when the "threshold" specified in paragraph (b)(1) of this AD is imminent or has elapsed.

(c) If any discrepant condition identified in the service bulletins (that are specified in the Boeing Document) is found as a result of the inspections required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletins.

(d) The terminating action for each inspection required by paragraph (a) of this AD consists of the accomplishment of the modification specified in the corresponding service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and corrective actions shall be done in accordance with Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision E, dated March 8, 1994, which includes the following list of effective pages:

Page No.	Revision level shown on page
List of active pages: Pages c.1 and c.2	E

(Note: The issue date of Revision E is indicated only on the title page; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 20, 1994.

Issued in Renton, Washington, on May 6, 1994.

S. R. Miller,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11523 Filed 5–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–151–AD; Amendment 39–8917; AD 94–10–10]

Airworthiness Directives; Boeing Model 747–100, –200, and –300 Series Airplanes Equipped With Pratt & Whitney JT9D Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747–100, –200, and –300 series airplanes, that requires modification of the thrust reverser control system by installing a solenoid-operated shut-off valve. This amendment is prompted by incidents of deployment of the engine fan thrust reverser during flight. The actions specified by this AD are intended to prevent such deployment, which could result in reduced controllability of the airplane.

DATES: Effective June 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD), applicable to Boeing Model 747–100, –200, and –300 series airplanes equipped with Pratt & Whitney JT9D series engines, was published in the **Federal Register** on December 7, 1993 (58 FR 64386). That action proposed to require modification of the thrust reverser control system by installing a solenoid-operated shut-off valve.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Several commenters contend that the proposed modification is not necessary and the proposed rule should be withdrawn. These commenters state that the high reliability of both the Thrust Reverser Sequencing Mechanism (TRSM) and the thrust reverser system preclude the need for the proposed shut-off valve installation. These commenters note that the manufacturer's service bulletin referenced in the proposal does not clearly state that the shut-off valve will prevent an in-flight deployment of the thrust reversers. The FAA does not concur. The reliability of the TRSM or the thrust reverser system does not affect the requirement for the solenoid-operated shut-off valve. An in-flight deployment of a thrust reverser can occur even with a fully functioning thrust reverser system with all components (including the TRSM) operating within maintenance limits, if the pneumatic signal line vent on the Directional Control Valve (DCV) becomes plugged. The installation of the shut-off valve prevents this single malfunction from causing such a deployment.

Further, the design of the thrust reverser control system is such that there is a constant supply of pneumatic signal air to the DCV. When the thrust levers are in the "idle" or "forward thrust" position, air flows through the DCV to the stow port of the gear switching actuator. Signal air leakage from the stow chamber to the deploy chamber occurs even with an actuator that is within overhaul limits. The signal air that leaks into the deploy chamber is designed to be vented through the actuator deploy port and the deploy signal line to the DCV, where it exits through the DCV vent. If this vent path becomes plugged, the pressure in the deploy chamber will rise. Pressurization of the deploy chamber of the gear switching actuator can cause the gear switching actuator to move to the "deploy" position.

Additionally, drive air is supplied to the thrust reverser Pneumatic Drive Unit (PDU) through a Pressure Regulator Shut-off Valve (PRSOV). The PRSOV opens when it receives pneumatic signal air from the DCV. This signal is received whenever the thrust levers are moved to the idle position, either in flight or on the ground. If the DCV vent, deploy signal line, or gear switcher actuator deploy chamber port becomes plugged and causes the gear switcher actuator to

move to the "deploy" position, the thrust reverser will deploy when the thrust lever is moved to the "idle" position. Plugging of this vent path has caused approximately 30 (of 31) known events of in-flight deployment of the thrust reversers on Model 747 airplanes. Such plugging has been caused by improper deactivation procedures, pieces of air filter media, and ice formed during flight.

The installation of the solenoid-operated shut-off valve required by this AD will prevent the flow of pneumatic drive air to the PDU, unless the airplane is on the ground and the reverse thrust levers are in the "reverse thrust" position The shut-off valve is installed between the PRSOV and the thrust reverser PDU. The shut-off valve opens only when the airplane air/ground logic is in the ground mode and "reverse thrust" is selected. Therefore, the shut-off valve is designed to prevent in-flight deployment of the thrust reverser by preventing the flow of drive air to the PDU (unless the airplane is on the ground and "reverse thrust" is selected).

There has been only one reported in-flight deployment of a thrust reverser on a Model 747 involving an engine that was equipped with the solenoid-operated shut-off valve. However, this incident was determined to have been caused by a maintenance crew that disconnected the PDU drive shafts to the thrust reverser in order to deactivate the thrust reverser, and inadvertently did not lock the reverser sleeve. By disconnecting the two drive shafts, the two reverser locking devices were disconnected. Thus, the improper deactivation of the reverser contributed to the in-flight deployment incident. By disconnecting the PDU drive shafts, the pneumatic drive was taken out of the system; therefore, the shut-off valve had no effect on the deployment.

None of the other 30 incidents of in-flight deployments of the thrust reversers on Model 747's have occurred on engines equipped with the subject solenoid-operated shut-off valve. The FAA considers that all of those events could have been prevented if the shut-off valve had been installed.

For these reasons, the FAA has determined that installation of the solenoid-operated shut-off valve is appropriate and warranted.

Several commenters do not support the need for the issuance of the proposed rule. These commenters state that the Model 747 has been shown to be controllable following all incidents of in-flight deployment of the thrust reversers. They contend that these incidents of deployment occurred at idle thrust, and that the proposed modification would only help in preventing uncommanded deployments at idle thrust or where improper lockout of the reverser sleeve had been performed. The FAA does not concur with these commenters' inference that issuance of the rule is not necessary. The FAA acknowledges that, in all of the known events of in-flight thrust reverser deployments, the flight crews were able to control the airplanes and land safely. At the time this rule was proposed, there was insufficient data to demonstrate that the airplane would be controllable in all phases of flight following deployment of a thrust reverser. Recently, however, Boeing has presented the results of a study it conducted on the controllability of the airplane following an in-flight deployment event in several phases of flight. The results of this study revealed that these airplanes could experience certain control problems in the event of a thrust reverser deployment occurring during high speed climb or possibly during cruise. This additional information on the controllability of the airplane following deployment of an outboard thrust reverser further demonstrates the need to install the solenoid-operated shut-off valve. For example, if the thrust lever is moved rapidly to the "idle" position from a high power setting, and the DCV vent is plugged (e.g., by ice), the thrust reverser could deploy at a high thrust level as the engine decelerates. The installation of the shut-off valve is designed to prevent pneumatic drive air from powering the PDU, unless the airplane is on the ground and "reverser thrust" is selected, thereby preventing in-flight deployments.

Several commenters request that the proposed rule be revised to allow the accomplishment of certain revised maintenance practices, in lieu of installation of the shut-off valve. These commenters point out that the majority of the incidents of in-flight deployments of thrust reversers have involved improper or outdated maintenance practices relative to deactivating the reverser. The Model 747 Maintenance Manual has been revised to delete all deactivating procedures except one, which involves disconnecting the PDU drive shafts and then ensuring that the reverser sleeve is locked in the stowed position. The commenters contend that, with such procedures now deleted from normal maintenance practices, circumstances that previously would have led to a deployment incident will now be eliminated. The FAA does not concur. Although this new maintenance procedure may serve to preclude in-flight deployments caused by improper deactivating procedures, the FAA finds that no maintenance procedure can prevent in-flight deployments caused by blocking of the DCV vent (by ice, foreign objects, etc.). Additionally, the FAA points out that several revisions had been made previously to the Model 747 Maintenance Manual in an attempt to prevent in-flight deployments of the thrust reverser, yet deployments have continued to occur. As stated elsewhere in this preamble, the FAA considers that the installation of the subject shut-off valves would have prevented 30 of the 31 known incidents of in-flight deployments on Model 747's, since those incidents involved blocking of the DCV vent.

Numerous commenters request that the proposed compliance time of 24 months for modification be extended to between 36 months and 5 years. Several of these commenters point out that there is a 300- to 400-day lead time necessary for purchasing and obtaining necessary parts. This lengthy lead time for parts delivery would seriously hamper affected operators' ability to comply with the proposed rule within a 24-month deadline, and would cause major scheduling problems, delays, and flight cancellations. Other commenters request an extension to in order to allow the modification to be accomplished during a regularly scheduled "heavy" maintenance visit ("D" check) at a main base, where required equipment and trained personnel would be available. The FAA agrees that the compliance time can be extended somewhat. Based on information provided by the commenters concerning parts availability, the FAA has determined that a compliance time of 36 months is appropriate in order to accommodate the time necessary for affected operators to order, obtain, and install the modification; and will not compromise safety. The final rule has been revised accordingly.

Certain commenters request that the proposed rule be revised to permit the installation of unmodified engines after the effective date of the AD and until the compliance time for modification. These commenters point out that proposed paragraph (b) would require that, as of the effective date of the rule, no operator install an unmodified engine on any airplane. However, to comply with this paragraph, operators would have to modify all spare engines prior to the effective date of the AD; this would be impossible, due to the lead time necessary to obtain parts, and would impose an economic burden on operators. The FAA concurs. The final rule has been revised to permit

installation of an unmodified engine up to 18 months after the effective date of the rule. This compliance time of 18 months is based on a 1-year period that would be necessary to obtain parts, plus a 6-month period to modify all spare engines.

One commenter requests that the proposed rule be revised to require the installation of a new PDU to prevent the back driving of the thrust reverser. This commenter has installed such a unit in accordance with Boeing Service Bulletins 747–78–2084 and 747–78–2090, and Garrett Service Bulletins 126712–78–1432 and 126236–78–1332. Since installation, this commenter has not experienced any in-flight deployments of the thrust reverser. The commenter recommends this installation in lieu of the shut-off valve that would be required the proposed AD. The FAA does not concur. The modification referred to by the commenter entails the installation of a reversible PDU in place of the gear-driven PDU that was installed on earlier Model 747 airplanes equipped with Pratt & Whitney JT9D engines. The pneumatic control system used with the reversible PDU is similar to the control system used with the gear-driven PDU. One difference is that a "directional switcher actuator" is used with the reversible PDU, in place of the "gear switcher actuator" used with the gear-driven PDU; however, both actuators are similar in design, and their deploy chamber vent paths are the same. Therefore, if the DCV vent, deploy signal line, or the directional switcher actuator deploy chamber port becomes plugged, the directional switcher actuator could move to the "deploy" position. If this occurs, the thrust reverser will deploy when the thrust lever is moved to the "idle" position, just as is the case for the gear-driven PDU configuration. Installation of the subject shut-off valve will prevent this from occurring. In light of this, the FAA has determined that installation of the shut-off valve is necessary, regardless of the type of PDU that is installed.

Other commenters request that the proposed rule be revised to allow alternative approaches, in lieu of the modification, to address the identified unsafe condition. The commenters state that the cost of the specific proposed modification is an unnecessary burden on operators, and consider that improved maintenance procedures are all that are necessary to ensure safety of the system. For the reasons previously described in this preamble, the FAA does concur with these commenters' specific suggestions for "alternative approaches." At this time, based on all available data to date, the FAA has determined that the modification required by the AD is the only action that will prevent in-flight deployments of the thrust reverser caused by blockage of the DCV vent. No maintenance action or acceptable alternative modification has yet been presented to the FAA that will prevent a deployment caused by this single modification. However, under the provisions of paragraph (c) of the final rule, operators may request approval of the use of alternative methods of compliance, provided that sufficient data is presented to the FAA to justify the request.

Numerous commenters request that the economic impact information presented in the preamble to the notice be revised to provide updated costs. These commenters state that the costs indicated in the preamble to the proposed rule were greatly underestimated. The FAA concurs. The estimated modification costs that were presented in the preamble to the proposal were based on information provided by the airplane manufacturer at the time the proposed rule was being developed. The manufacturer has now provided updated costs for the parts and labor necessary to modify affected airplanes, and the economic impact information, below, has been revised accordingly.

The economic impact information has also been revised to update the current number of airplanes that will be affected by this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 221 Model 747–100, –200, and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 124 airplanes of U.S. registry will be affected by this AD, that it will take approximately 128 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $75,356 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,217,104, or $82,396 per airplane.

The number of required work hours, as indicated above, is presented as if the accomplishment of the modification required by this AD were to be conducted as a "stand alone" action. However, the 36-month compliance time specified in paragraph (a) of this AD allows ample time for the modification to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–10 Boeing: Amendment 39–8917. Docket 93–NM–151–AD.

Applicability: Model 747–100, –200, and –300 series airplanes; equipped with Pratt & Whitney JT9D series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent engine fan thrust reverser deployment during flight, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the thrust reverser control system to include a solenoid-operated shut-off valve in accordance with Boeing Service Bulletin 747–78–2052, Revision 4, dated March 23, 1989.

Note: Airplanes on which the modification has been accomplished previously in accordance with Boeing Service Bulletin 747–78–2052, Revision 3, dated August 27, 1987, are considered to be in compliance with this paragraph.

(b) As of 18 months after the effective date of this AD, no person shall install a Pratt & Whitney JT9D series engine on any airplane unless the thrust reverser control system installed on that engine has been modified to include a solenoid-operated shut-off valve in accordance with Boeing Service Bulletin 747–78–2052, Revision 4, dated March 23, 1989.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Boeing Service Bulletin 747–78–2052, Revision 4, dated March 23, 1989, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–5, 12–13,19–21, 35, 38, 46	4	March 23, 1989.
6–7, 18, 39, 41	3	August 27, 1987.
15, 23–24, 36, 42–45, 47–49 30–31, 40	2	January 9, 1976.
10, 16, 22, 37	1	March 28, 1975.
8–9, 11, 14, 17, 25–29, 32–34	Original	July 19, 1974.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 20, 1994.

Issued in Renton, Washington, on May 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11780 Filed 5–18–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, and 241

[Release Nos. 33–7060; 34–34061; FR 28A]

Amendment of Interpretation Regarding Substantive Repossession of Collateral

AGENCY: Securites and Exchange Commission.

ACTION: Interpretive release.

SUMMARY: This interpretive release amends the interpretive guidance contained in Financial Reporting Release No. 28 (FR 28) that addresses the accounting for substantive repossessions of collateral. This release conforms the interpretive guidance in FR 28 to the requirements of Statement of Financial Accounting Standards No. 114, "Accounting by Creditors for Impairment of a Loan" (SFAS 114), which was issued by the Financial Accounting Standards Board (FASB) in May 1993.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT: John Riley, Stephen M. Swad, or Jeffery A. Swormstedt (202–942–4400), Office of the Chief Accountant, or Teresa E. Iannaconi (202–272–2553), Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Amendment of Interpretation Regarding Substantive Repossession of Collateral

In 1977, The FASB issued Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings" (SFAS 15), which

addressed, among other things, the accounting for substantive repossessions of collateral for restructured loans. Paragraph 34 of SFAS 15 required a troubled debt restructuring that is in substance a repossession or foreclosure by the creditor to be accounted for by the creditor by recognizing the fair value of the collateral as an asset, even if that collateral is not formally repossessed. However, SFAS 15 did not identify any criteria to determine when a loan restructuring was considered a substantive repossession of collateral.

The Commission found that, under SFAS 15, there was inconsistency in practice concerning the accounting for substantive repossessions of collateral. So, in 1986, to ensure more consistent application of substantive repossession accounting, the Commission issued FR 28, which concludes, among other things, that a loan should be accounted for as being an in-substance repossession of collateral if certain criteria are met.[1] These criteria focus on whether the primary risks and rewards of collateral ownership have passed from the debtor to the creditor.

In 1993, the FASB issued SFAS 114, which addresses, among other things, the accounting for substantive repossession of collateral. SFAS 114 amends SFAS 15 to clarify that substantive repossession accounting applies in the circumstances in which the debtor surrenders the collateral to the creditor and the creditor receives physical possession of the debtor's assets (the collateral).[2] Consequently, the accounting guidance relating to the accounting for substantive repossessions of collateral in FR 28 is not consistent with the account requirements for substantive repossession accounting in SFAS 114.

Because SFAS 114 clarifies the accounting literature that addresses the accounting for substantive repossessions of collateral, the portion of FR 28 that addresses substantive repossession accounting no longer is necessary once a registrant adopts SFAS 114.[3] Accordingly, registrants that have adopted SFAS 114 should not apply the portion of FR 28 that addresses the accounting for substantive repossessions of collateral. Registrants that have not adopted SFAS 114 should continue to apply all portions of FR 28, including the portion that addresses the accounting for substantive repossessions of collateral.

[1] The portion of Financial Reporting Release No. 28 that addresses the accounting for substantive repossessions of collateral is referred to in the Codification of Financial Reporting Policies as § 401.09.c.

[2] See SFAS 114, paragraphs 22d, 70, and 71.

[3] SFAS 114 applies to financial statements for fiscal years beginning after December 15, 1994. Earlier application is encouraged.

II. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982 (47 FR 21028) is updated to:

1. Add a new § 401.09.c.1, entitled "Amendment of Interpretation Regarding Substantive Repossession of Collateral," consisting of the last two paragraphs of section I of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register** Code of Federal Regulations System.

List of Subjects in 17 CFR Parts 211, 231, and 241

Securities.

Amendment of the Code of Federal Regulations

For the reasons set out in the preamble, title 17 chapter II of the Code of Federal Regulations is amended as set forth below:

PART 211–INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

1. Part 211, subpart A, is amended by adding Release No. FR–28A and the release date of May 12, 1994, to the list of interpretive releases.

PART 231–INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 231 is amended by adding Release No. 33–7060 and the release date of May 12, 1994, to the list of interpretive releases.

PART 241–INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 241 is amended by adding Release No. 34–34061 and the release date of May 12, 1994, to the list of interpretive releases.

Dated: May 12, 1994.

By the Commission.

[FR Doc. 94–12174 Filed 5–18–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Presriptions—Transmission by Facsimile

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The DEA amends its regulations to allow for the transmission of controlled substance prescriptions between the prescriber and the dispenser via facsimile. This change will facilitate the delivery of medication in situations where medication needs change quickly and physicians' orders need to be communicated rapidly.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on September 23, 1993 (58 FR 49453). This rule allows for the transmission of written prescriptions by a practitioner to the dispensing pharmacy by facsimile. All conditions specified under 21 CFR 1306.05 regarding the manner in which a prescription must be prepared, shall apply to prescriptions generated via facsimile.

By virtue of this rule, DEA recognizes the practice of transmitting a Schedule II prescription from the prescriber to the pharmacy by means of facsimile, but requires that the original written prescription be presented and verified against the facsimile at the time the substances are actually dispensed, and that the original document be properly annotated and retained for filing. Two exceptions to this requirement are granted.

The first exception involves pharmacies providing home infusion/intravenous (I.V.) pain therapy. Prescriptions for home infusion/I.V. pain therapy may be transmitted by the practitioner or the practitioner's agent to the home infusion pharmacy by facsimile and they may be considered "written prescriptions" as required by 21 U.S.C. 829(a). In other words, in the case of home (or hospice) infusion/I.V. pain therapy, it is not necessary for the original prescription to be delivered to the pharmacy either prior to or subsequent to the delivery of the medication to the patient's home. The

facsimile copy of the prescription shall be retained as the original document by the home infusion pharmacy and it must contain all information required by 21 CFR 1306.05(a) including the date issued, full name and address of the patient, name, address, DEA registration number and signature of the practitioner.

The exception to the regulations for home infusion/I.V. therapy is intended to facilitate the means by which home infusion pharmacies obtain prescriptions for patients requiring the frequently modified parenteral controlled release administration of narcotic substances, but does not extend to the dispensing of oral dosage units of controlled substances. By facilitating the process by which such prescriptions are communicated, the need to treat them as "emergency prescriptions" as defined by 21 CFR 1306.11(d), which presently requires that a Schedule II emergency prescription be limited to an amount for the duration of the emergency, will be substantially eliminated. This exception will also facilitate the delivery of medication to the terminally ill in non-hospital settings were medication needs change quickly and physicians' orders need to be communicated rapidly.

The second exception applies to Schedule II prescriptions written for patients in Long Term Care Facilities (LTCF) which are filled by and delivered to the facility by a pharmacy. A prescription for any controlled substance in Schedule II written for a patient in a LTCF may be transmitted by facsimile by the practitioner or the practitioner's agent to the dispensing pharmacy and may be considered "written prescriptions" as required by 21 U.S.C. 829(a). The facsimile copy of the prescription shall be retained as the original document by the dispensing pharmacy and it must contain all information required by 21 CFR 1306.05(a) including the date issued, full name and address of the patient (the address shall indicate that the location is a LTCF), name, address, DEA registration number and signature of the practitioner. By facilitating the process by which prescriptions are communicated, the need to treat them as "emergency prescriptions" as defined by 21 CFR 1306.11(d), which presently requires that a Schedule II emergency prescription be limited to an amount for the duration of the emergency, will be substantially eliminated. This exception will also facilitate the delivery of medication to patients in LTCF settings where medication needs change quickly and physicians' orders need to be communicated rapidly.

Under current regulations, a pharmacist bears the responsibility for ensuring that prescriptions for controlled substances have been issued for a legitimate medical purpose by an individual practitioner acting in the usual course of this professional practice pursuant to 21 CFR 1306.04(a). Orders purporting to be prescriptions, which are not issued in the usual course of professional treatment, are not considered prescriptions within the meaning and intent of the Controlled Substances Act and a person who issues or fills such an order shall be subject to penalties provided by law. That responsibility applies equally to an order transmitted by facsimile. Therefore, this rule should not constitute an increased potential for the diversion of controlled substances. In exercising professional judgment, a pharmacist must take adequate measures to guard against the diversion of controlled substances through prescription forgeries. Some measures to be considered in authenticating prescriptions received via facsimile equipment would include maintenance of a practitioner's facsimile number reference file, verification of the telephone number of the originating facsimile equipment and/or telephone verification with the practitioner's office that the prescription was both written by the practitioner and transmitted by the practitioner or the practitioner's agent. Although such measures parallel efforts currently employed in verifying the authenticity of prescriptions transmitted by traditional means, the requirement of this rule places an additional responsibility on the pharmacist to take efforts to ensure that the facsimile has been initiated by the prescriber.

DEA received 26 comments on the proposed rule. Of these, seven support the proposed rule as written and 19 support the proposed rule with clarification or minor change. Commentors expressed concern in the following general areas. Seven comments were concerned with the problem of allowing the facsimile prescription to be dispensed only by a "consulting" pharmacy as proposed in 21 CFR 1306.11(f) and suggested that other categories of pharmacies also be allowed to dispense controlled substances based upon facsimile prescriptions. Six submitted alternatives: (1) Consulting or provider pharmacy, (2) provider pharmacy, (3) dispensing or provider pharmacy, (4) pharmacy with which the facility has a contract or agreement, (5) pharmacy dispensing medications to the facility and (6) providing pharmacy.

DEA has changed "consulting" pharmacy to "dispensing" pharmacy in the final rule. It was found that many facilities utilize more than one pharmacy on a regular basis. Although some state laws require that each facility must have a consultant pharmacist, the individual may not be affiliated with the pharmacy actually dispensing medications. Restricting the process to consulting pharmacies would not facilitate the process for those facilities whose dispensing pharmacy and consulting pharmacy are different.

DEA received three comments on the definition of LTCF. One commentor suggested including facilities such as nursing homes or facilities, residential care facilities and mental and correctional institutions in the definition. Another commentor suggested including the term "or hospice setting". The third commentor suggested including skilled nursing homes, personal care homes and adult care facilities as closed system environments in the definition. DEA maintains that the existing definition of ITCF, currently found in 21 CFR 1306.02(e), adequately addresses the facilities that should be included. The definition includes a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

One commentor pointed out a lack of consistency concerning the use of the terms physician, practitioner, prescriber, and prescribing practitioner throughout the proposed rule. It was further suggested that DEA standardize or clarify the term prescribing practitioner by mentioning physicians and mid-level practitioners.

DEA acknowledges the inconsistency. The term practitioner will be used in the final rule. Pursuant to 21 U.S.C. 823(f), DEA registers practitioners which includes Mid-Level Practitioners (MLPs) if the applicant is authorized to dispense controlled substances by the state in which he/she practices. No further clarification is warranted. This term is defined in 21 U.S.C. 802(21) and 21 CFR 1304.02 (d) and is consistently used throughout the statutes and regulations of Title 21 of the Controlled Substances Act.

Two commentors suggest adding information on the prescription prior to faxing such as: "faxed to" to void the prescription for reuse. This was considered prior to publishing the proposed rule. While DEA agrees with and encourages this practice as a deterrent to sending the same document

several times, the ease of getting around the requirement does not justify its addition to the rule. If such information were required but was not transmitted in the facsimile, the dispensing pharmacist would be forced to seek the information before dispensing the controlled substance, thus adding delay to the process, which is contrary to the intent of the regulation.

Four comments concern the Schedule II restriction of only allowing oral prescription under emergency situations pursuant to the conditions set forth in 21 CFR 1306.11(d). Two commentors state that no schedule II's should be faxed. Two commentors disagree with the Schedule II restriction, one of these two commentors suggests that the prescription could be delivered within 5 days after the faxed original.

Since Schedule II controlled substances have the highest potential for abuse, extra care and diligence must be employed with these substances. The diversity in the comments received, both positive and negative, reflect the dichotomy between availability and adequate controls. Having studied the comments, DEA feels that the original proposal struck an appropriate balance for Schedule II prescriptions and provides the necessary controls while still allowing for the rapid delivery of the controlled substances.

Three comments address the issue of what administration methods should be permitted for purposes of the proposed definition of "home infusion pharmacy" and of the proposed exception which allows a Schedule II facsimile to serve as the original written prescription pursuant to 21 CFR 1306.02(h) and 1306.11(e). One commentor suggests including intramuscular and oral dosage unit. A second commentor suggests allowing oral dosage unit dispensing in the same manner as Schedule III and IV prescriptions. The third commentor suggests oral dosage unit for terminally ill regardless of the care setting. Dispensing of oral dosage forms for the terminally ill has been previously addressed in 21 CFR 1306.13. However, intramuscular has been added to the final rule. DEA was advised by health care professionals that intramuscular administration is one form of administration utilized when repeated doses are required.

Four comments addressed the issue of expanding the term prescriber to include a prescriber's "agent" for purposes of defining who is allowed to transmit a facsimile prescription under 21 CFR 1306.11(a). Two suggest using "practitioner's agent" instead. Two suggest including "prescriber" or "agent". DEA agrees with the commentors that the proposal unintentionally implied that every practitioner would have to personally fax the prescription. Therefore, the language has been amended to include the faxing by the practitioner's agent.

One commentor suggests that due to fading of certain types of facsimile paper DEA should allow copying. DEA is concerned about the quality of the copy and its durability. It is the intent of this rule that if a facsimile copy is retained as the original record it must satisfy the same record-keeping requirements as an original paper record. The facsimile copy must be maintained as a complete and accurate record for the record-keeping time limit of two years pursuant to 21 CFR 1304.04(a). A facsimile which can fade and deteriorate before the record-keeping time limit is reached would not be acceptable as the original record.

Two comments suggested that the phrase "administer and dispense (but not prescribe)" be changed by deleting the prohibition against prescribing by the institutional practitioner as proposed in §§ 1306.21(c) and 1306.31(c). The proposed regulations address the situations where an individual practitioner or his agent (as opposed to an institutional practitioner such as a hospital) transmits a written instrument, a facsimile or an oral order. Hence, it would be confusing to delete the phrase "(but not prescribe)" because it would indicate that the institutional practitioner had the authority to prescribe based upon a prescription already issued by an individual practitioner. The current regulations do address the general circumstances under which practitioners and exempted persons are allowed to dispense, administer or prescribe in 21 CFR 1301.24. A proposal will be drafted in the near future to amend § 1301.24 which should clarify any current ambiguities in §§ 1306.21(c) and 1306.31(c).

One comment was received concerning an inconsistency in the use of the phrases "transmitted from", "transmitted directly by", and "transmitted by". DEA realized that there was an inconsistency. In section 1306.11, as proposed, "transmitted from" and "transmitted directly from" were used and in §§ 1306.21 and 1306.31, as proposed, "transmitted directly by" was used. For clarity and consistency "transmitted by" will be used for the final rule.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

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

List of Subjects in 21 CFR 1306

Drug traffic control, Prescriptions.

For reasons set out above, 21 CFR 1306 is amended as follows:

PART 1306—[AMENDED]

1. The authority citation for Part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b), unless otherwise noted.

2. Section 1306.02 is amended by redesignating the current paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

§ 1306.02 Definitions.

* * * * *

(h) The term *home infusion pharmacy* means a pharmacy which compounds solutions for direct administration to a patient in a private residence, Long Term Care Facility or hospice setting by means of parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion.

* * * * *

3. Section 1306.11 is amended by revising paragraph (a) and by adding new paragraphs (e) and (f) as follows:

Controlled Substances Listed in Schedule II

§ 1306.11 Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance in Schedule II, which is prescription drug as determined by the Federal Food, Drug and Cosmetic Act, only pursuant to a written prescription signed by the practitioner, except as provided in paragraph (d) of this section. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agency to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in paragraph (e) or (f) of this section. The original prescription

shall be maintained in accordance with § 1304.04(h).

* * * * *

(e) A prescription prepared in accordance with § 1306.05 written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by the practitioner or the practitioner's agent to the home infusion pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph (e) and it shall be maintained in accordance with § 1304.04(h).

(f) A prescription prepared in accordance with § 1304.05 written for Schedule II substance for a resident of a Long Term Care Facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph (f) and it shall be maintained in accordance with § 1304.04(h).

* * * * *

4. Section 1306.21 is amended by revising paragraphs (a) and (c) as follows:

Controlled Substances Listed in Schedules III and IV

§ 1306.21 Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance listed in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required in § 1306.05, except for the signature of the practitioner.

* * * * *

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedules III or IV only pursuant to written prescription signed by an individual practitioner, or pursuant to a facsimile of a written prescription or order for medication transmitted by the practitioner or the practitioner's agent to the institutional practitioner-pharmacist, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in § 1306.05 except for the signature of the individual practitioner), or pursuant to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user, subject to § 1306.07.

* * * * *

5. Section 1306.31 is amended by revising paragraph (c) as follows:

Controlled Substances Listed in Schedule V

§ 1306.31 Requirement of prescription.

* * * * *

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule V only pursuant to a written prescription signed by an individual practitioner, or pursuant to a facsimile of a written prescription transmitted by the practitioner or the practitioner's agent to the institutional practitioner—pharmacist, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in § 1306.05 except for the signature of the practitioner), or pursuant to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user, subject to § 1306.07.

Dated: May 10, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–12173 Filed 5–18–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–357, Re: Notice No. 787]

RIN 1512–AA07

Seiad Valley Viticultural Area (93F–022P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF); Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Siskiyou County, California, named "Seiad Valley." The petition was filed by Brian J. Helsaple of Seiad Valley Vineyards. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows winemakers to distinguish their products from wines made in other areas and enables consumers to better identify the wines they may purchase.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226. (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF received a petition from Brian J. Helsaple of Seiad Valley Vineyards to establish a viticultural area in Siskiyou County, California, to be known as "Seiad Valley." The viticultural area is located in northwestern California, about 15 miles south of the Oregon border. It contains approximately 2,160 acres, of which approximately 2.5 acres are planted to vineyards. Seiad Valley Vineyards is the only commercial grower and the only wine producer currently active within the viticultural area.

Notice of Proposed Rulemaking

In response to Mr. Helsaple's petition, ATF published a notice of proposed rulemaking, Notice No. 787, in the **Federal Register** on January 11, 1994 (59 FR 1510), proposing the establishment of the Seiad Valley viticultural area. The notice requested comments from all interested persons by March 14, 1994.

Comments on Notice of Proposed Rulemaking

Nine comments were received concerning the proposal to establish the Seiad Valley viticultural area. All nine commenters stated that they fully support the proposed area as delineated in Notice 787. United States Senator Barbara Boxer noted in her comment that "[d]esignating this distinct region as a viticultural area will help to spark economic growth in a community that has been hard-hit by the disappearance of timber and mining-based industries." One commenter, Barbara Holder, Forest Supervisor, Klamath National Forest, United States Department of Agriculture Forest Service, addressed a question asked in the notice of proposed rulemaking. ATF had asked for comments concerning the extension of the area to the south of the Klamath River. She stated "[t]he area proposed, including lands south of the Klamath River along Grider Creek, does comprise a distinctive zone with regard to geographical features, topography, soil and climate."

Evidence of Name

Evidence that the name of the area is locally and/or nationally known as referring to the area specified includes:

(a) The U.S.G.S. map used to show the boundaries of the area (the Seiad Valley Quadrangle 7.5 minute series map) uses the name "Seiad Valley" to describe the area immediately surrounding Seiad Creek, corresponding to the portion of the area which is north of the Klamath River The map also shows the town of Seiad Valley within this area. The map shows no separate designation for the portion of the area south of the Klamath River, which is drained by Grider Creek.

(b) Excerpts from the 1957 issue of Siskiyou Pioneer, an annual publication of the Siskiyou County Historical Society, discuss the history of the name Seiad Valley, and local understanding of the extent of the area known as Seiad, or Seiad Valley. "Sciad," by Betty Livingston and Hazel Davis, states the name Seiad was originally spelled Sciad, and the creek and valley were called that by the trappers "before the prospectors came in 1850." Sometime after 1871, the spelling of the name changed to Seiad. In "Gold Mining from Scott Bar to Happy Camp," by J.B. Grider, the following description appears:

> Seiad is a small valley two miles long and one mile wide * * *. There are two large creeks in Seiad, Grider Creek and Seiad Creek. Grider Creek flows north into the Klamath from the Marble Mountain territory. Seiad creek flows south into the Klamath from the Siskiyous and Red Mountain."

(c) The petitioner also provided a copy of a claim document dated August 26, 1942, which states the Grider Creek mining claim is "situate in the Seiad Mining District."

Evidence of Boundaries

The area is defined primarily by its elevation, using the 1,600 and 1,800 foot contour lines. The petitioner states that the vegetation within and outside the area provides a dramatic contrast. Within the area, cottonwood, oak and willow trees and wild blackberries and grapes grow in addition to the cultivated crops. Outside the area, on the higher slopes of the surrounding mountains, conifers such as cedar, Douglas fir and Ponderossa pine predominate in the thin, eroded soils with scant summer moisture.

Geographical Features

The viticultural area consists of the valleys drained by Seiad Creek and Grider Creek, which both flow into the Klamath River in northwestern California. These valleys and an expanse of land along the Klamath River which connects them share characteristics of topography, soil composition and climate which distinguish the viticultural area from the surrounding areas.

Topography

The U.S.G.S. topographic map of the Seiad Valley Quadrangle shows the area is a relatively flat area varying in elevation from 1,400 to 1,600 feet, with a small portion as high as 1,800 feet, surrounded by steeply rising terrain. Outside the area, the elevation ranges from 2,000 to 2,800 feet, with peaks exceeding 3,000 feet on all sides, and some peaks as high as 3,900 feet. Snow melt, runoff, and erosion from these higher areas into the valley create a contrast in both the quality of soils and the availability of water within and outside the area. The lower elevation within the area also contributes to more moderate temperatures there.

Soil

The petitioner describes the valley floor as "composed of deep fertile soil mixtures of loam, sand, clay and rocks eroded from the surrounding mountain slopes." According to a draft environmental impact report prepared in 1975 by the California Department of Transportation, the valley floor is "mostly alluvium deposits which were widely dredged and hydraulically mined for gold. Chromite was also mined within the Seiad Valley area." Dredging left "tailings," or piles of rounded rocks, wherever the dredge operated. The petitioner states that these granite-dominated rock tailings store heat during the day and provide protection against frost in spring and fall.

Climate

An article in the Pioneer Press of September 16, 1992, titled "Rock-pile grapevines surprising all experts," contrasted Siskiyou County growing conditions with those in Seiad Valley vineyard: "What's stopped the area from becoming a wine-producing area are the erratic late spring freezes in the zone where elevations are low enough to even make it possible. And in some of the county's lowest elevation areas, the precipitation levels are too high." The article stated the rock tailings in the vineyard "may give Helsaple just the edge he needs to be the county's first successful longterm wine grape grower."

Boundary

The boundary of the Seiad Valley viticultural area may be found on one United States Geological Survey (U.S.G.S.) map with a scale of 1:24000. The boundary is described in § 9.148.

Miscellaneous

ATF does not wish to give the impression by approving the Seiad Valley viticultural area that it is approving or endorsing the quality of wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a

distinction on labels and advertisements as to origin of the grapes.

Any commercial advantage gained can only come from consumer acceptance of wines from Seiad Valley.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because:

(1) It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.148 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.148 Seiad Valley.

(a) *Name.* The name of the viticultural area described in this section is "Seiad Valley."

(b) *Approved map.* The appropriate map for determining the boundary of the Seiad Valley viticultural area is a U.S.G.S. 7.5 minute series topographical map of the 1:24000 scale, titled "Seiad Valley, Calif.," 1980.

(c) *Boundary.* The Seiad Valley viticultural area is located in Siskiyou County, California. The boundary is as follows:

(1) The beginning point is the intersection of the 1600 foot contour line with the power transmission line north of the Klamath River, near Mile 130;

(2) From the beginning point, the boundary follows the 1600' contour line in a generally northeasterly direction until it reaches the intersection of an unnamed light duty road and an unimproved road just west of Canyon Creek;

(3) The boundary then follows the unimproved road north to its end, then goes east in a straight line until it reaches the 1800' contour line;

(4) The boundary then follows the 1800' contour line in a northeasterly direction to the point, near Sawmill Gulch, where the contour line crosses Seiad Creek and turns south and west;

(5) The boundary continues to follow the 1800' contour line as it proceeds southwest for approximately 4.5 miles, then turns sharply south-southeast for approximately 0.3 miles, until the contour line turns sharply east at a point just north of the Klamath River;

(6) The boundary then diverges from the 1800' contour line and proceeds south-southeast in a straight line, across the Klamath River and State Route 96, until it intersects with the 1600' contour line;

(7) The boundary then follows the 1600' contour line south and west, then north and west, roughly following the course of the Klamath River, until it reaches an unnamed peak 1744 feet high;

(8) The boundary continues along the 1600' contour line as it diverges from the Klamath River and proceeds south, just to the east of an unnamed light duty road, to the point where that road crosses Grider Creek;

(9) The boundary diverges from the contour line and proceeds west in a straight line across the road and Grider Creek until it intersects with the 1600' contour line on the west side of Grider Creek;

(10) The boundary then follows the 1600' contour line north, west and north again until it reaches a point where the contour line turns west, just south of the Klamath River;

(11) The boundary diverges from the 1600' contour line and proceeds in a straight line in a northeasterly direction, back to the point of beginning.

Dated: April 19, 1994.

Daniel R. Black,

Acting Director.

Approved: May 2, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–12201 Filed 5–18–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA51

Permit-Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; technical amendment.

SUMMARY: On January 14, 1993 at 58 FR 4462, the Occupational Safety and Health Administration (OSHA) published a final rule on Permit-Required Confined Spaces, 29 CFR 1910.146 in the **Federal Register**. On June 29, 1993 at 58 FR 34844, OSHA published a corrections document for that final rule which contained corrections to the regulatory text and to several appendices of the final rule. This document adds a metric equivalent in paragraph (k)(3)(ii) and further revises the "Atmospheric monitoring" section of appendix E, "Sewer System Entry", of the final rule.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Information and Public Affairs, room N–3647, U.S. Department of Labor, 200

Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 219–8181.

SUPPLEMENTARY INFORMATION: OSHA published its final rule on Permit-Required Confined Spaces, 29 CFR 1910.146, on January 14, 1993 at 58 FR 4462. Corrections to the regulatory text and several appendices were published on June 29, 1993 at 58 FR 34844.

Amendment to 29 CFR 1910.146

The last sentence of § 1910.146(k)(3)(ii) requires that a mechanical device be used to retrieve personnel from vertical type permit spaces more than 5 feet deep. OSHA failed to include the metric equivalent of 5 feet in this provision. Since it is the policy of the U.S. Government and OSHA to include metric equivalents of U.S. units wherever possible, OSHA is correcting § 1910.146(k)(3)(ii) by adding the metric equivalent (1.52 meters) of 5 feet.

Amendment to Appendix E

In the correction notice of June 29, 1993 (58 FR 34844), OSHA removed all reference to "broad range sensor instruments" from the "Atmospheric monitoring" section of non-mandatory appendix E (see 58 FR 34845) because the Agency felt that it was inappropriate to suggest a particular type of sensor instrument for all sewer entries. However, it appears that, by removing the reference to the broad range sensor, OSHA inadvertently created the impression that the Agency now favored the use of substance-specific sensors over the use of broad range sensors for atmospheric monitoring in sewer systems. This was not the Agency's intent. As stated in the preamble to the final rule, the choice of sensors or other monitoring equipment will, in general, depend on the extent to which the employer has been able to identify the atmospheric hazards present or potentially present in the sewer. Where the employer has already identified those hazards, substance-specific sensors are preferable, because they accurately indicate the concentrations of the identified air contaminants. By contrast, where the employer has not been able to identify the specific atmospheric hazards present or potentially present in the sewer, broad range sensors are preferable because they indicate that the hazardous threshold of a class (or classes) of contaminants (i.e., hydrocarbons) in the sewer have been exceeded.

Sewer permit spaces generally cannot be isolated from adjacent sections of the sewer. This means that air contaminants arising or introduced elsewhere in a sewer system can enter a sewer permit space, without warning, during entry operations. This, in turn, may make it difficult for employers to anticipate the potential atmospheric hazards of a sewer permit space. OSHA expects employers to consider the predictability of sewer permit space's atmosphere when selecting the appropriate equipment for atmospheric testing and monitoring.

Accordingly, OSHA is revising the information in § 1910.146, appendix E, pertaining to atmospheric testing and monitoring in sewers. The reference to broad range sensors is restored and the advantages and limitations of both the oxygen sensor/broad range sensor instrument and the substance-specific device are more clearly stated. However, no preference is expressed for either type of meter. Instrument selection is left up to the employer, who is in a position to decide what type of testing instrument is appropriate for a particular sewer entry.

Exemption From Notice and Comment Procedures

With regard to this action, OSHA has determined that it is not required to follow procedures for public notice and comment rulemaking under either section 4 of the Administrative Procedure Act (5 U.S.C. 553) or under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655(b)). This action does not affect the substantive requirements or coverage of the standards themselves. This technical amendment does not modify or revoke existing rights or obligations, nor does it establish new ones. This action simply provides additional information on the existing regulatory burden. OSHA, therefore, finds that notice and public procedure are impracticable and unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, OSHA also finds that, in accordance with 29 CFR 1911.5, good cause exists for dispensing with the public notice and comment procedures prescribed in section 6(b) of the Occupational Safety and Health Act.

Exemption From Delayed Effective Date Requirement

Under 5 U.S.C. 553, OSHA finds that there is good cause for making this technical amendment effective upon publication in the **Federal Register**. This technical amendment simply provides additional information on the existing regulatory burden without increasing that burden.

List of Subjects in 29 CFR Part 1910

Confined spaces, Hazardous atmospheres, Monitoring, Occupational safety and health, Safety.

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, 29 CFR 1910.146 is amended as set forth below:

Signed at Washington, DC, this 12th day of May, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart J of part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

§ 1910.146 [Amended]

2. The last sentence of paragraph (k)(3)(ii) of § 1910.146 is amended by adding "(1.52 m)" between the words "feet" and "deep."

3. Section (2), *Atmospheric monitoring*, of Appendix E of § 1910.146 is revised to read as follows:

(2) *Atmospheric monitoring.* Entrants should be trained in the use of, and be equipped with, atmospheric monitoring equipment which sounds an audible alarm, in addition to its visual readout, whenever one of the following conditions are encountered: Oxygen concentration less than 19.5 percent; flammable gas or vapor at 10 percent or more of the lower flammable limit (LFL); or hydrogen sulfide or carbon monoxide at or above 10 ppm or 35 ppm, respectively, measured as an 8-hour time-weighted average. Atmospheric monitoring equipment needs to be calibrated according to the manufacturer's instructions. The oxygen sensor/broad range sensor is best suited for initial use in situations where the actual or potential contaminants have not been identified, because broad range sensors, unlike substance-specific sensors, enable employers to obtain an overall reading of the hydrocarbons (flammables) present in the space. However, such sensors only indicate that a hazardous threshold of a class of chemicals has been exceeded. They do not measure the levels of contamination of specific substances. Therefore, substance-specific devices, which measure the actual levels of specific substances, are best suited for use where actual and potential contaminants have been identified. The

measurements obtained with substance-specific devices are of vital importance to the employer when decisions are made concerning the measures necessary to protect entrants (such as ventilation or personal protective equipment) and the setting and attainment of appropriate entry conditions. However, the sewer environment may suddenly and unpredictably change, and the substance-specific devices may not detect the potentially lethal atmospheric hazards which may enter the sewer environment.

Although OSHA considers the information and guidance provided above to be appropriate and useful in most sewer entry situations, the Agency emphasizes that each employer must consider the unique circumstances, including the predictability of the atmosphere, of the sewer permit spaces in the employer's workplace in preparing for entry. Only the employer can decide, based upon his or her knowledge of, and experience with permit spaces in sewer systems, what the best type of testing instrument may be for any specific entry operation.

The selected testing instrument should be carried and used by the entrant in sewer line work to monitor the atmosphere in the entrant's environment, and in advance of the entrant's direction of movement, to warn the entrant of any deterioration in atmospheric conditions. Where several entrants are working together in the same immediate location, one instrument, used by the lead entrant, is acceptable.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 206

RIN 0790–AF59

National Security Education Program (NSEP) Grants to Institutions of Higher Education

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: The National Security Education Act provided for the establishment of the National Security Education Program, the National Security Education Board, and a Trust Fund in the U.S. Treasury to provide all resources for the program. Under the Act the Secretary is directed to carry out a program to award undergraduate scholarships, graduate fellowships, and grants to institutions of higher education. This rule is to inform those concerned with institutional grants to be offered under the 1994–1995 pilot grants program of the preliminary guidelines.

DATES: This rule is effective on May 5, 1994. Written comments on this rule must be received not later than July 18, 1994.

ADDRESSES: Forward comments to the office of: Director, National Security Education Program, P.O. Box 47103, Washington, DC 20050–7103.

FOR FURTHER INFORMATION CONTACT: Edmond J. Collier, (703) 696–5673.

SUPPLEMENTARY INFORMATION: Certification statement regarding the interim rule re: Executive Order 12866, Public Law 96–354 and Public Law 96–511.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this Interim Rule will, if issued, be a significant regulatory action. This rule has been reviewed by OMB prior to **Federal Register** publication.

Public Law 96–354, "Regulatory Flexibility Act"

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because, if issued as a final rule, it would have no adverse effect on small entities. It would provide guidance to colleges, universities, or consortia interested in applying for an institutional grant under the National Security Education Program. The primary effect of this rule on potential grantees will be to reduce the administrative costs and other burdens resulting from the simplification and clarification of the application process.

Public Law 96–511, "Paperwork Reduction Act"

It has been certified that this rule would, if issued as a final rule, impose a reporting requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and is being forwarded for review by OMB.

List of Subjects in 32 CFR Part 206

Colleges and universities, Education, Grant program.

Accordingly, title 32 of the CFR, subchapter C is amended to add part 206 to read as follows:

PART 206—NATIONAL SECURITY EDUCATION PROGRAM (NSEP) GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

Sec.

Authority: 20 U.S.C. 1141(a).

§ 206.1 Major characteristics of the NSEP institutional grants program.

(a) The Institutional Grants Program provides support in the form of grants to U.S. institutions of higher education. During the 1994–95 and 1995–96 academic years, a program of pilot grants is being initiated with an annual competition for grants held during the spring of each year. Grants to institutions will complement NSEP scholarship and fellowship programs. NSEP encourages the development of programs and curricula which:

(1) Improves the quality and infrastructure of international education;

(2) Addresses issues of national capacity; and

(3) Defines innovative approaches to issues not addressed by NSEP scholarship and fellowship programs.

(b) The NSEP Grants Program is designed to address a number of important objectives critical to the United States:

(1) To equip Americans with an understanding of less commonly taught languages and cultures and enable them to become integrally involved in global issues.

(2) To build a critical base of future leaders in the marketplace and in government service who have cultivated international relationships and worked and studied along-side foreign experts.

(3) To develop a cadre of professionals with more than the traditional knowledge of language and culture who can use this ability to help the U.S. make sound decisions and deal effectively with global issues; and

(4) To enhance institutional capacity and increase the number of faculty who can educate U.S. citizens toward achieving these goals.

(c) Grants will be awarded for initial 1- or 2-year periods. Potential follow-on commitments will be based on a rigorous evaluation and assessment process. Between 15 and 25 awards are expected to be made in the first year ranging from approximately $25,000 to $250,000. These are only estimates and do not bind the NSEP to a specific number of grants or to the amount of the grant.

(d) The following key characteristics will be emphasized in the NSEP Institutional Grants Program:

(1) *Programmatic in emphasis.* The purpose of the grants is to address weaknesses and gaps in programs and curricula. The grants should be used to strengthen the national capacity in international education. While "operational" support for already existing centers and projects may be a component of a grant, NSEP emphasizes