



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

OCT 19 2009

Mr. David W. Boston
President
Owen Compliance Services, Inc.
PO Box 765
12001 County Road 1000
Godley, TX 76044-0765

Ref. No. 09-0200

Dear Mr. Boston:

This is in response to your August 26, 2009 e-mail to this agency concerning a miscellaneous final rule we issued under Docket No. PHMSA-2005-21812 (HM-218D) (01/28/08; 73 FR 4699) that revised requirements for packaging explosive materials under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You note that on page 4717, in the § 173.62(c) Table of Packing Methods, column 3 of the final rule we amended the HMR to add UN 4H1 expanded plastic boxes as authorized packagings under Packing Method 134. You also note in your e-mail that while this amendment is reflected in the current HMR, the Government Printing Office (GPO) appears to have removed UN 4G fiberboard boxes as authorized packagings from the same list without instruction to do so. You ask if the removal of UN 4G fiberboard boxes from the list of authorized packagings was inadvertent and, if so, are they authorized for continued use under Packing Method 134.

The answer to both of your questions is yes. Continued use of a UN 4G fiberboard box under Packing Method 134 remains authorized. We corrected this inadvertent error in a recent rulemaking; see enclosure.

Thank you for bringing this matter to our attention. I hope this clarification is helpful.

Sincerely,

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Enclosure

Drakeford, Carolyn (PHMSA)

From: Gorsky, Susan (PHMSA)
Sent: Thursday, August 27, 2009 7:04 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Error? in Packing Instruction 134
Attachments: PI 134 (2007).pdf; PI 134 (2008).pdf; 73 FR 4717.pdf

Stevens
 § 173.62 (c).
 Packaging for Explosive
 09-0200

From: Cynthia Hilton [mailto:chilton@ime.org]
Sent: Wednesday, August 26, 2009 5:16 PM
To: Gorsky, Susan (PHMSA)
Subject: Error? in Packing Instruction 134

Susan --

Dave identifies a well-supported clerical error. Can he get a letter of interpretation that he is correct? And, would you please include this correction in your miscellaneous rulemaking which you have got to be finalizing for SEPT publication?

THANKS

Cynthia

Cynthia Hilton
 Executive Vice President
 Institute of Makers of Explosives
 202-266-4319

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From: Boston, David [mailto:David.Boston@corelab.com]
Sent: Wednesday, August 26, 2009 5:03 PM
To: Lon Santis
Cc: Cynthia Hilton; Susan Flanagan
Subject: FW: Error? in Packing Instruction 134

FYI,
 Dave

From: Boston, David
Sent: Wednesday, August 26, 2009 4:02 PM
To: Robert A. Richard (bob.richard@dot.gov)
Cc: Duane Pfund (Duane.Pfund@dot.gov)
Subject: Error? in Packing Instruction 134

Bob,

I was reviewing Packing Instruction 134 of 49 CFR 173.62 today and found what I believe is an accidental deletion of an authorized packing method. PI 134 applies, among others, to UN0323 (Cartridges, power device / 1.4S), which Owen Oil Tools manufactures, packages, and distributes. All OOT UN0323 items are packaged in UN 4G fiberboard boxes.

What I discovered is this:

8/27/2009

- PI 134 in 2007 and earlier has 4G as authorized outer packaging.
- PI 134 in 2008 does not have 4G as authorized outer packaging.
- 15 Rev UN Model Regulations P134 has 4G as authorized packaging.
- No amendments to P134 were approved during the last biennium to remove 4G from P134 for 16th Rev.
- PHMSA revised PI 134 on January 28, 2008 to add 4H1 (which would appear in the list immediately after 4G). In 73 FR 4717, the amendment is correct and shows both 4G and newly added 4H1.

It appears to me that the GPO, when they printed the 2008 Hazmat Regulations, replaced 4G with 4H1 in PI 134 rather than simply adding 4H1 to the list. So:

1. Am I correct? Was this an error and not an intentional removal of 4G from the list of authorized PI 134 packagings?
2. I believe we can still use 4G even though it doesn't appear in PI 134 because there has been no notice to delete it and because it's deletion was accidental. Am I correct that we can still use 4G for PI 134 packaging?
3. If I'm correct and it is an error, what do we do to get PI 134 corrected? Do you need a petition for amendment, or will this e-mail suffice?

Thanks for your help.

David W. Boston
President
Owen Compliance Services, Inc.
P.O. Box 765
12001 County Road 1000
Godley, TX 76044-0765
Tel: +1 (817) 551-0660
Fax: +1 (817) 396-4584

e-mail: david.boston@corelab.com
web: <http://www.ocsresponds.com>

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the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW, Washington, DC 20554. Please include OMB Control Number, 3060-0029 (Form 349) in your correspondence. The Commission will also accept your comments via the Internet if you send them to PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

SYNOPSIS

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on October 8, 2009, for the information collection requirements (revisions to FCC Form 349).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060-0029 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060-0029.

OMB Approval Date: October 8, 2009.

Expiration Date: October 31, 2012.

Title: Application for DTV Broadcast Station License, FCC Form 302-DTV; Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC Forms: 302-DTV, 340 and 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 5,170 respondents and 5,170 responses.

Estimated Time per Response: 1-4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 11,080 hours.

Total Annual Costs: \$19,096,297.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On June 29, 2009, the Commission adopted a Report and Order, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, MB Docket No. 07-172, FCC 09-59. In the Report and Order, the Commission adopted changes to the FM translator rules that would allow AM stations to use authorized FM translator stations to rebroadcast the AM signal locally, retransmitting their AM programming as a "fill-in" service. The adopted cross service translating rules limit FM translators to providing "fill-in" service only, specifically within the AM primary station's authorized service area. In addition, the Commission limited the cross-service rule changes to "currently authorized FM translators," that is, those translators with licenses or permit in effect as of May 1, 2009. Therefore, the rule changes affecting this information collection will add a new universe of filers - AM stations - to this information collection. AM stations will use Form 349 to apply for authorizations to operate such FM translator stations.

Consistent with actions taken by the Commission in the Report and Order, the following changes are made to Form 349: Sections II and III of Form 349 include new certifications concerning compliance with the AM station "fill-in" service requirements. Specifically, in the AM service, applicants certify that the coverage contour of the FM translator station is contained within the lesser of: (a) the 2 mV/m daytime contour of the AM primary station being rebroadcast, or (b) a 25-mile radius centered at the AM station's transmitter site. The instructions for Sections II and III have been revised to assist applicants with completing the new questions.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This form also includes the third party disclosure requirement of 47 CFR 73.3580 requires local public notice in a newspaper of general circulation of all application filings for new or major change in facilities. This notice must be

completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

FCC Form 302-DTV is used by licensees and permittees of Digital TV ("DTV") broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 CFR 73.1675(c) or 73.1690(c).

FCC Form 340 is used by licensees and permittees to apply for authority to construct a new noncommercial educational ("NCE") FM, TV, and DTV broadcast station, or to make changes in the existing facilities of such a station. The FCC Form 340 is only used if the station will operate on a channel that is reserved exclusively for noncommercial educational use, or in the situation where applications for NCE stations on non-reserved channels are mutually exclusive only with one another.

Revisions to this information collection are due to revisions being made only to FCC Form 349.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

[FR Doc. E9-24857 Filed 10-15-09; 8:45 am]

BILLING CODE 6712-01-S

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 174, 180

[Docket No. PHMSA-2009-0237 (HM-244B)]

RIN 2137-AE50

Hazardous Materials: Minor Editorial Corrections and Clarifications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for

clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.

DATES: Effective date: October 16, 2009.

FOR FURTHER INFORMATION CONTACT:

Steven Andrews, Office of Hazardous Materials Standards, 202-366-8553, PHMSA, East Building, PHH-10, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) ("we") annually reviews the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to identify typographical and other errors, outdated addresses or other contact information, and similar errors. In this final rule, we are correcting typographical errors, incorrect CFR references and citations, an incomplete office address, inconsistent use of terminology, misstatements of certain regulatory requirements and inadvertent omissions of information. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next revision of the 49 CFR.

II. Section by Section Review

The following is a summary by section of the more substantive changes made in this final rule. The summary does not include minor editorial corrections such as punctuation errors or similar minor revisions.

Part 107

Appendix A to Subpart D of Part 107: In Appendix A to Subpart D of Part 107, in part II "List of Frequently Cited Violations," under the heading "Manufacturing, Reconditioning, Retesting Requirements," under "F. Cylinder Requalification" entry 7, in the second column, we are correcting the reference to "§ 178.205(c)" to "§ 180.205(c)."

Section 107.705

This section prescribes requirements for persons who file registrations, reports, and applications for approval. We are updating the office mailing

address in paragraph (a)(1) of submitting these documents.

Part 171

Section 171.8

This section contains definitions for certain terms used in the HMR. We are revising the definition for "commerce" in § 171.8 to align it with the definition contained in the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), as amended by the Hazardous Materials Safety and Security Reauthorization Act of 2005 (the Act; Title VII of Public Law 109-59, 119 Stat. 1144 (August 10, 2005)). The revised definition adds transportation on a United States-registered aircraft to clarify that such transportation is considered transportation in commerce for purposes of Federal hazmat law and the HMR. In this final rule, we are revising the definition of "commerce" in the HMR to read: "Commerce means trade or transportation in the jurisdiction of the United States within a single state; between a place in a state and a place outside of the state; that affects trade or transportation between a place in a state and place outside of the state; or on a United States-registered aircraft." In addition, we are revising the definition of "material poisonous by inhalation" to clarify that the term is synonymous with "material toxic by inhalation."

Section 171.12

This section prescribes requirements for hazardous materials shipments transported to or from Canada or Mexico. Paragraph (a)(1) provides that these shipments must meet the applicable requirements in §§ 171.22 and 171.23; these sections are contained in Subpart C of Part 171. Therefore, we are also revising the introductory language in the last sentence in paragraph (a)(1) to include compliance with the applicable requirements in "subpart C of this part."

Section 171.15

This section prescribes requirements for the immediate telephonic notification of certain hazardous materials incidents. In this final rule, we are revising paragraph (a) to permit notifications to the National Response Center to be submitted electronically through an Internet site.

Section 171.22

This section contains authorizations and conditions for the use of international standards and regulations for the transportation of hazardous materials to, from, or within the United States. As stated earlier in the preamble

discussion to § 171.8, the definition of "commerce" is revised in this final rule to recognize that the term includes the transportation of hazardous materials aboard any United States-registered aircraft. Consistent with the revision made to the definition of "commerce," we are revising paragraph (a) in § 171.22 to clarify that the authorization provided in this section for use of international standards applies to transportation on U.S.-registered aircraft anywhere in the world, not just to transportation in commerce of hazardous materials "to, from, or within the United States."

Part 172

Section 172.101

This section contains the Hazardous Materials Table (HMT) and explanatory text for each of the columns in the table. In this final rule, we are removing the entries "*Nitrous oxide and carbon dioxide mixtures*, see Carbon dioxide and nitrous oxide mixtures," "*Oxygen and carbon dioxide mixtures*, see Carbon dioxide and oxygen mixtures," and "*Oxygen, mixtures with rare gases*, see Rare gases and oxygen mixtures" because the HMT entries to which the reader is directed are no longer in the HMT. These entries, "Carbon dioxide and nitrous oxide mixtures, UN1015," "Carbon dioxide and oxygen mixtures, compressed, UN1014," and Rare gases and oxygen mixtures, compressed, UN1980, were removed in a final rule published under Docket HM-215I (71 FR 78596; December 29, 2006).

Section 172.320

This section prescribes marking requirements for packages of Class 1 (explosive) materials. We are removing paragraph (e)(4) because it contains an obsolete provision and the paragraph designation is reserved.

Part 173

Section 173.62

This section prescribes the specific packaging requirements for explosives. We are correcting the formatting of Packing Instruction 134 in the Table of Packing Methods to move the fibreboard (4G) package from the column headed "Inner packagings" to the column headed "Outer packagings." This reformatting error occurred in the printing of a previous rulemaking.

Section 173.124

This section prescribes the definitions for Class 4, Divisions 4.1, 4.2 and 4.3 materials. Due to a printing error, the test procedure for assigning a self-reactive material to a generic type was

inadvertently printed in multiple locations and the definition of a type C self-reactive material was inadvertently omitted from this section. Therefore, to correct this printing error, we are revising paragraphs (a)(2)(ii)(C) and (a)(2)(iii)(C) to delete the duplicate test procedure and reinstate the definition of a type C self-reactive material.

Section 173.133

This section prescribes the assignment of packing group and hazard zones for Division 6.1 materials. We are revising the table in § 173.133(a)(1) to correct the reference to § 172.203(m)(2) to read § 172.203(m).

Section 173.168

This section specifies requirements for transportation of chemical oxygen generators. Paragraph (d)(2)(i) contains the test procedure and acceptance criteria for the Flame Penetration Resistance Test. In a September 28, 2007 final rule (72 FR 55091), we moved the entire test procedure to new Appendix E to Part 178 but failed to remove the corresponding language in paragraph (d)(2)(i). In this final rule, we are revising paragraph (d) to remove the duplicative language.

Section 173.304

This section prescribes filling requirements for cylinders of liquefied compressed gases. We are revising paragraph (f)(3)(ii) to correct "part 78" to read "part 178."

Part 174

Section 174.59

This section prescribes marking and placarding requirements for rail cars offered for transportation. In the last sentence, we are correcting a reference to § 171.12a to read § 171.12.

Part 176

Section 176.415

This section prescribes requirements for the transportation by vessel of Division 1.5, ammonium nitrates, and certain ammonium nitrate fertilizers. We are correcting paragraph (c)(4) to remove the word "and" at the end of the sentence.

Part 180

Section 180.209

This section, which prescribes requalification requirements for DOT specification cylinders, contains a paragraph (a)(1) but no (a)(2). We are correcting this formatting inconsistency by removing the paragraph designation "(1)" preceding the first full sentence.

Section 180.407

This section prescribes periodic requalification requirements for specification cargo tanks. Paragraphs (c) and (h) require each cargo tank to be tested for leaks, to include the product piping with all valves and accessories in place and operative. Paragraph (h)(2) permits cargo tanks equipped with vapor collection equipment and used to transport petroleum distillate fuels to be leakage tested in accordance with the Environmental Protection Agency's (EPA's) Method 27 in place of the HMR requirement and specifies that the test must be conducted in accordance with the test methods and procedures prescribed in 40 CFR 63.425(e)(1). However, the paragraph inadvertently fails to reference the required cargo tank internal valve test procedures in paragraph (e)(2). Therefore, in this final rule, we are revising paragraph (h)(2) in § 180.407 of the HMR to reference 40 CFR 63.425(e)(2).

Section 180.605

This section prescribes requalification requirements for specification and UN portable tanks. Paragraph (h)(1) prescribes the pressure test procedures for specification 51, 56, and 57 portable tanks; however, the paragraph heading does not reference specification 56 portable tanks. In this final rule, we are revising paragraph (h) heading to include the specification 56 portable tanks.

III. Regulatory Analyses and Notices

A. Statutory Authority

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The purpose of this final rule is to remove unnecessary cross references to the hazardous materials table, correct mailing addresses, grammatical and typographical errors, and, in response to requests for clarification, improve the clarity of certain provisions in the Hazardous Materials Regulations.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final 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. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR

11034). This final rule does not impose new or revised requirements for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on state and local governments. PHMSA is not aware of any state, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

* * * * *

■ 11. In § 172.320, revise paragraph (e) to read as follows:

§ 172.320 Explosive hazardous materials.

* * * * *

(e) The requirements of this section do not apply to the following Class 1 materials:

(1) Those being shipped to a testing agency in accordance with § 173.56(d) of this subchapter;

(2) Those being shipped in accordance with § 173.56(e) of this subchapter, for the purposes of developmental testing;

(3) Those which meet the requirements of § 173.56(h) of this subchapter and therefore are not subject to the approval process of § 173.56 of this subchapter;

(4) [Reserved];

(5) Those that are transported in accordance with § 173.56(c)(2) of this subchapter and, therefore, are covered by a national security classification currently in effect.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 13. In § 173.62, in paragraph (c), revise Packing instruction 134 in the Table of Packing Methods to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Table with 4 columns: Packing instruction, Inner packagings, Intermediate packagings, Outer packagings. Row 134 details requirements for bags, receptacles, sheets, tubes, and boxes.

* * * * *

■ 14. In § 173.124, revise paragraphs (a)(2)(ii)(C) and (a)(2)(iii)(C) to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(2) * * *

(ii) * * *

(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.

* * * * *

(iii) * * *

(C) Performance of the self-reactive material under the test procedures specified in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) and the provisions of paragraph (a)(2)(iii) of this section; and

* * * * *

■ 15. In § 173.133, in paragraph (a)(2)(i), revise Note 2 following the table to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

(a) * * *

(2) * * *

(i) * * *

Note 2: A liquid in Division 6.1 meeting criteria for Packing Group I, Hazard Zones A or B stated in paragraph (a)(2) of this section is a material poisonous by inhalation subject to the additional hazard communication requirements in §§ 172.203(m), 172.313 and table 1 of § 172.504(e) of this subchapter.

* * * * *

■ 16. In § 173.168, revise paragraph (d)(2) to read as follows:

§ 173.168 Chemical oxygen generators.

* * * * *

(d) * * *

(2) After September 30, 2009, with its contents, is capable of meeting the

following additional requirements when transported by cargo-only aircraft:

(i) The Flame Penetration Resistance Test specified in Appendix E to part 178 of this subchapter.

(ii) The Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

* * * * *

■ 17. In § 173.304, revise paragraph (f)(3)(ii) to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(f) * * *

(3) * * *

(ii) After September 30, 2009, is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test specified in part III of Appendix E to part 178 of this subchapter; and

* * * * *