§ 39.13 [Amended]

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

94-17-05 Airbus Industrie: Amendment 39-9000. Docket 94-NM-105-AD.

Applicability: Model A340-211 and 311 series airplanes, as listed in Airbus Service Bulletin A340-38-4013, dated January 5, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire due to overheating of the toilet vacuum generator, accomplish the following:

(a) Within 45 days after the effective date of this AD, replace circuit breakers 6 MG and 106 MG, part number NSA 931302-25, in panel 5005VE with faster circuit breakers (20 amp), part number NSA 931322-200, in accordance with either Airbus All Operator Telex (AOT) 38-01, dated December 15, 1993, or Airbus Service Bulletin A340-38-4013, dated January 5, 1994.

(b) 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, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 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.

(d) The replacement shall be done in accordance with either Airbus All Operator Telex (AOT) 38-01, dated December 15, 1993, or Airbus Service Bulletin A340-38-4013, dated January 5, 1994. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

(e) This amendment becomes effective on September 6, 1994.

Issued in Renton, Washington, on August 8, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-19699 Filed 8-19-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-19-AD; Amendment 39-9003; AD 94-17-08]

Airworthiness Directives; De Havilland Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, that requires removal of the aluminum or brass hardware in the firewall terminal block assembly and replacement with steel hardware. This amendment is prompted by the results of an investigation, which revealed that corroded aluminum washers in the DC firewall terminal block assembly may loosen the electrical connections. The actions specified by this AD are intended to prevent interruption of DC electrical power due to connections that may have loosened from corrosion.

DATES: Effective on September 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. 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 FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC-7 series airplanes was published in the **Federal Register** on April 22, 1994 (59 FR 19154). That action proposed to require removal of the aluminum or brass hardware in the firewall terminal block assembly and replacement with steel hardware (Modification 7/2617).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be nominal in cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,075, or $165 per airplane.

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 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

94–17–08 De Havilland, Inc.: Amendment 39–9003. Docket 94–NM–19–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent interruption of DC electrical power due to connections that may have loosened from corrosion, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove the aluminum or brass hardware in the firewall terminal block assembly and replace with steel hardware (Modification 7/2617), in accordance with de Havilland Service Bulletin S.B. 7–24–69, dated October 8, 1993.

(b) 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(c) Special flight permits may be issued in accordance with sections 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.

(d) The removal and replacement shall be done in accordance with de Havilland Service Bulletin S.B. 7–24–69, dated October 8, 1993. 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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 21, 1994.

Issued in Renton, Washington, on August 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–20156 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–44; Amendment 39–9006; AD 94–17–11]

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–200, S–600, and S–1200 Series Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, that currently requires replacing Bendix ignition coils and rotating magnets, regardless of total time in service (TIS), with improved TCM ignition coils, rotating magnets and marking magnetos to indicate compliance with this AD, except for the S–1200 series magnetos on which the AD requires replacing only the ignition coils as that series magneto already incorporates rotating magnets with the improved TCM design. This amendment limits the number of magnetos requiring replacement. This amendment is prompted by a report from the manufacturer that there is an error in the serial number listing of affected magnetos. The actions specified by this AD are intended to prevent magneto failure and subsequent engine failure.

DATES: Effective September 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before October 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: On December 29, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94–01–03, Amendment 39–8785 (59 FR 4555, February 1, 1994), to require replacing certain Bendix ignition coils and rotating magnets, regardless of time in service (TIS), with improved serviceable Teledyne Continental Motors (TCM) ignition coils and rotating magnets at either the next 100-hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of the AD, whichever occurs first. For S–1200 series magnetos, the AD requires replacing only the ignition coils as the rotating magnets on that series magneto already incorporates the improved TCM design. Additionally, the AD requires remarking magnetos to indicate compliance with the AD. That action was prompted by recent reports of accidents caused by failures of magnetos incorporating older Bendix components that had not been replaced in accordance with superseded AD 73–07–04, Amendment 39–1731 (38 FR 27600, October 5, 1973). That condition, if not corrected, could result in magneto failure and subsequent engine failure.

Since the issuance of that AD, TCM has informed the FAA that an error in the serial number listing in TCM Service Bulletin (SB) No. 637, dated December 1992, resulted in too many affected magnetos requiring AD compliance. The AD should apply only to certain magnetos manufactured by Bendix in Sidney, New York, and not to any Bendix magnetos built in either Jacksonville, Florida, or Atlanta, Georgia. In addition, the S–600 series magnetos require replacement of only the rotating magnets and not the ignition coils. Finally, the FAA received reports that there is some confusion as

to how the S–20, S–200, S–600, and S–1200 series magnetos are referenced in the TCM SB and the AD. TCM has issued a revised SB that corrects these errors.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4, 1994, that describes procedures for replacing certain Bendix ignition coils and rotating magnets with improved serviceable TCM ignition coils and rotating magnets and marking magnetos to indicate compliance with this MSB.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD revises AD 94–01–03 to require replacement of certain Bendix ignition coils and rotating magnets with improved serviceable TCM ignition coils and rotating magnets. For the S–600 series magnetos, this AD requires replacing only the rotating magnets as there is no replacement for the ignition coils. For the S–1200 series magnetos, this AD requires replacing only the ignition coils as the rotating magnets on that series magnetos already incorporate the improved TCM/Bendix design. Finally, this AD requires marking magnetos to indicate compliance with this AD. The actions are required to be accomplished in accordance with the SB described previously.

The errors in the SB have caused an undue economic burden to those operators that were mandated to replace the specified components of magnetos. This AD action will therefore relieve operators of unnecessary expense, and the FAA is issuing this AD as a final rule without prior comment. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–44." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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 removing Amendment 39–8785 (59 FR 4555, February 1, 1994) and by adding a new airworthiness directive, Amendment 39–9006, to read as follows:

94–17–11 Teledyne Continental Motors: Amendment 39–9006. Docket 93–ANE–44. Revises AD 94–01–03, Amendment 39–8785.

Applicability: Teledyne Continental Motors (TCM), formerly Bendix magnetos:

S–20, S–200, and S–600 series magnetos with red or black Bendix (not TCM) data plates having serial numbers (S/N's): Lower than 2000000 without any letter prefix; or S/N's lower than A16058 having the letter "A" prefix.

S–20, S–200, and S–600 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

S–1200 series magnetos with red Bendix (not TCM) data plates having S/N's: lower than 2000000 without any letter prefix; or S/N's lower than A132844 having the letter "A" prefix.

S–1200 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

These magnetos are installed on but not limited to reciprocating engine powered aircraft manufactured by Beech, Cessna, Maule, Mooney, and Piper.

Note 1: Yellow Bendix or TCM service spare data plates may have been installed during a field overhaul; use model and S/N to determine applicability.

Note 2: No action is required for those magnetos in compliance with AD 94–01–03.

Note 3: Magnetos built by Bendix in Jacksonville, Florida, and Magnetos built by TCM in Atlanta, Georgia, as indicated on the data plate, are not affected by this AD.

Note 4: The paint on some early data plates may have been obliterated and the data plate will appear silver in color; use model and serial number to determine applicability.

Note 5: The FAA has received reports of some confusion as to what is meant by S–20, S–200, S–600, and S–1200 series magnetos as referenced in TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4,

1994, and this AD. A typical example is S6RN–25, where the S designates single type ignition unit, the 6 designates the number of engine cylinders, the R designates right hand rotation, the N is the manufacturer designator (this did not change when TCM purchased the Bendix magneto product line), and the number after the dash indicates the series (a –25 is a S–20 series magneto, while a –1225 is a S–1200 series magneto).

Compliance: Required as indicated, unless accomplished previously.

To prevent magneto failure and subsequent engine failure, accomplish the following:

(a) For Bendix S–20 and S–200 series magnetos, replace Bendix ignition coils and rotating magnets identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with appropriate serviceable ignition coils and rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours time in service (TIS) after the effective date of this AD, whichever occurs first.

(b) For the Bendix S–600 series magnetos, replace Bendix rotating magnets identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with appropriate serviceable rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

Note: The ignition coils on the S–600 series magnetos already incorporate the improved design.

(c) For the Bendix S–1200 series magneto, replace Bendix ignition coils identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with appropriate serviceable ignition coils at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

Note: The rotating magnets on the S–1200 series magnetos already incorporate the improved design.

(d) After compliance with paragraphs (a), (b), or (c) of this AD, as applicable, and prior to further flight, mark the magneto in accordance with the Identification Instructions of TCM SB No. MSB644, dated April 4, 1994.

(e) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

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

(g) The replacement and identification shall be done in accordance with the following service document:

Document No.	Pages	Date
TCM SB No. MSB644. Total pages: 3	1–3	Apr. 4, 1994.

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 Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 6, 1994.

Issued in Burlington, Massachusetts, on August 11, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–20413 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–03–P

14 CFR Part 39

[Docket No. 93–NM–106–AD; Amendment 39–9004; AD 94–17–09]

Airworthiness Directives; Boeing Model 747–100, –200, –300, and –400 Series Airplanes Equipped with BFGoodrich Evacuation Ramp/Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, –300, and –400 series airplanes, that requires various modifications of certain evacuation ramp/slides. This amendment is prompted by reports of several evacuation ramp/slide malfunctions. The actions specified by this AD are intended to prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective September 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from the BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, D/7916, Phoenix, Arizona 85040. 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200, –300, and –400 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 15, 1994 (59 FR 11940). That action proposed to require various modifications of certain evacuation ramp/slides.

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 proposed rule.

Another commenter requests that the proposed 24-month compliance time for modification of the ramp/slides be extended to 36 months so that it will coincide with affected operators' scheduled overhauls. The commenter points out that the manufacturer of the subject ramp/slides recommends a compliance time of 36 months. The commenter believes that safety will not be compromised if an extension is allowed. The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts, the average utilization of the affected fleet, and normal maintenance schedules for timely accomplishment of the modification. The FAA finds that the proposed 24-month compliance time represents the maximum interval of time allowable wherein the

modifications can reasonably be accomplished and an acceptable level of safety can be maintained. Further, the FAA took into account the 36-month compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 24 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer.

Another commenter requests that the proposed 24-month compliance time for modification be shortened to 6 months. This commenter believes that a shorter compliance time is necessary for continued safe operation of airplanes equipped with the affected ramp/slides. The FAA does not concur with the commenter's request. As explained above, the FAA considered many factors, including the safety implications, when developing an appropriate compliance time for this AD. After consideration of all the available information, the FAA cannot conclude that a reduction of the proposed compliance time, without prior notice and opportunity for public comment, is warranted. To reduce the compliance time of the AD would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that process may be as long as four additional months. In comparing the actual compliance date of the final rule after completing such a process to the compliance date of this final rule as issued, the increment in time is minimal. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original proposal, the FAA has determined that further delay of this final rule action is not appropriate.

Two commenters request that paragraph (a) of the proposed rule be revised to require accomplishment of the modifications specified only in paragraphs 2.C., 2.D.(2), 2.E., and 2.F. of the BFGoodrich service bulletin cited in the AD. The commenters believe that accomplishment of paragraph 2.G. of the service bulletin should be optional, since the modifications included in that paragraph are considered to be product improvements that are not associated with the addressed unsafe condition. One of these commenters, BFGoodrich, states that approximately 40 percent of the slide modification kits were shipped to operators prior to the issuance of the supplemental NPRM, and some operators may not have accomplished the modifications specified in paragraph 2.G. of the service bulletin. The commenter expresses a concern that a requirement to accomplish that paragraph would result in additional costs and unscheduled removal and maintenance actions for operators.

The FAA concurs with the commenters' request, and has revised paragraph (a) of the final rule to specify that accomplishment of the product improvement modifications specified in paragraph 2.G. of the Accomplishment Instructions of the service bulletin is not required by this AD.

Two commenters request that the proposal be revised to cite the latest revision to the BFGoodrich service bulletin specified in the AD and to reference Boeing Service Bulletin 747–25–3028. The FAA concurs. Since the issuance of the supplemental NPRM, the FAA has reviewed and approved Revision 2 of BFGoodrich Service Bulletin 7A1418–25–253, dated April 15, 1994, which corrects certain typographical errors that appeared in Revision 1 of that service bulletin and references the Boeing service bulletin. The Boeing service bulletin describes procedures for an alternative method of modifying of the packboard and girt. Paragraph (a) of the final rule has been revised to cite the latest revision of the service bulletin as an additional source of service information. Further, "NOTE 2" has been added to paragraph (a) of the final rule to reference Boeing Service Bulletin 747–25–3028 as an additional source of service information for modifying the packboard and girt.

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 1,100 BFGoodrich ramp/slides of the affected design installed on Boeing Model 747–100, –200, –300, and –400 series airplanes in the worldwide fleet. The FAA estimates that 300 of these subject ramp/slides are installed on Boeing Model 747–100, –200, –300, and –400 series airplanes of U.S. registry that will be affected by this AD. It will take approximately 22 work hours per ramp/slide to accomplish the required actions, at an average labor rate of $55 per work hour. Required parts will be provided by the ramp/slide manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $363,000, or $1,210 per airplane.

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.

However, the FAA has been advised that 40 percent of the required modification kits have been delivered to airlines having airplanes affected by this AD. From this information, the FAA can assume that 40 percent of the affected fleet already have been modified in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be 40 percent less than the "total cost impact" figure indicated above.

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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

94-17-09 Boeing: Amendment 39-9004. Docket 93-NM-106-AD.

Applicability: Model 747-100, -200, -300, and -400 series airplanes equipped with BFGoodrich evacuation ramp/slides; as listed in BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993, or Revision 2, dated April 15, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the door 3 offwing evacuation ramp/slide, part number 7A1418-( ), in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993; or Revision 2, dated April 15, 1994; as applicable. Accomplishment of the product improvement modifications specified in paragraph 2.G. of the Accomplishment Instructions of the service bulletin is not required by this AD.

Note 1: Modification of the reservoir assembly (part number 4A3416-1) to the part number 4A3416-3 configuration, as specified in paragraph 2.D.(1) of the service bulletin, is required currently by AD 91-25-02, Amendment 39-8103 (56 FR 63629, December 5, 1991).

Note 2: BFGoodrich Service Bulletin 7A1418-25-253, Revision 2, dated April 15, 1994, references Boeing Service Bulletin 747-25-3028, dated August 26, 1993, as an additional source of service information for modification of the packboard and girt.

(b) 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, Los Angeles 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, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) 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.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993; or BFGoodrich Service Bulletin 7A1418-25-253, Revision 2, dated April 15, 1994. 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 the BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, D/7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 21, 1994.

Issued in Renton, Washington, on August 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-20157 Filed 8-19-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-20-AD; Amendment 39-9005; AD 94-17-10]

Airworthiness Directives; De Havilland Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC-8 series airplanes, that requires removal of the aluminum or brass hardware in the firewall terminal block and battery shunt cable assemblies and replacement with steel hardware. This amendment is prompted by the results of an investigation, which revealed that corroded aluminum washers in the DC firewall terminal block and battery shunt cable assemblies may loosen the electrical connections. The actions specified by this AD are intended to prevent interruption of DC electrical power due to connections that may have loosened from corrosion.

DATES: Effective September 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. 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 FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC-8 series airplanes was published in the **Federal Register** on April 22, 1994 (59 FR 19152). That action proposed to require removal of the aluminum or brass hardware in the firewall terminal block and battery shunt cable assemblies and replacement with steel hardware (Modification 8/1984).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 130 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be nominal in cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,450, or $165 per airplane.

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 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

94–17–10 De Havilland, Inc.: Amendment 39–9005. Docket 94–NM–20–AD.

Applicability: All Model DHC–8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent interruption of DC electrical power due to connections that may have loosened from corrosion, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove the aluminum or brass hardware in the firewall terminal block and battery shunt cable assemblies and replace with steel hardware (Modification 8/1984), in accordance with de Havilland Service Bulletin S.B. 8–24–47, Revision 'A,' dated November 29, 1993.

(b) As of the effective date of this AD, no person shall install on any airplane a terminal block, part number 72470052–101 or 82450068–001, unless it has been previously reworked and bears the identification 8/1984.

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York 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 removal and replacement shall be done in accordance with de Havilland Service Bulletin S.B. 8–24–47, Revision 'A,' dated November 29, 1993. 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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 21, 1994.

Issued in Renton, Washington, on August 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–20158 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Docket No. 27855; Amendment No. 71–23]

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9B, Airspace Designations and Reporting Points. This action also explains the procedures FAA will use to amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

EFFECTIVE DATE: These regulations are effective September 16, 1994, through September 15, 1995. The incorporation by reference of FAA Order 7400.9B is approved by the Director of the Federal Register as of September 16, 1994, through September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Ann Webb, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9232.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, listed Class A, Class B, Class C, Class D, Class E airspace areas and reporting points. Due to the large number and frequent revision of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in Federal Aviation Regulations (FAR) § 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9A in § 71.1 effective September 16, 1993, through September 15, 1994. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9A in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9B. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9B in § 71.1 as of September 16, 1994, through September 15, 1995. This rule also explains the procedures FAA will use to amend the airspace designations incorporated by reference in part 71. § § 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9B.

The Rule

This action amends part 71 of the Federal Aviation Regulations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9B effective September 16, 1994, through September 15, 1995. During the

incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9B in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994. 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. The approval to incorporate by reference FAA Order 7400.9B is effective September 16, 1994, through September 15, 1995. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9B may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485. Copies of FAA Order 7400.9B may be inspected in Docket No. 27855 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, DC weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is effective September 16, 1994, through September 15, 1995.

§ 71.5 [Amended]

3. Section 71.5 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.31 [Amended]

4. Section 71.31 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.33 [Amended]

5. Paragraph (c) of § 71.33 is amended by removing the words "FAA Order 7400.9" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.41 [Amended]

6. Section 71.41 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.51 [Amended]

7. Section 71.51 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.61 [Amended]

8. Section 71.61 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.71 [Amended]

9. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.79 [Amended]

10. Section 71.79 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

§ 71.901 [Amended]

11. Paragraph (a) of § 71.901 is amended by removing the words "FAA Order 7400.9A" and adding, in their place, the words "FAA Order 7400.9B."

Issued in Washington, DC, on August 8, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–20508 Filed 8–19–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AD66

Appeal Rights Following Mass Change Resulting in Reduction, Suspension, or Termination of State Supplementary Payments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our current rules with regard to initial determinations in order to revise our policy on providing appeal rights when a State-initiated mass change in federally administered State supplementary payment level amounts results in the reduction, suspension or termination of a recipient's State supplementary payments, or when Federal administration of State supplementary payments has been terminated.

DATES: These rules are effective August 22, 1994.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471. For information on eligibility or claiming benefits, call our national toll-free number 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 1616(a) of the Social Security Act (the

Act) authorizes the Secretary of Health and Human Services (the Secretary) to enter into agreements with the States under which the Secretary administers the States' supplementary payments. State supplementary payments are cash benefits paid on a regular basis to individuals who are receiving Federal Supplemental Security Income (SSI) benefits, or who, but for their income, would be eligible to receive SSI benefits. When the Social Security Administration, acting as the Secretary's delegate, has entered into an agreement with a State for the Federal administration of these supplementary payments, the State transfers the funds necessary to make these payments to us and we make these payments to the recipients. States that make State supplementary payments but that have not elected Federal administration make the payments themselves directly to recipients. If a State elects Federal administration, we charge the State an administration fee as of October 1, 1993, for each supplementary payment we make on behalf of the State, pursuant to section 13731 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). A federally administered State supplementary payment is included in the same payment with the Federal SSI benefit where both a State supplementary payment and a Federal SSI benefit are payable. The payment level amounts of State supplementary payments are determined by the States. From time to time, States may change the payment level amounts, either by increasing them, or by reducing them.

Our existing regulations provide in § 416.1402(b) that reduction, suspension, or termination of SSI benefits is an initial determination. The regulations at § 416.2005(d) provide that, generally, the regulations in effect for the SSI program are applicable in the Federal administration of State supplementary payments. Therefore, any reduction, suspension, or termination of federally administered State supplementary payments is also an initial determination. Section 416.1404 provides that we will mail to the affected recipient a written notice of our initial determination, including the right to a reconsideration before the determination takes effect. Further, § 416.1413b provides that a recipient has 60 days within which to appeal our determination that we plan to reduce, suspend, or terminate his or her benefits.

In the current process under our regulations, we consider the reduction, suspension or termination of State supplementary payments to be an initial determination, mail appropriate written notice of our initial determination and provide appeal rights to all affected recipients. We apply this process even with respect to mass changes in State supplementary payment level amounts, *i.e.*, a State-initiated change in the level(s) of federally administered State supplementary payments payable to all recipients of State supplementary payments or to categories of such recipients, due, for example, to State legislative or executive action. In many such cases in which a recipient appeals the reduction, suspension, or termination of his or her State supplementary payments due to the State-initiated mass change, he or she wishes only to dispute the propriety, fairness, or legality of that mass change, for example, and not to dispute the application of that mass change to the facts of his or her case, *i.e.*, not to dispute the revised benefit computation.

We believe that this policy of providing affected recipients the right to appeal the State's action in reducing payment levels in these cases is not required by the Act or by fundamental principles of procedural due process. Moreover, in the past, this policy has had a needless administrative impact on us since we do not control, nor can we alter, the State-initiated mass change. This impact was demonstrated most recently when a large federally administered State supplementary payment State, as a result of a State law change, initiated an across-the-board reduction in its State supplementary payment levels. Over 27,000 affected individuals appealed to us the resulting reduction, suspension, or termination of their State supplementary payments on the basis that the State-initiated mass change was unfair to them, and not because they wished to dispute the resulting computation of their benefits. The vast majority of affected individuals requested benefit continuation at the previously established payment levels, pending issuance of decisions on the initial appeals, as set forth in § 416.1336(b). SSA provided appeal opportunities to individuals. It then informed them that their appeals were denied on the basis that SSA had no authority to order the State to repeal its law and reinstate State supplementary payments to their former higher levels. Since States must provide the funding for State supplementary payments, in some cases the State incurred additional program costs while the individuals' appeals were pending. Processing these actions served only to exacerbate existing workload backlogs by diverting scarce workpower resources from other necessary service delivery activities.

The courts have stated clearly that the legal sufficiency of an agency's procedures with respect to recipients of public assistance who are experiencing such a mandated change in their entitlement will be measured first under an agency's statute and regulations. If no violation of the statute or regulations is found, then it must be determined if the agency's procedures violate constitutional due process requirements. In *Atkins* v. *Parker*, 472 U.S. 115 (1985), the United States Supreme Court considered whether the Food Stamp Act required that an individual hearing be provided for every household affected by a general change in the law. The Court found that the Food Stamp Act distinguished between an adverse action based on the particular facts of an individual case, on the one hand, and a mass change initiated by the State or Federal Government affecting the entire caseload of recipients or significant portions thereof, on the other hand, with Congress only contemplating hearings on individual fact-based adverse actions.

Our existing regulations do not relieve us from providing appeal rights to recipients for mass change actions in their State supplementary payments. Nevertheless, we believe that there is no requirement in the Act that we provide a recipient of a federally administered State supplementary payment an opportunity to appeal a reduction, suspension or termination of his or her payments resulting from a State-initiated mass change, if that individual does not dispute the application of that mass change to the facts of his or her case. Like the Food Stamp Act, only appeal rights with respect to individual adverse actions appear to be contemplated under the Social Security Act.

With regard to constitutional due process requirements, we believe that those requirements mandate that an individual whose benefits are reduced, suspended or terminated as a result of a State-initiated mass change be afforded the full measure of appeal rights in a matter in which he or she disputes the application of that mass change to the facts of his or her particular case, that is, in a case where the recipient alleges that we have improperly computed his or her benefits as a result of the mass change. In *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the United States Supreme Court held that fundamental notions of due process of law required that individuals who sought to challenge the termination of their public entitlements as "resting on incorrect or misleading factual premises

or on misapplication of rules or policies to the facts of particular cases" be afforded a hearing in which they could "defend by confronting any adverse witnesses and by presenting * * * arguments and evidence orally." *Id.* at 268.

In light of the *Atkins* v. *Parker* and *Goldberg* v. *Kelly* decisions, we do not believe that full appeal rights under our administrative review system are required in situations where claimants are contesting only the State legislative or executive action which results in a change in the level(s) of the federally administered State supplementary payments. Instead, under these regulations, claimants will receive notice of the State-initiated mass change and be given appeal rights only with respect to the calculation of their individual benefit amount made pursuant to the mass change. These procedures follow the rationale of the *Atkins* v. *Parker* decision which distinguished adverse actions based on mass changes from adverse actions based on the facts of an individual case and still provide an opportunity to contest the factual bases or the application of rules to particular facts as is required by the *Goldberg* v. *Kelly* decision.

In cases where the individual desires to appeal the reduction, suspension or termination resulting from a State-initiated mass change only to dispute the propriety, fairness, or legality, for example, of the mass change, and presents no claim that his or her benefits have been improperly calculated, then we believe that the Act and procedural due process do not require that we provide such an individual the right to appeal that action. As indicated above, State supplementary payment levels are established by the States. Any change in those levels as they apply across the caseload of State supplementary payment recipients is, for the most part, a matter within the control and jurisdiction of the States. We are required to administer the States' payment levels under the Act, regulations and provisions of the Federal/State Supplementation Agreements and have no right, power or authority to find State-initiated mass changes in those levels to be unfair, illegal or improper, nor can we order the States to increase those payment levels.

In preparing these regulatory changes, we have noted the Secretary's regulations for the Administration for Children and Families regarding the availability of a hearing in cases of mass change in the Aid to Families With Dependent Children program. Those regulations provide in 45 CFR 205.10(a)(5) that "[a] hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation." We believe that a similar approach is appropriate where a mass change in the level of a federally administered State supplementary payment is the result of State legislative or executive action.

Thus, because of the futility of affording individuals affected by a State-initiated mass change the opportunity to appeal the effects of that mass change in cases involving no disputed facts but only a claim, for example, regarding the propriety or legality of the mass change itself, we believe that it is appropriate for us to amend our regulations so as to limit the opportunity to appeal, and the corresponding right to continue to receive benefits pending a decision on the initial appeal, as set forth in § 416.1336(b), only to those cases involving disputed facts. We, therefore, are revising our regulations at § 416.1401 to define a "mass change" as a State initiated change in the level(s) of federally administered State supplementary payments applicable to all recipients of such payments, or to categories of such recipients, due, for example, to State legislative or executive action. In addition, we are revising our regulations at § 416.1402 by adding a paragraph (n) to state that only our calculation of the amount of change in an individual's State supplementary payment amount which results from a mass change is an initial determination, subject to administrative and judicial review, and continuation of benefits pursuant to § 416.1336(b).

We also are revising our regulations at § 416.1403(a) to provide that a determination to reduce, suspend, or terminate federally administered State supplementary payments due to a State-initiated mass change in the level of such payments is not an initial determination, except as is provided in § 416.1402(n), i.e., only our calculation of the amount of the change in the State supplementary payment is an initial determination. In addition, we are revising § 416.1403(a) to clarify that the termination of Federal administration of State supplementary payments is not an initial determination. The termination of Federal administration of these payments means only that the State has assumed the responsibility for the issuance of its supplementary payments. The amount of State supplementary payments an individual receives will not change because of the termination of Federal administration. The only change will be that the State will be making the payments. There will be no adverse impact to the recipients solely due to the change. Further, we are revising § 416.1403(b) to explain that we will provide to these recipients a notice of the termination of Federal administration, although the determination will not be subject to administrative or judicial review.

Early in the SSI program, which became effective January 1, 1974, several States terminated Federal administration of their State supplementary payments. Although there have been no recent terminations, we are revising § 416.1403 to clearly state our policy on the effect of terminations.

Comments on Notice of Proposed Rulemaking

On August 10, 1993, we published proposed rules in the **Federal Register** at 58 FR 42514 with a 60-day comment period. We received 3 letters with comments. Following are summaries of those comments and our responses to them.

Comment: Claimants should not be denied the right to challenge a reduction in State supplementary payments below federally mandated levels.

Response: Federal law does not mandate State supplementary payment levels. States are free to establish those levels in amounts that they alone determine are appropriate. In certain cases, reduction by a State of its payment levels below those established by section 1618 of the Act may result in the loss of the State's eligibility for payments pursuant to title XIX. In such cases, SSA has no authority to order the State to reinstate its State supplementary payment levels at or above the levels established by section 1618. Accordingly, no purpose would be served by permitting claimants to appeal a reduction in State supplementary payment levels below those established by section 1618.

Comment: The regulations should require SSA to afford each affected recipient with written notice and the opportunity for a hearing, consistent with *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), before reducing that recipient's State supplementary payment.

Response: Publication of these regulations will not affect SSA's current practice of first sending written notice to the recipient informing him or her of the mass change and of its impact on his or her benefit amount or eligibility before effectuating any reduction, suspension, or termination as a result of that mass change. Provision of such written notice is consistent with the

requirements of §§ 416.1402(b), 416.1404(c), 416.1413b, and 416.1336. Such notice will also inform the recipient of his or her right to appeal the determination to reduce, suspend or terminate his or her payment as a result of the mass change. However, that right to appeal, and the corresponding right to request benefit continuation, will be limited only to those cases in which the individual contends that our calculation of the amount of the change in his or her State supplementary payment resulting from the mass change is incorrect. Individuals will be informed that there will be no right to appeal the determination on any other grounds. As explained in the discussion under Supplementary Information, we believe these procedures to be fully consistent with *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Comment: After a mass change in State supplementary payments, SSA must be prepared to carefully explain to recipients the resulting adjustment in their benefit checks and be prepared to handle a heavy volume of calls and requests for information from those recipients.

Response: We will ensure that our notice language will clearly explain the mass change that is occurring; how it will affect the recipient's monthly payment; and how, and in what instance, the recipient may invoke his or her right to appeal our determination. In the event of a mass change, we will prepare our offices to respond to an increase in phone-in inquiries and will issue to those offices instructional materials to assist them in responding to those inquiries. We have initiated these actions in prior instances of mass change and expect to do so again as the need arises.

Comment: SSA should try to require States to provide advance notice to the SSI recipient community of the State's decision to reduce State supplementary payments.

Response: We have no authority to compel a State to provide to its citizens advance notice of its decision to initiate a mass change in the level of its State supplementary payments. We are generally informed of a State's decision to initiate a mass change when such information becomes a matter of public knowledge. In the past, prior to initiating a mass change, we have endeavored to discuss the impact with responsible State officials and expect to do this in the event of future mass changes.

Comment: The Supplementary Information section of the proposed regulations is misleading because recent legislation requires States to pay fees for Federal administration of their State supplementary payments. This requirement is important because it may affect the State's ability to pay the cost of State supplementary payments.

Response: We agree and have amended the discussion under Supplementary Information to reflect the fact that as of October 1, 1993, we charge States that have elected Federal administration of their State supplementary payments an administration fee for each supplementary payment made on behalf of the State, pursuant to section 13731 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).

Comment: SSA should inform each State of the potential loss of medicaid payments that can accompany a reduction or termination of a State supplementary payment.

Response: We believe that all States that supplement the Federal SSI benefit are aware that reduction of State supplementary payment levels below those levels established by section 1618 of the Act may result in the loss of their eligibility for payments pursuant to title XIX. Indeed, we periodically discuss with those States the impact of section 1618 of the Act on their payment levels.

Comment: Allowing appeals in mass change cases only if the individual contests the computation of his or her revised State supplementary payments creates a threshold jurisdictional issue that will further complicate the appeals process and will not result in a significant cost savings to SSA.

Response: We disagree. By limiting appeals only to cases in which the recipient disputes the computation of his or her State supplementary payment resulting from a mass change, SSA will effect a significant cost savings. Furthermore, by prohibiting the pursuit of such claims through the administrative and judicial process, SSA will avoid the substantial administrative consequences that can result when large numbers of individuals who wish only to contest the propriety, fairness, or legality of a mass change request appeals of reductions, suspensions, or terminations resulting from that mass change.

Based on our responses to the comments on the proposed rules, we have not changed the text of the proposed rules. In these final rules, we made only several nonsubstantive changes to the proposed rules. We are, therefore, publishing the proposed rules essentially unchanged as final rules.

Regulatory Procedures

Executive Order No. 12866

The Office of Management and Budget has reviewed these rules and determined they meet the criteria for a significant regulatory action under E.O. 12866.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: June 28, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: July 22, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are amending subpart N of part 416 of 20 CFR chapter III as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for Subpart N of Part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, 1383b.

2. Section 416.1401 is amended by adding the following new definition after the definition for "Determination:"

§ 416.1401 Definitions

* * * * *

Mass change means a State-initiated change in the level(s) of federally administered State supplementary payments applicable to all recipients of such payments, or to categories of such

recipients, due, for example, to State legislative or executive action.

* * * * *

3. Section 416.1402 is amended by deleting "and" at the end of paragraph (l), replacing the period at the end of paragraph (m) with a semicolon, inserting "and" after the semicolon, and by adding paragraph (n) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(n) Our calculation of the amount of change in your federally administered State supplementary payment amount (i.e., a reduction, suspension, or termination) which results from a mass change, as defined in § 416.1401.

4. Section 416.1403 is amended by adding paragraphs (a)(15), (a)(16), and (b)(3) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(15) The determination to reduce, suspend, or terminate your federally administered State supplementary payments due to a State-initiated mass change, as defined in § 416.1401, in the levels of such payments, except as provided in § 416.1402(n).

(16) Termination of Federal administration of State supplementary payments.

(b) * * *

(3) If there is a termination of Federal administration of State supplementary payments.

[FR Doc. 94–20362 Filed 8–19–94; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 47 and 48

[TD 8561]

RINs 1545–AR38, 1545–AR94, 1545–AR95 and 1545–AS32

Tax-Free Exports of Vaccines, Vaccine Floor Stocks Tax of 1993, and Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the export of certain vaccines and to the floor stocks tax on vaccines held on August 10, 1993. This document also contains final regulations relating to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel held on October 1, 1993; on diesel fuel held on January 1, 1994; and on commercial aviation fuel held on October 1, 1995. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1987 and the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). The regulations provide guidance relating to the floor stocks taxes, including guidance concerning the person liable for each tax, exceptions to the taxes, and the time for reporting and paying each tax. In addition, the regulations provide guidance to manufacturers of exported vaccines.

DATES: These regulations are effective August 22, 1994.

For dates of applicability, see §§ 47.2–1, 47.3–1, 48.4221–3(e), and 48.6416(b)(2)–2(b)(2).

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Vaccines

Background

The Vaccine Injury Compensation Trust Fund (the Fund) compensates individuals who are injured as a result of the administration of certain vaccines. Revenue for the Fund is provided by a manufacturers tax (section 4131) on these vaccines. The tax, as originally enacted, was in effect only from 1988 through 1992, but OBRA 1993 applied the tax to vaccine sales after August 10, 1993.

OBRA 1993 also imposes a floor stocks tax, which does not appear in the Internal Revenue Code (Code), on these vaccines. The floor stocks tax is a one-time tax on taxable vaccines that were sold by the manufacturer, producer, or importer on or before August 10, 1993, on which no tax was imposed by section 4131, and that were held at the last moment of August 10, 1993, for sale or use. The rates of floor stocks tax are equal to the tax rates for sales by the manufacturer, producer, or importer.

On September 20, 1993, a notice of proposed rulemaking (PS–7–93) relating to tax-free exports of vaccine was published in the **Federal Register** (58 FR 48801).

On November 29, 1993, temporary regulations (TD 8497) relating to the vaccine floor stocks tax were published in the **Federal Register** (58 FR 62524). A notice of proposed rulemaking (PS–50–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 62558).

No comments responding to PS–7–93 were received. Written comments responding to PS–50–93 were received, but no public hearing was requested or held. After consideration of all comments, the proposed vaccine export regulations and the proposed vaccine floor stocks regulations are adopted by this Treasury decision, and the temporary regulations relating to the vaccine floor stocks tax are removed.

Summary of Comments

All of the comments received on PS–50–93 addressed the de minimis exception to the floor stocks tax. The proposed regulations provide that any person whose liability for tax does not exceed $1,000 is not required to report or pay the floor stocks tax. One comment requested that the de minimis amount be increased to $10,000. The de minimis exception was established for the administrative convenience of the IRS to eliminate the necessity of processing returns from persons holding small amounts of vaccines and having a small tax liability. The $1,000 de minimis amount is adequate for this purpose and the comment is, therefore, not adopted.

Another comment suggested that the exception be applied on a physician-by-physician basis so that a group practice (such as a partnership or professional corporation) would have a de minimis amount proportionate to the size of the group. As noted, increasing the amount of the de minimis exception is not consistent with its purpose. Further, if adopted, this suggestion could increase the administrative burdens of the tax. For example, allocation problems would arise if a physician is engaged in practice through more than one group (such as a partnership and a clinic or hospital). Accordingly, this suggestion is not adopted. The comment also suggested that the de minimis exception be treated as an exemption and that only amounts of tax in excess of $1,000 be reported or paid. This suggestion is inconsistent with the limited purpose of the exception—to eliminate small returns. It is, therefore, not adopted.

Fuel Floor Stocks

Background

OBRA 1993 makes several changes to the Code with respect to the taxation of motor fuels. First, effective October 1, 1993, it increases the rates of excise taxes on gasoline, diesel fuel, and aviation fuel. The gasoline tax, under section 4081, increases from 14.1 cents per gallon to 18.4 cents per gallon; the

diesel fuel tax, under section 4091, increases from 20.1 cents per gallon to 24.4 cents per gallon; and the aviation fuel tax, under section 4091, increases from 17.6 cents per gallon to 21.9 cents per gallon. These new rates include the 0.1-cent-per-gallon tax that funds the Leaking Underground Storage Tank (LUST) Trust Fund. Second, effective January 1, 1994, OBRA 1993 generally moves the point of imposition of tax on diesel fuel to the terminal rack. Third, effective October 1, 1995, OBRA 1993 increases the tax on fuel used in commercial aviation by 4.3 cents per gallon.

OBRA 1993 also imposes three floor stocks taxes, which are not codified, on these fuels. The taxes are to be paid by persons holding fuel on the effective dates of the changes.

The first floor stocks tax is a one-time tax on gasoline, diesel fuel, and aviation fuel that are held at the first moment of October 1, 1993, at a point in the distribution chain where these fuels would not otherwise be subject to the increased tax rates. The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

The second floor stocks tax is a one-time tax on diesel fuel held by any person at the first moment of January 1, 1994, if (A) no tax was imposed on the fuel under section 4041(a) or 4091 as in effect on December 31, 1993, and (B) tax would have been imposed by section 4081, as amended by OBRA 1993, on any prior removal, entry, or sale of the fuel had section 4081 applied to the fuel for periods before January 1, 1994. The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

The third floor stocks tax is a one-time tax on commercial aviation fuel held by any person at the first moment of October 1, 1995, on which the LUST tax was imposed under section 4091 before October 1, 1995. The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

On November 29, 1993, temporary regulations (TD 8498) were published in the **Federal Register** (58 FR 62526). A notice of proposed rulemaking (PS–49–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 62559).

On December 27, 1993, temporary regulations (TD 8512) amending the existing temporary regulations to allow diesel fuel dyed past the terminal rack to qualify for exemption from the floor stocks tax were published in the **Federal Register** (58 FR 68304). A notice of proposed rulemaking (PS–76–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 68338). On January 31, 1994, a correction to TD 8498 was published in the **Federal Register** (59 FR 4251).

Written comments responding to these notices were received, but no public hearing was requested or held. After consideration of all the comments, the proposed floor stocks regulations are adopted by this Treasury decision and the corresponding temporary regulations are removed. The comments made with respect to the temporary and proposed regulations are discussed below.

Summary of Comments

Three comments were received. One of the comments suggested that the requirement that diesel fuel be dyed at the time of its removal from the terminal in order to be exempt from the floor stocks tax was too restrictive and that any diesel fuel held for an exempt purpose that is eventually used for an exempt purpose should be free from floor stocks tax. This comment was addressed in TD 8512, which allows diesel fuel that was dyed past the terminal rack to qualify for exemption from the floor stocks tax. Two comments suggested that fuel held in storage tanks below the standpipe (dead storage) should not be subject to floor stocks tax. This suggestion was addressed in the preamble to the temporary regulations (TD 8498) and, for the reasons there stated, is not adopted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Edward Madden, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 47

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR chapter I is amended as follows:

Paragraph 1. Part 47 is revised to read as follows:

PART 47—FLOOR STOCKS TAXES

Subpart A—[Reserved]

Sec.

47.1–1 through 47.1–5 [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

47.2–1 Scope of this subpart B and effective date.

47.2–2 Definitions relating to the vaccine floor stocks tax.

47.2–3 Imposition of vaccine floor stocks tax.

47.2–4 De minimis exception to vaccine floor stocks tax.

47.2–5 Requirements with respect to payment and return.

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

47.3–1 Scope of this subpart C and effective date.

47.3–2 Definitions relating to the floor stocks taxes under this subpart C.

47.3–3 Imposition of the October 1, 1993, floor stocks tax on fuel held on October 1, 1993.

47.3–4 Exceptions to the October 1, 1993, floor stocks tax.

47.3–5 Requirements with respect to payment and return for the October 1, 1993, floor stocks tax.

47.3–6 Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994.

47.3–7 Exception to the January 1, 1994, floor stocks tax.

47.3–8 Requirements with respect to payment and return for the January 1, 1994, floor stocks tax.

47.3–9 Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995.

47.3–10 Exceptions to the October 1, 1995, floor stocks tax.

47.3–11 Requirements with respect to payment and return for the October 1, 1995, floor stocks tax.

Authority: 26 U.S.C. 7805.

Section 47.2–5 also issued under section 13421(c) of Pub. L. 103–66 (107 Stat.312, 565).

Subpart A—[Reserved]

§§ 47.1–1 through 47.1–5 [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

§ 47.2–1 Scope of this subpart B and effective date.

The regulations in this subpart B relate to the vaccine floor stocks tax imposed by section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66; 107 Stat. 312, 565). The tax is imposed on untaxed vaccines held at the last moment of August 10, 1993. The regulations in this subpart B describe the specific articles subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart B also provide an exception to the tax and requirements for payment of tax and filing a return reporting the tax. The regulations in this subpart B are effective on August 10, 1993.

§ 47.2–2 Definitions relating to the vaccine floor stocks tax.

(a) *Terms used in section 4131.* For purposes of this subpart, terms that are also used in section 4131 have the same meaning as when so used.

(b) *Other terms.* For purposes of this section—

Act refers to the Omnibus Budget Reconciliation Act of 1993.

Controlled group means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

§ 47.2–3 Imposition of vaccine floor stocks tax.

(a) *Vaccines subject to tax.* Section 13421(c) of the Act imposes a floor stocks tax on any taxable vaccine (as defined in section 4132(a)(1) of the Internal Revenue Code)—

(1) Which was sold by the manufacturer, producer, or importer on or before August 10, 1993;

(2) On which no tax was imposed under section 4131 (or on which such tax was imposed and subsequently credited or refunded); and

(3) Which is held at the last moment of August 10, 1993, by any person for sale or use.

(b) *Rates of tax.* The rate of floor stocks tax on each taxable vaccine is the rate of tax specified in section 4131(b)(1) of the Internal Revenue Code.

(c) *Person liable for tax.* The person liable for the floor stocks tax on any vaccine subject to tax is the person that holds the vaccine at the last moment of August 10, 1993. For purposes of the floor stocks tax, a vaccine is held at the last moment of August 10, 1993, by the person that has title to the vaccine (whether or not delivery to that person has been made) at such time, as determined under applicable local law. There is no exemption from the floor stocks tax for the United States or for State or local governments. Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax.

§ 47.2–4 De minimis exception to vaccine floor stocks tax.

(a) *De minimis exception*—(1) *In general.* Except as otherwise provided in this section, if the aggregate amount of floor stocks tax payable by a person does not exceed $1,000, that person is not required to report or pay the tax.

(2) *All amounts held subject to tax if threshold exceeded.* If the aggregate amount of floor stocks tax payable by a person exceeds $1,000, that person is required to report and pay the total amount of tax as determined without regard to this section.

(3) *Controlled groups.* A member of a controlled group (as defined in § 47.2–2) is not excepted from reporting and paying floor stocks tax under this section if the aggregate amount of floor stocks tax payable by all members of the controlled group exceeds $1,000.

(b) *Examples.* The following examples illustrate the rules of this section:

Example 1. A holds 50 doses of DPT vaccine and 60 doses of polio vaccine on the last moment of August 10, 1993. A is not a member of a controlled group. A is not required to report and pay the floor stocks tax on any of the taxable vaccines because the aggregate amount of floor stocks tax payable by A (determined without regard to this section) does not exceed $1,000 ((50×$4.56 per dose of DPT vaccine) + (60×$0.29 per dose of polio vaccine) = $245.40).

Example 2. D, E, and F are members of the same controlled group. On the last moment of August 10, 1993, D holds 100 doses of DPT vaccine and 160 doses of polio vaccine; E holds 80 doses of DPT vaccine, 10 doses of MMR vaccine and 60 doses of polio vaccine; and F holds 20 doses of MMR vaccine and 10 doses of DT vaccine. Without regard to this section, D is liable for a tax of $502.40 ((100×$4.56 per dose of DPT vaccine)+(160×$0.29 per dose of polio vaccine)); E is liable for a tax of $426.60 ((80×$4.56 per dose of DPT vaccine)+(10×$4.44 per dose of MMR vaccine)+(60×$0.29 per dose of polio vaccine)); and F is liable for a tax of $89.40 ((20×$4.44 per dose of MMR vaccine)+(10 X $0.06 per dose of DT vaccine)). Because the aggregate amount of floor stocks tax payable by all members of the group ($1,018.40) exceeds $1,000, each member of the controlled group must report and pay the floor stocks tax.

§ 47.2–5 Requirements with respect to payment and return.

(a) *Payment of tax.* The floor stocks tax is to be paid without assessment or notice on or before February 28, 1994.

(b) *Filing of return*—(1) *Form 720.* Except as provided in § 47.2–4(a) (relating to the de minimis exception),

every person liable for the floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before February 28, 1994, and is a return for the fourth calendar quarter of 1993. A first return reporting only floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the fourth calendar quarter of 1993 for other excise taxes earlier than February 28, 1994, that person files a single Form 720 for the quarter by February 28, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

§ 47.3–1 Scope of this subpart C and effective date.

The regulations in this subpart C relate to the fuel floor stocks taxes imposed by sections 13241(h), 13243, and 13245 of the Omnibus Budget Reconciliation Act of 1993 (Act). The tax under section 13241(h) of the Act is imposed on previously taxed gasoline, diesel fuel, and aviation fuel held by any person at the first moment of October 1, 1993 (the October 1, 1993, floor stocks tax). The tax under section 13243 of the Act is imposed on untaxed diesel fuel that does not satisfy the requirements of section 4082 (as amended by section 13242 of the Act) and that is held by any person at the first moment of January 1, 1994, at a point in the distribution chain outside the bulk transfer/terminal system (the January 1, 1994, floor stocks tax). The tax under section 13245 of the Act is imposed on commercial aviation fuel on which tax was imposed under section 4091 (even if only at the Leaking Underground Storage Tank Trust Fund financing rate) before October 1, 1995, and that is held by any person at the first moment of October 1, 1995 (the October 1, 1995, floor stocks tax). The regulations in this subpart describe the specific fuels subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart also provide exceptions to tax and requirements for payment of tax and filing a return reporting tax. This subpart is effective on October 1, 1993.

§ 47.3–2 Definitions relating to the floor stocks taxes under this subpart C.

Act is the Omnibus Budget Reconciliation Act of 1993.

Aviation fuel is any liquid (other than any product taxable under section 4081) that is commonly or commercially known or sold as a fuel that is suitable for use in an aircraft.

Commercial aviation fuel is any aviation fuel that is held for use or sale for use in a business of transporting persons or property for compensation or hire by air.

Controlled group means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

Diesel fuel means any liquid (other than gasoline) that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or, after December 31, 1993, diesel-powered boat.

Fuel means gasoline, diesel fuel, and aviation fuel (including after September 30, 1995, commercial aviation fuel).

Gasoline means—

(1) All products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that are not sold as gasoline and have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blend stocks (as defined in § 48.4081–1(j) of this chapter).

Person includes each business unit that has, or is required to have, its own employer identification number.

§ 47.3–3 Imposition of the October 1, 1993, floor stocks tax on fuel held on October 1, 1993.

(a) *Fuels subject to tax.* Section 13241(h)(1) of the Act imposes a floor stocks tax on gasoline (including gasohol), diesel fuel, and aviation fuel—

(1) On which tax was imposed under section 4081 or 4091 before October 1, 1993; and

(2) That is held at the first moment of October 1, 1993, by any person.

(b) *Rate of tax.* The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any fuel subject to the October 1, 1993, floor stocks tax is the person that holds the fuel at the first moment of October 1, 1993. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–4 Exceptions to the October 1, 1993, floor stocks tax.

(a) *Exception for fuel held for an exempt use*—(1) *Gasoline.* The October

1, 1993, floor stocks tax does not apply to gasoline held exclusively for an exempt use. In determining whether gasoline is held exclusively for an exempt use, the following rules in paragraphs (a)(1) (i) through (iii) of this section apply:

(i) An exempt use, with respect to gasoline, is any use of gasoline (other than use in producing gasohol) that is described in section 6420, 6421, or 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4081. Thus, for example, exempt use of gasoline includes use on a farm for farming purposes; use in an off-highway business use; use in certain intercity, local, and school buses; exclusive use by a State or local government or nonprofit educational organization; and use in commercial aircraft.

(ii) Gasoline is held exclusively for an exempt use only if the person that holds gasoline at the first moment of October 1, 1993, actually uses the gasoline in an exempt use.

(iii) Gasoline is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the gasoline is held for resale (including resale to a person that will use the gasoline in an exempt use). Thus, for example, gasoline held by a gasoline service station for sale to a farmer for use on a farm for farming purposes is not exempt from the October 1, 1993, floor stocks tax. However, the farmer would be eligible to claim an income tax credit for an amount equal to the tax under sections 34 and 6420.

(2) *Diesel fuel.* The October 1, 1993, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules in paragraphs (a)(2) (i) through (iv) of this section apply:

(i) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than use in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(ii) Diesel fuel held for use in a diesel-powered train is not exempt from the October 1, 1993, floor stocks tax under this paragraph (a)(2) unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. See section 6427(l)(3) as amended by section 13241 of the Act.

(iii) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of October 1, 1993, actually uses the diesel fuel in an exempt use.

(iv) Diesel fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, diesel fuel held by a retailer for sale to a construction company for use in the construction company's off-road machinery is not exempt from the October 1, 1993, floor stocks tax. However, the construction company would be eligible to claim a credit or payment equal to the tax under section 6427.

(3) *Aviation fuel.* The October 1, 1993, floor stocks tax does not apply to aviation fuel held exclusively for an exempt use. In determining whether aviation fuel is held exclusively for an exempt use, the following rules in paragraphs (a)(3) (i) through (iii) of this section apply:

(i) An exempt use, with respect to aviation fuel, is any use of aviation fuel that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt use of aviation fuel includes any use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use other than use as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)).

(ii) Aviation fuel is held exclusively for an exempt use only if the person that holds the aviation fuel at the first moment of October 1, 1993, actually uses the aviation fuel in an exempt use.

(iii) Aviation fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the aviation fuel is held for resale (including resale to a person that will use the aviation fuel in an exempt use). Thus, for example, aviation fuel held by a fixed-base operator for sale to an airline for use in commercial aviation is not exempt from the October 1, 1993, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for gasoline or diesel fuel held in vehicle fuel supply tank.* The October 1, 1993, floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of October 1, 1993, in the fuel supply tank of a motor vehicle (as defined in § 48.4041–8(c) of this chapter) or motorboat. This exception does not apply to fuel held in the fuel supply tank of a train or an aircraft.

(c) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1993, floor stocks tax does not apply to—

(i) Gasoline that a person holds at the first moment of October 1, 1993, if the aggregate amount of gasoline held by that person at that moment does not exceed 4,000 gallons; and

(ii) Diesel fuel or aviation fuel that a person holds at the first moment of October 1, 1993, if the aggregate amount of diesel fuel or the aggregate amount of aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules*—(i) *Coordination with other exemptions.* In determining the aggregate amount of gasoline, diesel fuel, or aviation fuel held by a person at the first moment of October 1, 1993, there is excluded the amount of gasoline, diesel fuel, or aviation fuel exempt from the October 1, 1993, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for exempt uses), or paragraph (b) of this section (relating to gasoline and diesel fuel held in the fuel supply tank of a motor vehicle or motorboat).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1993, floor stocks tax applies to all amounts of gasoline, diesel fuel, or aviation fuel (as the case may be) held by a person (and not exempt from tax under paragraph (a) or (b) of this section) if the aggregate amount of fuel held by the person at the first moment of October 1, 1993, exceeds 4,000 gallons in the case of gasoline or 2,000 gallons in the case of diesel fuel or aviation fuel.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2) holds more than 4,000 gallons of gasoline if the aggregate amount of all gasoline held by all members of the controlled group exceeds 4,000 gallons. A member of a controlled group holds more than 2,000 gallons of diesel fuel or aviation fuel if the aggregate amount of all diesel fuel or aviation fuel, as the case may be, held by all members of the controlled group exceeds 2,000 gallons.

(3) *Examples.* The following examples illustrate the rules of this section:

Example 1. On October 1, 1993, A holds 10,000 gallons of gasoline, 6,000 gallons of

which are held exclusively for use on a farm for farming purposes. The remaining 4,000 gallons are held for use in A's highway vehicles. A is not a member of a controlled group. A is not liable for the floor stocks tax on any of the 10,000 gallons because the aggregate amount of fuel held by A for uses other than exempt uses does not exceed 4,000 gallons.

Example 2. On October 1, 1993, B holds 1,900 gallons of diesel fuel and 3,900 gallons of gasoline. B is not a member of a controlled group. B is not liable for the floor stocks tax on diesel fuel because B's holdings of diesel fuel do not exceed 2,000 gallons. B is not liable for the floor stocks tax on gasoline because B's holdings of gasoline do not exceed 4,000 gallons.

Example 3. On October 1, 1993, C holds 4,100 gallons of gasoline for resale at a service station. C is liable for a floor stocks tax of $176.30 (4,100 X $.043) on that gasoline.

§ 47.3–5 Requirements with respect to payment and return for the October 1, 1993, floor stocks tax.

(a) *Payment of tax.* The October 1, 1993, floor stocks tax is to be paid without assessment or notice on or before November 30, 1993.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1993, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before November 30, 1993, and is a return for the third calendar quarter of 1993. A first return reporting only the October 1, 1993, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the third calendar quarter of 1993 for other excise taxes earlier than November 30, 1993, that person files a single Form 720 for the quarter on or before November 30, 1993. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

§ 47.3–6 Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994.

(a) *Fuel subject to tax.* Section 13243 of the Act imposes a floor stocks tax on diesel fuel held at the first moment of January 1, 1994, by any person if—

(1) No tax was imposed on the diesel fuel under section 4041(a) or 4091 as in effect on December 31, 1993; and

(2) Tax would have been imposed by section 4081, as amended by section 13242 of the Act, on any prior removal, entry, or sale of the diesel fuel had section 4081 applied to the diesel fuel for periods before January 1, 1994.

(b) *Rate of tax.* The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any diesel fuel subject to the January 1, 1994, floor stocks tax is the wholesale distributor or other registered producer, recreational boat operator, or other person that holds the fuel at the first moment of January 1, 1994. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–7 Exception to the January 1, 1994, floor stocks tax.

(a) *In general.* The January 1, 1994, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(1) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 (as in effect on January 1, 1994) and that would entitle the ultimate purchaser to a credit or payment equal to any tax imposed by section 4081 (as in effect on such date). Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(2) Diesel fuel held for use in a diesel-powered train is not exempt from the January 1, 1994, floor stocks tax under paragraph (a)(1) of this section unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. For circumstances in which diesel fuel held for use in a diesel-powered train may be exempt from the January 1, 1994, floor stocks tax, see paragraph (b) of this section (relating to the exemption for dyed fuel) and § 47.3–6(a)(1), which exempts fuel that was previously taxed under section 4041(a) or 4091 (as in effect on December 31, 1993).

(3) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of January 1, 1994, actually uses the diesel fuel in an exempt use.

(4) Diesel fuel is not held exclusively for an exempt use if, at the first moment of January 1, 1994, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, except in the case of dyed fuel described in paragraph (b) of this section, diesel fuel held by a heating oil retailer for sale for use as home heating oil is not exempt from the January 1, 1994, floor stocks tax. However, a homeowner who uses the fuel for heating purposes would be eligible to claim a credit or may be eligible for a payment equal to the tax under section 6427.

(b) *Exception for dyed fuel.* The January 1, 1994, floor stocks tax does not apply to diesel fuel that satisfies the dyeing requirements of § 48.4082–1T(b) of this chapter by March 31, 1994, or by the time the fuel is sold by the person holding the fuel at the first moment of January 1, 1994, whichever is earlier. Thus, for example, diesel fuel held by a heating oil retailer for sale for use as home heating oil is exempt from the January 1, 1994, floor stocks tax if the retailer or another person has dyed the fuel and the fuel satisfies the requirements of § 48.4082–1T(b) of this chapter.

§ 47.3–8 Requirements with respect to payment and return for the January 1, 1994, floor stocks tax.

(a) *Payment of tax.* The January 1, 1994, floor stocks tax is to be paid without assessment or notice on or before July 31, 1994.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the January 1, 1994, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before July 31, 1994, and is a return for the second calendar quarter of 1994. A first return reporting only January 1, 1994, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the second calendar quarter of 1994 for other excise taxes on or before

August 31, 1994, that person files a single Form 720 for the quarter on or before August 31, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

§ 47.3–9 Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995.

(a) *Fuel subject to tax.* Section 13245 of the Act imposes a floor stocks tax on commercial aviation fuel on which tax was imposed under section 4091 before October 1, 1995, and which is held on the first moment of that date by any person. Tax is imposed under section 4091 even if imposed only at the Leaking Underground Storage Tank Trust Fund financing rate under that section.

(b) *Rate of tax.* The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any commercial aviation fuel subject to the October 1, 1995, floor stocks tax is the person that holds the commercial aviation fuel at the first moment of October 1, 1995. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–10 Exceptions to the October 1, 1995, floor stocks tax.

(a) *Exception for commercial aviation fuel held for use as supplies for vessels or aircraft.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel held exclusively for use as supplies for vessels or aircraft within the meaning of section 4221(d)(3). In determining whether commercial aviation fuel is held exclusively for such use, the following rules in paragraphs (a)(1) and (2) of this section apply:

(1) Commercial aviation fuel is held exclusively for use as supplies for vessels or aircraft only if the person that holds the commercial aviation fuel at the first moment of October 1, 1995, actually uses the aviation fuel in that exempt use.

(2) Commercial aviation fuel is not held exclusively for use as supplies for vessels or aircraft if, at the first moment of October 1, 1995, the commercial aviation fuel is held for resale (including resale to a person that will use the aviation fuel as supplies for vessels or aircraft). Thus, for example, commercial aviation fuel held by a fixed base operator for sale to an airline for use in foreign trade is not exempt from the October 1, 1995, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel that a person holds at the first moment of October 1, 1995, if the aggregate amount of commercial aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules relating to the 2,000 gallon exception*—(i) *Coordination with other exemptions.* In determining the aggregate amount of commercial aviation fuel held by a person at the first moment of October 1, 1995, there is to be excluded the amount of commercial aviation fuel exempt from the October 1, 1995, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for an exempt use).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1995, floor stocks tax applies to all amounts of commercial aviation fuel held by a person (and not exempt from tax under paragraph (a) of this section) if the aggregate amount of commercial aviation fuel held by the person at the first moment of October 1, 1995, exceeds 2,000 gallons.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2) holds more than 2,000 gallons of commercial aviation fuel if the aggregate amount of all commercial aviation fuel held by all members of the controlled group exceeds 2,000 gallons.

(3) *Example.* The following example illustrates the rules of this paragraph (b):

Example. D, E, and F are members of the same controlled group. On October 1, 1995, D holds 2,000 gallons of commercial aviation fuel. E holds 1,500 gallons of commercial aviation fuel, and F holds 500 gallons of commercial aviation fuel. None of the commercial aviation fuel is held for an exempt use. Because the aggregate amount held by all members of the group is 4,000 gallons, which exceeds 2,000 gallons, all commercial aviation fuel held by each member is subject to the floor stocks tax. Thus, D is liable for tax of $86.00 (2,000×$.043), E is liable for tax of $64.50 (1,500×$.043), and F is liable for tax of $21.50 (500×$.043).

§ 47.3–11 Requirements with respect to payment and return for the October 1, 1995, floor stocks tax.

(a) *Payment of tax.* The October 1, 1995, floor stocks tax is to be paid without assessment or notice on or before April 30, 1996.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1995, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before April 30, 1996, and is a return for the first calendar quarter of 1996. A first return reporting only October 1, 1995, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the first calendar quarter of 1996 for other excise taxes on or before May 31, 1996, that person files a single Form 720 for the quarter on or before May 31, 1996. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 2. The authority citation for part 48 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 48.4221–3(e) also issued under 26 U.S.C. 4221(a).

Section 48.6416(b)(2)–2(b) also issued under 26 U.S.C. 6416(b).

* * * * *

Par. 3. Section 48.4221–3 is amended by adding paragraph (e) to read as follows:

§ 48.4221–3 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.

* * * * *

(e) *Vaccines.* The exemption provided by section 4221(a)(2) applies after August 10, 1993, to the tax imposed on vaccines by section 4131, but only if—

(1) The vaccine is sold by the manufacturer after August 10, 1993; and

(2) In the case of vaccine sold to, or sold for resale to, the United States or any of its agencies or instrumentalities, the United States or such agency or instrumentality notifies the manufacturer that the vaccine is intended for uses other than the vaccination of persons described in 42 U.S.C. 300aa–11(c)(1)(B)(i)(II) (relating to certain U.S. citizens who are vaccinated outside the United States).

Par. 4. Section 48.6416(b)(2)–2 is amended by:

1. Redesignating the text of paragraph (b) following the heading as paragraph (b)(1).

2. Adding a heading to paragraph (b)(1).

3. Revising the first sentence of paragraph (b)(1).

4. Adding paragraph (b)(2).

5. The revisions and additions read as follows:

§ 48.6416(b)(2)–2 Exportations, uses, sales, and resales included.

* * * * *

(b) *Exportation of tax-paid articles*—(1) *In general.* Subject to the limitations of section 6416(b)(2) and paragraph (b)(2) of this section, tax paid under chapter 31 or 32 on the sale of any article will be considered to be an overpayment under section 6416(b)(2)(A) if the article is exported by any person. * * *

(2) *Rule for exportation of vaccines.* Paragraph (b)(1) of this section applies to tax paid under section 4131 on the sale of a vaccine, but only if the sale by the manufacturer occurs after August 10, 1993, and, in the case of vaccine sold to the United States or any of its agencies or instrumentalities, the condition of § 48.4221–3(e)(2) is satisfied.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 21, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–20222 Filed 8–19–94; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–39–1–6507; FRL–5022–5]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking action to approve the Texas Natural Resource Conservation Commission (TNRCC) Inspection and Maintenance (I/M) State Implementation Plan (SIP), which includes a SIP narrative entitled "Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution—Inspection/Maintenance SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur, and Houston/Galveston Ozone Nonattainment Areas," and Regulation IV, 31 TAC 114.3, entitled "Vehicle Emissions Inspection and Maintenance Program," as a revision to the Texas SIP for ozone in all four nonattainment areas and carbon monoxide in El Paso. On November 12, 1993, and on March 9, 1994, Texas submitted SIP revision requests to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act as amended in 1990 (CAA), 42 U.S.C. 7511a(b)(4) and 7511a(c)(3) and Federal I/M rule 40 CFR Part 51 subpart S. These SIP revisions will require vehicle owners to comply with the Texas I/M program in the four Texas ozone nonattainment areas classified as moderate or worse which includes El Paso also classified as nonattainment area for carbon monoxide. This revision applies to the Texas counties of Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller. On May 18, 1994 (59 FR 25867), the EPA published a Notice of Proposed Rulemaking (NPR) for the State of Texas. The NPR proposed approval of the Texas I/M SIP submitted by the State. No public comments were received on the NPR; therefore, the EPA is publishing this final action.

EFFECTIVE DATE: This rule will become effective on September 21, 1994.

ADDRESSES: Copies of the State's submittals and the EPA's technical support document (TSD) are available for public review at U.S. Environmental Protection Agency Region 6, (6T–AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Also, Texas' submittal is available at the TNRCC, Mobile Source Division, I/M Section, P.O. Box 13087, Austin, Texas 78711–3087. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

In addition, a copy of today's revision to the Texas SIP is also available for inspection at: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James F. Davis at (214) 655–7584.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1990, requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the CAA) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level.

In addition, all ozone nonattainment areas classified as moderate or worse must implement a basic or an enhanced I/M program depending upon its classification, regardless of previous requirements. In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the CAA to have an I/M program. Ozone nonattainment areas classified as "serious" or worse with populations of 200,000 or more, and CO nonattainment areas with design values above 12.7 parts per million (ppm.) and populations of 200,000 or more, and metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region were required to meet EPA guidance for enhanced I/M programs.

The EPA has designated four areas as ozone nonattainment in the State of Texas. The Houston/Galveston ozone nonattainment area is classified as severe and contains the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The Beaumont/Port Arthur ozone nonattainment area is classified as serious and contains the following three counties: Hardin, Jefferson, and Orange. The 1980 population of the Beaumont/Port Arthur area was less than 200,000. The El Paso ozone nonattainment area is classified as serious and contains the county of El Paso. The Dallas/Fort Worth ozone nonattainment area is classified as moderate and contains the following four counties: Collin, Dallas, Denton, and Tarrant. The designations for ozone were published in the Federal Register (FR) on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR sections 81.300–81.437. In addition, a