report submitted to EPA by April 27, 1995. The subacute testing for 1,3,5-trimethylbenzene shall be completed and the final report submitted to EPA by February 11, 1995.

(B) Except for 1,3,5-trimethylbenzene, a progress report shall be submitted to EPA for each test beginning 6 months after the date specified in paragraph (d)(1) of this section and at 6–month intervals thereafter until the final report is submitted to EPA . The progress report for 1,3,5-trimethylbenzene shall be submitted to EPA by April 10, 1995.

(2) * * *

(ii) * * * (A) The subchronic testing for chloroethane shall be completed and the final report submitted to EPA by June 27, 1995. The subchronic testing for 1,1-dichloroethane and 1,1,2,2-tetrachlorethane shall be completed and the final report submitted to EPA by August 27, 1995. The subchronic testing for 1,3,5-trimethylbenzene shall be completed and the final report submitted to EPA by April 10, 1995.

* * * * *

(d) *Effective date.* (1) This section is effective on December 27, 1993 except for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(2)(ii)(A). The effective date for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2)(ii)(A) is September 29, 1995.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

[FR Doc. 95–24211 Filed 9–28–95; 8:45 am]

BILLING CODE 1505–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM–215A; Amdt. No. 173–242]

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: Response to petition for reconsideration.

SUMMARY: On December 29, 1994, RSPA published a final rule which amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. A final rule correcting errors in the December 29, 1994 final rule and responding to petitions for reconsideration was published on May 18, 1995. This final rule denies a petition for reconsideration to the May 18, 1995 final rule concerning adoption of certain testing provisions for plastic aerosol containers.

EFFECTIVE DATE: The effective date for the final rules published under Docket HM–215A on December 29, 1994 (59 FR 67390), and May 18, 1995 (60 FR 26796), remains October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Machado, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On July 18, 1994, RSPA published a Notice of Proposed Rulemaking (NPRM) (59 FR 36488) proposing changes to the Hazardous Materials Regulations (HMR) in order to maintain alignment with corresponding provisions of the recently revised International Maritime Dangerous Goods Code (IMDG Code), International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). On December 29, 1994, RSPA published a final rule under Docket HM–215A (59 FR 67390). A final rule published on May 18, 1995 (60 FR 26796), incorporated editorial and technical revisions to the December 29, 1994 final rule based on the merit of petitions and other revisions RSPA determined to be necessary to correct or clarify the final rule.

One of these editorial revisions entailed deleting all references in § 173.306(a)(3)(v) to testing procedures for certain non-specification plastic aerosol containers. (Section 173.306(a)(3)(v) enumerates one of the five different conditions that must be met in order to ship limited quantities of compressed gas in *metal* containers.) Language in the preamble to the July 18, 1994 NPRM and in the December 29, 1994 final rule suggested that RSPA intended to add *testing provisions* for plastic aerosol containers. However, the HMR do not authorize the *use* of plastic aerosol containers, and both documents were silent on any intent to authorize the *use* of plastic aerosol containers. In proposing and adopting revisions to § 173.306(a)(3)(v), RSPA inadvertently incorporated UN Recommendation language regarding testing procedures for plastic containers. (*See*, UN Recommendations, Eighth Ed. ¶¶9.8.1 and 9.8.2 entitled ''Leakproofness Test for Aerosols and Small Receptacles for Gas.'')

This drafting error was brought to RSPA's attention by a member of petitioner Winston & Strawn's staff during a telephone conversation with a RSPA staff member, and in a subsequent letter dated January 10, 1995, seeking clarification of the origin and intent of the amendments to § 173.306(a). On May 16, 1995, RSPA responded to petitioner's letter and stated that

> Based on a provision in the UN Recommendations, RSPA proposed and incorporated a hot water bath test for aerosol containers in § 173.306(a)(3)(v). By adopting provisions identical to those contained in the UN Recommendations, RSPA failed to remove wording referring to certain non-specification plastic aerosol containers. It was not RSPA's intent in amending § 173.306 to authorize the use of plastic containers, and the final rule made no revisions to paragraphs (a)(3) and (a)(3)(ii), which specify only metal containers. We plan to amend paragraph (a)(3)(v) to remove all reference to plastic containers in order to clarify that they are not authorized for use under the HMR.

On May 18, 1995, RSPA published a final rule and amended § 173.306(a)(3)(v) to remove all references to plastic containers. RSPA explained that in adopting provisions identical to those contained in the UN Recommendations regarding metal containers, it had failed to remove wording referring to testing of certain non-specification plastic aerosol containers. Because plastic containers are not authorized for use under § 173.306(a)(3), RSPA removed all references to the hot water immersion test for plastic containers from § 173.306(a)(3)(v).

On June 16, 1995, Winston & Strawn filed a petition for reconsideration of this issue, on behalf of an unnamed client, on the grounds that adequate notice and an opportunity to comment were not given for this change, as required under the Administrative Procedure Act, 5 U.S.C. 553, and that RSPA's actions were arbitrary and capricious. The petitioner asked RSPA to reinstate § 173.306(a)(3)(v) as originally promulgated in the December 29, 1994 final rule. The petitioner also asked that RSPA make several ''editorial revisions'' in paragraphs (a)(3) and (a)(3)(ii) so as to authorize the use of plastic containers for aerosols. A copy of this petition for reconsideration is on file in the Dockets Unit (DHM–30),

Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington DC and may be reviewed between the hours of 8:30 a.m. and 5 p.m. Monday through Friday, except for Federal holidays.

In its May 18, 1995 final rule, RSPA stated that it was making an editorial correction to § 173.306(a)(3)(v) to remove all references to plastic containers because those containers are not authorized for use under § 173.306(a)(3). In treating this amendment as a routine editorial correction, RSPA reasoned that: (1) There would be no public interest in retaining testing procedures for containers that are not authorized for use; (2) removing the language would have no impact on the industry because the containers are not authorized for use; and (3) removing the language would avoid confusion. Consequently, RSPA determined that notice and comment were unnecessary.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, sets forth the requirement for public notice and an opportunity to comment on rulemaking proceedings. Section 553(b) requires that an NPRM be published in the Federal Register, unless persons subject to the requirements of the rulemaking are named and either personally served or otherwise have actual notice. Section 553(b)(3) states that publication of an NPRM is not required when

> the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, *unnecessary,* or contrary to the public interest. (Emphasis added.)

Section 553(b)(3) makes clear that ''there is no need for giving the public an opportunity to participate in minor amendments to rules * * *.'' *Texaco v. Federal Power Commission,* 412 F.2d 740, 743 (3rd Cir. 1969). The court in *Texaco,* quoting *National Motor Freight Traffic Ass'n v. U.S.,* 268 Fed. Supp. 90, 95–96 (D.D.C. 1967), *aff'd* 393 U.S. 18, found the language of 5 U.S.C. 553(b)(3) to apply to situations where an agency rule is ''a routine determination,'' ''insignificant in nature and impact,'' and unimportant ''to the industry and to the public.'' *Texaco* at 743. The *Texaco* court also quoted the Attorney General's Manual on Administrative Procedure Act (1947), pp. 12–13, which contains the following language: '' 'Unnecessary' refers to the issuance of a minor rule or amendment in which the public is not particularly interested. Senate Hearings (1941, p. 882.'' *Id.*

As evidenced by petitioner's telephone call and January 10, 1995 letter, the petitioner itself recognizes that, standing alone, the language as adopted in the December 29, 1994 final rule does not authorize the use of plastic aerosol containers. In fact, the December 29, 1994 language regarding testing for plastic aerosol containers conflicts with § 173.306(a) which makes clear that only metal containers are authorized. In its petition for reconsideration, Petitioner not only asked that the language from the December 29, 1994 rule be reinstated but also that several additional revisions be made to § 173.306 (a)(3)(v) in order to authorize the use of plastic aerosol containers. Specifically, petitioner requests that the limiting reference to metal containers be removed from §§ 173.306 (a)(3) and (a)(3)(ii)) so that plastic containers would also be authorized. The revisions requested by petitioner are exactly the type that would be subject to the notice and comment requirements of 5 U.S.C. 553(b) in that they propose a significant change to the regulations that would have a substantial impact on the regulated industry. For example, RSPA is not aware of any proposed industry standards for the manufacture and use of aerosol containers other than those made of metal.

With respect to petitioner's statement that compliance with the May 18, 1995 final rule is ''unreasonable,'' the final rule merely makes clear that no new containers are authorized under § 173.306(a)(3); it neither imposes new requirements, burdens, restrictions or costs on the industry nor eliminates any rights or benefits.

Petitioner also argues that the record does not support RSPA's contention that the language regarding testing standards for plastic aerosol containers was mistakenly inserted into the NPRM and final rule by RSPA staff because of (1) the specificity of the language with regard to the testing procedures; (2) the preamble language suggesting that RSPA intended to propose the testing procedures; and (3) RSPA's stated intent to harmonize the HMR with the various international standards. Consequently, petitioner argues that RSPA's May 18, 1995 action in revising the language of § 173.306(a)(3)(v) was arbitrary and capricious. In support of this contention, petitioner cites three cases which stand for the propositions that: (1) There must be a rational connection between the facts found and the choice made by an agency, *see Motor Vehicle Mfrs. Ass'n of the United States* v. *State Farm Mut. Automobile Insurance Co.,* 463 U.S. 29, 42 (1983) (in rescinding requirement, agency failed to consider other viable options); and (2) the reason for an agency's action must be satisfactorily articulated, *see Kent County, Delaware Levy Court* v. *U.S. Environmental Protection Agency,* 963 F.2d 391, 397 (D.C. Cir 1992) (agency failed to offer *any* reason why it was infeasible to follow its own experts' recommendations); *HLI Lordship Industries, Inc.* v. *The Committee for Purchase from the Blind and Other Severely Handicapped,* 791 F.2d 1136, 1141 (5th Cir. 1981) (agency provided no basis for its decision).

As discussed both above and below, RSPA's action in rescinding the erroneously adopted testing provisions for plastic containers was rational and well articulated. First, as noted above, the NPRM and final rule language regarding testing procedures for plastic aerosol containers is virtually identical to the language in paragraphs 9.8.1 and 9.8.2 of the Eighth edition of the UN Recommendations. In preparing the NPRM, RSPA staff failed to note that it had incorporated the testing procedure for plastic aerosol containers into the language it borrowed ''wholesale'' from paragraphs 9.8.1. and 9.8.2. of the UN Recommendations. Consequently, the specificity of the language in the NPRM and final rule shows only that RSPA did indeed copy the language from the UN Recommendations. The identical language appears in both the NPRM and final rule because no comments were received regarding the proposed changes to § 173.306 and, as a result, the erroneous language in the NPRM was simply carried over, without change, into the final rule.

The language in the preamble of the NPRM and final rule regarding the proposed addition of testing provisions for plastic containers was drafted after RSPA staff had identified the provisions of the various international standards it would propose to adopt in the NPRM. The preamble language merely reflected the contents of the proposed regulatory text for § 173.306(a)(3)(v). It is not logical that RSPA would have intentionally proposed to adopt (and subsequently adopted) testing provisions for containers that are not authorized for use, or that RSPA would have chosen this confusing manner in which to authorize plastic aerosol containers. Specifically, §§ 173.306(a)(1), (a)(2), and (a)(3) clearly identify, in the first line of each text, the three packagings that are authorized for the transportation of limited quantities of compressed gas. The subparagraphs that follow each of those three paragraphs set forth the limitations or conditions that apply to those three packagings. It would be illogical for RSPA to have buried an authorization for plastic containers in the last of five

subparagraphs that relate to a paragraph authorizing metal containers.

Finally, petitioner asserts that RSPA's failure to adopt an authorization for plastic aerosol containers is directly contrary to RSPA's statement in the NPRM and final rule that the purpose of the rulemaking was to maintain alignment with corresponding provisions of international standards. Petitioner repeatedly argues that RSPA's statement regarding its desire to keep the HMR in alignment with international standards obligated the agency not to deviate from those standards. Petitioner fails to note, however, that language throughout the preamble to the NPRM and to the final rule indicated that the intent of the rulemaking was not to incorporate every term of the international standards, but 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 requirements * * *.'' (Emphasis added.) *See* 59 FR 36488 and 59 FR 67390. RSPA further stated in the NPRM that the proposed regulatory changes are ''proposed to ensure a *basic consistency* with *many* changes contained in the [international standards].'' (Emphasis added.) 59 FR 36489.

The above statements demonstrate that RSPA did not intend to adopt, verbatim, every provision of international standards. Furthermore, evidence of RSPA's intent can be found in the NPRM statement that ''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.'' 59 FR 36489. There are numerous examples of U.S. variations from international standards, such as retention of the combustible liquid hazard classification and exceptions, adoption of a vibration standard for package testing, the establishment of inhalation toxicity criteria, and the authorization to continue using plastic packagings beyond five years from date of manufacture. Consequently, RSPA's stated desire to maintain general alignment with international standards does not negate the agency's ability to exercise its own discretion in certain areas.

In short, RSPA accidentally adopted testing procedures for a plastic aerosol packaging that is not authorized for use under the HMR. When RSPA realized its mistake, it acted reasonably and quickly to ensure that the regulated industry understood that the packaging still was not authorized. It did so by removing the superfluous language from the HMR and explaining in a concise general statement the reason for its action. RSPA's action was rational and well articulated and, therefore, was not arbitrary and capricious. To grant the petitioner's request would result in a regulation that would include certain testing procedures for plastic aerosol containers that are not authorized for use. The result would be illogical and contrary to our efforts to clarify the HMR and eliminate obsolete or redundant rules. To grant the petitioner's request to authorize use of plastic aerosol containers would require public comment.

Based on the above, RSPA denies petitioner's June 16, 1995 petition for reconsideration.

Issued in Washington, DC on November 6, 1995, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–27953 Filed 11–9–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[I.D. 103195D]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason orders.

SUMMARY: NMFS publishes the inseason orders regulating fisheries in U.S. waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary of Commerce (Secretary) during the 1995 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.)(Panel Area). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1995 orders are therefore being published in this document as a composite of the year's inseason orders.

DATES: Each of the following inseason orders was effective upon announcement on telephone hotline numbers as specified at 50 CFR 371.21(b)(1).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 371 provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Panel Area that apply during the period each year when the Commission exercises jurisdiction over these fisheries.

The regulations close the Panel Area to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give the effect of Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotline numbers described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the Federal Register as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. The 1995 orders are therefore being published in this document as a composite of the year's inseason actions.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1995 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.