

market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASD/NMS system will offer the opportunity for the Company to secure its own group of market makers and expand the capital base available for trading in the Common Stock; and

(4) The Company believes that the firms making a market in the Company's Common Stock on the NASD/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before July 21, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94-16242 Filed 7-5-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on July 28, 1994 at 9 a.m. Arrange for oral presentations by July 18, 1994.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 28, 1994, a McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia. The agenda for the meeting will include:

- Opening Remarks.
- A review of the activities of the Performance Standards Working Group.
- A discussion of future activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 18, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on June 28, 1994.

Daniel Salvano,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-16266 Filed 7-5-94; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 94-28; Notice 2]

Determination That Nonconforming 1992 Porsche 911 Carrera 2 and Carrera 4 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified versions of the 1992 Porsche 911 Carrera 2 and Carrera 4), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer R-90-004) petitioned NHTSA to determine whether 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 25, 1994 (59 FR 19748) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. The petition covers both the 2-wheel drive Carrera 2 and the 4-wheel drive Carrera 4. The notice referred collectively to these vehicles as the "1992 Porsche 911 Carrera 2/4." No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 52 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and are capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 30, 1994.

William S. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94-16296 Filed 7-5-94; 8:45 am]

BILLING CODE 4910-69-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the ninth session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods and to report on progress in harmonizing hazardous material transportation regulations with Mexico.

DATES: July 20, 1994 at 9:30 a.m.

ADDRESSES: Room 6200-6204, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to (1) review the progress made by the ninth session of the Sub-Committee of Experts on the Transport of Dangerous Goods in completing its work program for the 1993-1994 biennium and (2) to begin preparation for the Committee of Experts on the Transport of Dangerous Goods eighteenth session to be held November 28 through December 7, 1994 in Geneva, Switzerland. Topics to be covered include matters related to explosives including packaging requirements for explosives, amendments to the tests and criteria for classifying dangerous goods, criteria for liquid and solid oxidizing substances, amendments to portable tank requirements, matters related to compressed gases, listing and classification issues, requirements for individual substances, packaging requirements for dangerous goods, requirements for limited quantities of dangerous goods, segregation requirements, matters related to infectious substances, criteria for environmentally hazardous substances, international activities related to harmonization of chemical classification and labeling requirements and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods. The

opportunity of this meeting will also be used to report on the activities related to the harmonization of hazardous materials regulations in North America, with particular emphasis on progress in harmonizing regulations with Mexico.

The public is invited to attend without prior notification.

Issued in Washington, DC, on June 30, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94-16299 Filed 7-5-94; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Tomb Treasures from China: The Buried Art of Ancient Xi'an" (See list¹), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum of San Francisco, California from on or about August 3, 1994 to on or about October 30, 1994; Kimbell Art Museum, Fort Worth, Texas from on or about November 19, 1994 to on or about February 12, 1995; Honolulu Academy of Arts, Hawaii from on or about March 16, 1995 to on or about June 18, 1995 is in national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: June 29, 1994.

Les Jin,

General Counsel.

[FR Doc. 94-16303 Filed 7-5-94; 8:45 am]

BILLING CODE 2230-01-M

¹ A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USA. The telephone number is 202/619-5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register

Vol. 59, No. 128

Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b of the Government in the Sunshine Act, (P.L. 94-409).

DATES: August 22-24, 1994, 9:00 a.m. to 5:00 p.m.

LOCATION: The Westin Hotel Seattle, 1900 Fifth Avenue, Seattle, Washington 98101, (206) 728-1000.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW., Suite 1050, Washington, DC 20004-1107, Telephone: (202) 272-2004, (202) 272-2074 (TT).

The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by August 1, 1994.

The quarterly meeting of the National Council shall be open to the public and conducted in a smoke-free atmosphere. In addition, those attending should be

mindful that the use of aromatic fragrances might affect people with environmental and chemical sensitivities.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director.

Committee Meetings and Committee Reports.

Unfinished Business.

New Business.

Announcements.

Adjournment.

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 1, 1994.

Edward P. Burke,

Acting Executive Director.

[FR Doc. 94-16448 Filed 7-1-94; 3:11 pm]

BILLING CODE 6820-BS-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 4, 11, 18, and 25, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 4

There are no meetings scheduled for the Week of July 4.

Week of July 11—Tentative

There are no meetings scheduled for the Week of July 11.

Week of July 18—Tentative

Tuesday, July 19

10:00 a.m.

Briefing On Fuel Cycle and Waste Management Activities In France (Public Meeting)

Wednesday, July 20

10:00 a.m.

Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)

(Contact: Christopher Grimes, 301-504-1161)

11:30 a.m.

Affirmation/Discussion And Vote (Public Meeting)

Thursday, July 21

3:00 p.m.

Briefing on Decommissioning Process (Public Meeting)

(Contact: David Futoma, 301-504-1621)

Friday, July 22

10:00 a.m.

Briefing on Information Technology Strategic Plan (Public Meeting)

(Contact: Francine Goldberg, 301-415-7460)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504-1661.

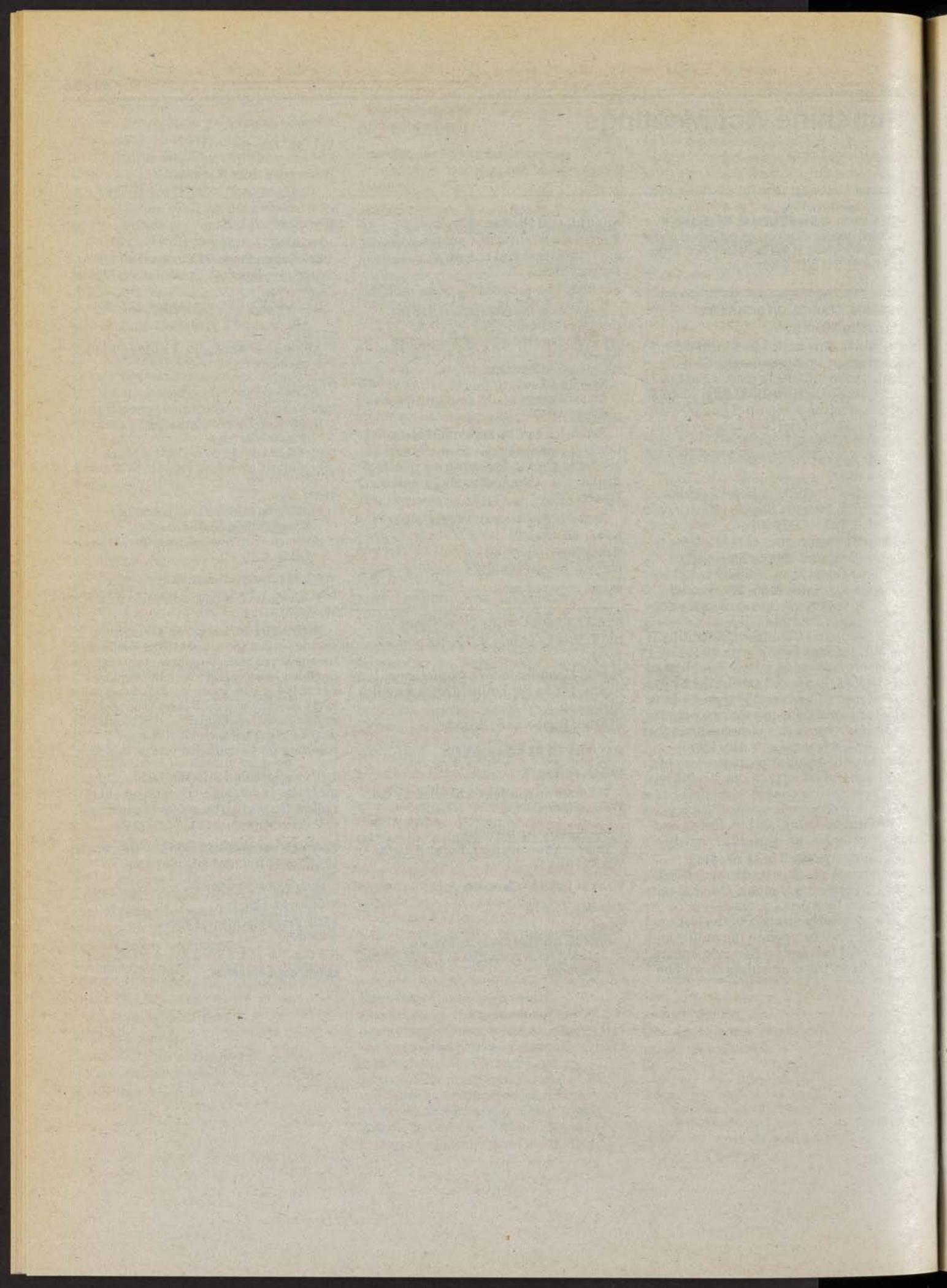
Dated: June 30, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94-16476 Filed 7-1-94; 3:42 pm]

BILLING CODE 7590-01-M



Federal Register

Wednesday
July 6, 1994

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 392 and 393

**Parts and Accessories Necessary for
Safe Operation; Warning Devices for
Stopped Vehicles and Protection Against
Shifting or Falling Cargo; Final Rules**

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 393

[FHWA Docket No. MC-93-19]

RIN 2125-AD17

Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the requirements for warning devices for stopped commercial motor vehicles (CMVs) to allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles, unless the CMV is transporting certain hazardous materials or is powered by compressed gas. It is the intent of this final rule to give equal priority to fusees and liquid-burning flares with regard to use as emergency warning devices. This action is required by the Intermodal Surface Transportation Efficiency Act of 1991.

DATES: Effective August 5, 1994. The incorporation by reference of the publication listed in § 393.95 of this final rule is approved by the Director of the Federal Register as of August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 1041(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, 1993), signed by the President on December 18, 1991, requires that "Section 393.95 of title 49 of the Code of Federal Regulations shall be applied so that fusees and flares are given equal priority with regard to use as reflecting signs."

On July 14, 1993, the FHWA published a notice of proposed rulemaking (NPRM) to amend § 393.95 to allow commercial motor vehicles to be equipped with fusees and liquid-burning flares in lieu of bidirectional reflective triangles, except CMVs

transporting explosives (Division 1.1, 1.2, and 1.3 hazardous materials), cargo tank motor vehicles used for flammable and combustible liquids (Class 3 hazardous materials) or flammable gas (Division 2.1 hazardous materials) (whether loaded or empty), or motor vehicles using compressed gas as a motor fuel. The FHWA also proposed amending § 392.22(b), which sets forth requirements for the placement and use of warning devices for stopped vehicles, because paragraph (b) did not allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles.

The FHWA proposed that vehicles be equipped with either (1) three bidirectional reflective triangles or (2) six fusees or liquid-burning flares. With regard to performance standards for fusees and liquid-burning flares, the FHWA proposed to amend § 393.95(j) to require that these devices be capable of burning for at least 30 minutes, and meet the standards of the Underwriters Laboratories, Inc., Highway Emergency Signals (UL 912).

Discussion of Comments

The FHWA received 12 comments to the NPRM. The commenters were: 3M; Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); Chemical Waste Transportation Institute (CWTI); Cortina Tool and Molding Company; James King and Company, Inc.; Federal Mogul; National Tank Truck Carriers, Inc.; Ohio University, College of Engineering and Technology, Department of Industrial and Systems Engineering; Pyrotechnic Signal Manufacturers Association (PSMA); Sate-Lite Manufacturing Company (Sate-Lite); and the Transportation Safety Equipment Institute (TSEI). The commenters were generally opposed to allowing the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The CWTI did not support or oppose the proposal but indicated that the FHWA should retain its restrictions on flame producing devices on certain vehicles and recommended that the FHWA use this rulemaking to amend § 393.95(g) to incorporate the use of the current hazardous materials classifications (i.e., Divisions 1.1, 1.2, or 1.3, 2.1 and Class 3). The PSMA provided the only comments in support of the proposed amendments.

Interpretation of Section 1041(b) of the ISTEA

Several of the commenters questioned the FHWA's interpretation of section 1041(b) of the ISTEA. Sate-Lite believes that section 1041(b) is ambiguous and as

such the FHWA has great latitude in the implementation of the requirement. Sate-Lite stated:

By explicitly acknowledging the safety hazards associated with fusees and flares and by specifically addressing these hazards by prohibiting the use of fusees and flares in certain situations, the FHWA has recognized that ISTEA granted the FHWA broad discretion in implementing Section 1041(b).

Clearly Congress did not anticipate or intend to require that the FHWA sacrifice motorist safety and the security of our federal highway system on the altar of "equal priority." As the FHWA has recognized, on these issues of motorist safety, Congress must defer to the expertise and judgment of the FHWA.

In light of the dangers and manifest deficiencies inherent in the use of fusees and flares as a substitute for warning triangles * * * Sate-Lite respectfully urges the FHWA to exercise its discretion by amending the proposed rule change. Sate-Lite strongly believes that the FHWA should continue to require motor carriers to carry three emergency warning triangles in accordance with the current rule.

In its comments, the ATA stated: The language of Section 1041(b) of the [ISTEA] strongly suggests that its sponsor(s) believe(s) that a fusee and a liquid-burning flare are essentially similar * * *. It should be made clear that fusees are acceptable only as a short-term warning device for use while long-term warning devices are put in place. In addition, it should be made clear that the trucking industry abandoned the use of liquid-burning flares (pot torches) as soon as the use of a superior type of warning device (the "dot-over-dot" emergency reflectors) was authorized by federal and state regulators.

For the reasons outlined above, liquid-burning flares have not been manufactured for 30 years, or more. In our view, the current effort to encourage a return to their use by the motor carrier industry is a step backward.

Advocates did not believe that the ISTEA prohibits the FHWA from continuing to require that each CMV be equipped with three bidirectional reflective triangles.

The FHWA believes that section 1041(b) of ISTEA requires that fusees and liquid-burning flares be allowed, but not mandated, in lieu of bidirectional reflective triangles. The FHWA already allows the use of fusees and other warning devices in addition to reflective triangles.

With regard to the ATA's comments about liquid-burning flares, or "pot

torches," the ISTEA refers to "fusees and flares." The FHWA believes the term "fusee" refers to a solid material that is ignited by friction and the term "flare" refers to a liquid-burning warning device. These terms, as used in the ISTEA, are not interchangeable. As such, the ISTEA allows the use of fusees and liquid-burning flares as primary emergency warning devices. While the apparent lack of availability of liquid-burning flares, as indicated by the ATA, might preclude their use as an alternative to bidirectional reflective triangles, the requirement of the ISTEA is not contingent upon the availability of the warning device.

In response to the Advocates' concerns, the FHWA does not believe it would be appropriate to require all CMVs to carry bidirectional reflective triangles. For those cases in which the CMV is equipped only with fusees or liquid-burning flares, the NPRM proposed, and this final rule includes, an amendment to § 392.22 stating that there shall be at least one lighted fusee or liquid-burning flare at each of the locations specified in § 392.22(b)(1) for the entire period that the vehicle is stopped. If a motor carrier chooses to rely solely upon fusees or liquid-burning flares as emergency warning devices, the motor carrier should not be penalized by being forced to carry an additional warning device that, under these circumstances, it would not be required to use.

Effectiveness of Fusees and Liquid-Burning Flares Versus Triangles

Many of the commenters opposed the use of fusees in lieu of bidirectional reflective triangles because of concerns about the effectiveness of fusees as emergency warning devices. The Advocates stated:

Unfortunately, the elevation of fusees and liquid-burning flares to the status of primary warning devices alongside triangles is a regressive step that can have serious consequences in the potential for additional truck and bus accidents. Although there are major shortcomings with the design and performance of reflective triangles, and with the criteria for deploying them set forth in the Federal Motor Carrier Safety Regulations (FMCSR), the selection of a single device having priority in all circumstances appropriately fulfills the well-known principle of traffic engineering that motorists should always be reinforced in their traffic control expectations when negotiating roads and streets. That is, it is important to educate motorists to the unambiguous intent of traffic control devices by ensuring the use of designs with

unvarying shapes, sizes, colors, and messages. Despite the fact that Advocates has serious misgivings over the retroreflective performance and conspicuity of emergency triangles, there is little question that their consistent use over the past two decades has provided instant recognition by motorists that there is a disabled commercial vehicle on or near the travelway. This important recognition by motorists can now be threatened by the substitution of flares or fusees to demarcate the area around a disabled truck or bus.

Several commenters cited an article published in the April 1992 issue of *Consumer Reports* magazine. For example, Sate-Lite stated:

A widely publicized recent study on the effectiveness of vehicle warning devices, in *Consumer Reports Magazine* [sic] (*Consumer Reports*, "Emergency! Handling Trouble on the Road," April 1992), concluded without reservation that triangle reflectors are the best choice of warning device for all vehicles." The *Consumer Reports* Study cites the fact that triangles can be placed as far away from the vehicle as needed and the fact that they do not require electric power. Moreover, flares and fusees: (1) Flares do not command attention because "their light comes from one small source and isn't very conspicuous at a distance"; (2) a flare's light may not last until help arrives; (3) there is the obvious need for periodic replacement of flares; and (4) flares will frequently roll or blow away from their initial site. These problems and deficiencies should be obvious even to the casual observer of highway conditions. The *Consumer Reports* study concluded that "Triangles provided the clearest warning from 100 feet at night."

Some commenters also referred to a National Highway Traffic Safety Administration report entitled "Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles" (August 19, 1986) (NHTSA Report) to support their claims that bidirectional reflective triangles are more effective than fusees as emergency warning devices.

While the FHWA understands the concerns of the commenters, it notes that this rulemaking is in response to section 1041(b) of the ISTEA. Section 1041(b) requires that § 393.95 be applied so that fusees and liquid-burning flares are given "equal priority" with bidirectional reflective triangles as emergency warning devices. The congressional mandate is not contingent upon an evaluation of the effectiveness of fusees and liquid-burning flares

relative to that of bidirectional reflective triangles.

In addition, this rulemaking is not intended to require the use of fusees and liquid-burning flares, but rather to allow their use as a primary emergency warning device on certain CMVs. This final rule does not require motor carriers to discontinue the use of bidirectional reflective triangles in favor of warning devices they believe to be less effective.

Mixtures of Warning Devices

The NPRM requested comments on whether or not motor carriers should be allowed to use a mixture of fusees, liquid-burning flares, and bidirectional reflective triangles (e.g., a bidirectional triangle at one of the three locations warning devices are required to be deployed, and fusees at the other locations). Sate-Lite and the TSEI believed that allowing a mixture of warning devices would contribute to motorist confusion and uncertainty in associating the warning devices with the stopped CMV.

The FHWA agrees with the commenters' concerns about motorist ability to understand the warning devices. The FHWA believes that the effectiveness of the three warning devices placed around the stopped vehicle would be diminished by allowing a different type of device to be used at each location. Therefore, § 392.22 is being amended to require that the same type(s) of warning devices be used at each of the locations specified in § 392.22.

Minimum Number of Fusees and Flares Required

The FHWA proposed that CMVs equipped with only fusees or liquid-burning flares have a minimum of six of these warning devices at all times. The ATA believed the proposed minimum was unrealistic. The ATA believed that the one hour of protection provided by six 30-minute fusees would not be sufficient based on what they considered the "best available information" on the duration of CMV breakdown time under "optimum" conditions. The ATA also pointed out that UL 912 specifies that each liquid-burning flare be capable of burning for 12 hours and that three of these devices should be sufficient.

The FHWA believes that a requirement for six fusees is appropriate. As stated in the NHTSA Report:

Roughly one-half of all emergency stops and disabled vehicle situations last for more than 30 minutes * * *. Moreover, since the distribution of emergency stop durations is highly

positively skewed, the total disabled vehicle exposure time for the time period of more than 30 minutes is considerably greater than for the time period of less than 30 minutes. No statistics are available to compare the "total risk" incurred after 30 minutes to that incurred before 30 minutes, but presumably the risk per minute is greatest soon after the emergency stop * * *. However, the total exposure time of disabled vehicles is greater after 30 minutes due to those vehicles left for several hours or more.

The FHWA recognizes that a number of factors affect the amount of time a vehicle remains disabled, including its location (e.g., urban area versus a rural area) and the availability of maintenance personnel and equipment. The FHWA believes that the performance-based requirement that warning devices be in place for the entire period the vehicle is stopped adequately addresses this issue. Motor carriers are responsible for ensuring that a sufficient number of warning devices are provided on their CMVs.

With regard to the ATA's comments about liquid-burning flares, the FHWA agrees that the proposed requirement for six liquid-burning flares was inconsistent with the UL 912 performance criteria which was proposed for incorporation by reference. Because UL 912 requires that liquid-burning flares be capable of burning for 12 hours, requiring three liquid-burning flares for vehicles which are not equipped with fusees or bidirectional reflective triangles is sufficient.

Incorporation by Reference of UL 912

The NPRM included a proposal that fusees and liquid-burning flares meet UL 912. In the case of fusees, UL 912 would be used to replace the § 393.95(j) reference to the Association of American Railroads (AAR), "Specifications for Red Railway or Red Highway Fusees." The ATA and the PSMA were the only commenters that addressed this issue. The ATA believed the FHWA should allow the use of fusees meeting either UL 912 or the AAR standards. The PSMA believed the performance standards of UL 912 are appropriate.

The FHWA has reviewed the UL and AAR standards. The two documents have comparable performance criteria for fusees. However, the UL document provides performance criteria for both fusees and liquid-burning flares while the AAR document only covers fusees. The FHWA has concluded the UL document is appropriate for incorporation by reference because the ISTEA requires that both fusees and

liquid-burning flares be allowed for use as emergency warning devices.

In addition to the requirements contained in UL 912, the PSMA suggested that all fusees be of the "lay-down type" with a "no-roll device." The PSMA did not provide any discussion of this suggestion.

A requirement that all fusees be of the "lay-down type" is unnecessarily design restrictive in that it would prohibit, without technical justification, the use of fusees that are provided with a means to remain in an upright position.

With regard to a "no-roll device," motor carriers must ensure that warning devices are in place at the required locations. If certain devices are necessary to keep fusees in place, the motor carrier is responsible for providing them. Furthermore, a general requirement for a "no-roll device" would not provide objective criteria as to what constitutes an acceptable device. The FHWA has not adopted the PSMA's suggestions.

Economic Impact of the Rulemaking

Both Sate-Lite and the TSEI submitted comments to the docket expressing concern over possible adverse effects of the proposed regulation on small entities. These comments are discussed below under the heading "Regulatory Flexibility Act."

Discussion of Final Rule

The FHWA is amending § 393.95 to allow CMVs to be equipped with fusees and liquid-burning flares in lieu of bidirectional reflective triangles, except CMVs transporting Division 1.1, 1.2, or 1.3 hazardous materials (explosives), cargo tank motor vehicles used for Class 3 (flammable and combustible liquid) or Division 2.1 (flammable gas) hazardous materials (whether loaded or empty), or motor vehicles using compressed gas as a motor fuel. This prohibition is necessary to minimize the risk of explosion or catastrophic fire involving cargoes and fuels of these types. The FHWA believes the retention of this provision is consistent with congressional intent.

The final rule amends § 393.95(f)(2) to require that CMVs be equipped with either (1) three bidirectional reflective triangles, (2) six fusees (each capable of burning for 30 minutes), or (3) three liquid-burning flares (filled with a sufficient amount of fuel to burn continuously for at least one hour). Although the FHWA has specified a minimum number of fusees and liquid burning flares, motor carriers relying solely upon these devices are responsible for ensuring that fusees or liquid-burning flares are in use for the

entire time the vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway.

The FHWA is amending § 392.22(b)(1) to require that the same type(s) of warning devices be used at each of the locations where warning devices are placed around the CMV. Section 392.22(b)(2)(i) *Fusees and liquid-burning flares*, is being amended to require that motor carriers relying solely upon fusees or liquid-burning flares ensure that those devices are in use for the entire time the vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway. The driver of the vehicle is required to extinguish and remove each fusee or liquid-burning flare before the stopped vehicle is moved.

In addition, the FHWA is amending § 392.22(b)(2)(ii) *Daylight hours*, to allow motor carriers to use fusees or liquid-burning flares in lieu of bidirectional reflective triangles when their CMVs are stopped during daylight hours in business or residential districts. Section 392.22(b)(2)(ii) requires that if fusees or liquid-burning flares are used, there must be at least one lighted fusee or flare at each of the prescribed locations as long as the vehicle is stopped.

The FHWA is removing § 392.22(b)(2)(vii) *Exemption for lightweight vehicles*, and certain United States Code and CFR citations at the end of § 392.22. Although the NPRM did not address these issues, the amendments are considered administrative in nature.

On May 19, 1988 (53 FR 18042), the FHWA published a final rule implementing the requirements of the Motor Carrier Act of 1984. The May 19, 1988, final rule included a definition of commercial motor vehicle which with certain exceptions, excluded lightweight vehicles (vehicles with a gross vehicle weight rating of 10,000 pounds or less) from the applicability of the FMCSRs. Therefore, the vehicles for which paragraph (b)(2)(vii) was intended are generally not subject to the FMCSRs and paragraph (b)(2)(vii) is obsolete.

With regard to performance standards for fusees and liquid-burning flares, the FHWA is amending § 393.95(f) to require that both fusees and liquid-burning flares meet the standards of the Underwriters Laboratories, Inc., Highway Emergency Signals (UL 912). The final rule incorporates by reference UL 912 in § 393.95.

The FHWA has created a new section, § 393.7, *Matter incorporated by reference*, to provide the language of incorporation required by 1 CFR 51 and to provide information on the availability of the incorporated

document. After a review of the comments to the July 14, 1993, NPRM and a determination that the incorporation by reference was necessary for the final rule, the FHWA submitted UL 912 to the Director of the Federal Register for approval in accordance with 5 U.S.C. 522(a) and 1 CFR 51.

The FHWA recognizes that some motor carriers may wish to supplement the required warning devices (reflective triangles or fusees and flares) with other warning devices such as electric lanterns. The final rule allows the use of other warning devices in addition to, but not in lieu of, the required devices provided they do not decrease the effectiveness of the required devices. The FHWA has added § 393.95(f)(3) to clearly indicate this intent.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule amends the requirements for warning devices for stopped vehicles. The FHWA has determined that this is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule allows motor carriers the option to use fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The rule does not increase the cost of complying with the requirements for emergency warning devices on commercial motor vehicles. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In their comments to the docket, both Sate-Lite and the TSEI expressed concern that the proposed regulation would have adverse impacts on small manufacturers of bidirectional reflective triangles and small motor carriers electing to deploy fusees or liquid-burning flares in accordance with this final rule.

In light of these concerns, and in compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rulemaking on small entities. As for small manufacturers of bidirectional reflective triangles, the final rule does not prohibit or restrict the manufacture, sale, or use of such devices. Furthermore, this final rule does not require motor carriers to increase the

number and types of warning devices carried on their CMVs. Nor does the rule mandate that CMVs be equipped with only one type of warning device. Rather the rule fulfills the requirements of section 1041(b) of the ISTEA by simply allowing, with few exceptions, the use of fusees and liquid-burning flares as an alternative to bidirectional reflective triangles.

Based on its evaluation of this rulemaking, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 392 and 393

Highway safety, Highways and roads, Incorporation by reference, Motor carriers, and Motor vehicle safety.

Issued on: June 23, 1994.

Rodney E. Slater,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, by amending parts 392 and 393 as set forth below:

PART 392—DRIVING OF MOTOR VEHICLES

1. The authority citation at the end of § 392.22 is removed and the authority citation for part 392 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. Section 392.22 is amended by removing paragraph (b)(2)(vii), revising paragraph (b)(1) introductory text, (b)(2)(i), and (b)(2)(ii), and adding paragraph (b)(1)(iv) to read as follows:

§ 392.22 Emergency signals, stopped vehicles.

(b) *Placement of warning devices*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whenever a vehicle is stopped on the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall as soon as possible, but in any event within 10 minutes, place the warning devices with which the vehicle is equipped in conformance with the requirements of § 393.95 of this subchapter, in the following manner:

(iv) The same type of required emergency warning device [see § 393.95(f) (1) and (2)] shall be placed at each of the three locations specified in paragraph (b)(1) (i) through (iii) of this section. If supplemental warning devices are also used [see § 393.95(f)(3)], a device of the same type shall be placed at each of those locations.

(2) *Special Rules*—(i) *Fusees and liquid-burning flares.* The driver of a commercial motor vehicle equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long as the vehicle is stopped. Before the stopped vehicle is moved, the driver shall extinguish and remove each fusee or liquid-burning flare.

(ii) *Daylight hours.* Except as provided in paragraph (b)(2)(iii) of this

section, during the period lighted lamps are not required, three bidirectional reflective triangles, or three lighted fusees or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning flares in lieu of bidirectional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid-burning flare remains lighted at each of the prescribed locations as long as the vehicle is stopped or parked.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATIONS

3. The authority citation for part 393 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

4. A new section 393.7 is added to subpart A of part 393 to read as follows:

§ 393.7 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 393 includes references to certain matter or materials. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

(b) *Availability.* The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2)–(9) [Reserved]

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW., Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7, appendix D; and

(ii) The Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

5. Section 393.95 is amended by revising paragraphs (f)(2), (g), and (j) and adding paragraph (f)(3) to read as follows:

§ 393.95 Emergency equipment on all power units.

* * * * *

(f) * * *

(2) *Vehicles equipped with warning devices on and after January 1, 1974.*

(i) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, § 571.125 of this title; or

(ii) At least 6 fusees or 3 liquid-burning flares. The vehicle must have as many additional fusees or liquid-burning flares as are necessary to satisfy the requirements of § 392.22.

(3) *Supplemental warning devices.* Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(g) *Restrictions on the use of flame-producing devices.* Liquid-burning flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any commercial motor vehicle transporting Division 1.1, 1.2, 1.3 (explosives) hazardous materials; any cargo tank motor vehicle used for the transportation of Division 2.1 (flammable gas) or Class 3 (flammable liquid) hazardous materials whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel.

* * * * *

(j) *Requirements for fusees and liquid-burning flares.* Each fusee shall be capable of burning for 30 minutes, and each liquid-burning flare shall contain enough fuel to burn continuously for at least 60 minutes. Fusees and liquid-burning flares shall conform to the requirements of Underwriters Laboratories, Inc., UL No. 912, Highway Emergency Signals, Fourth Edition, July 30, 1979, (with an amendment dated November 9, 1981). (See § 393.7(b) for information on the incorporation by reference and availability of this document.) Each fusee and liquid-burning flare shall be marked with the UL symbol in accordance with the requirements of UL 912.

* * * * *

[FR Doc. 94-16070 Filed 7-5-94; 8:45 am]

BILLING CODE 4910-22-P

49 CFR Part 393

[FHWA Docket No. MC-93-21]

RIN 2125-AD18

Parts and Accessories Necessary for Safe Operation; Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the cargo securement requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to adopt the use of working load limits in specifying the minimum strength of cargo securement devices. The amendment requires that the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction be at least 1/2 times the weight of the article secured. In addition, a table of working load limits is being included in the FMCSRs to provide motor carriers with a means of determining the number of tiedown assemblies required. It is the intent of this final rule to make the tiedown requirements easier to understand, use, and enforce. This action is in response to a petition from the Commercial Vehicle Safety Alliance (CVSA).

DATES: Effective August 5, 1994. The incorporation by reference of the publications listed in § 393.102(b) of this final rule is approved by the Director of the Federal Register as of August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS-10, (202) 366-2981; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1990, the CVSA petitioned the FHWA to change the criterion for cargo tiedown assemblies from "static breaking strength" to "working load limit." The CVSA contends the static breaking strength of a tiedown assembly is a rating that incorporates no safety factor, though the rule itself does include such a factor. The CVSA also believes the use of working load limits will make the tiedown regulations easier to understand, use, and enforce. The