

respond to the agency's submission of evidence within 10 days after the date of service of the submission.

(3) If an appellant or an intervenor files a petition or cross petition for review of an initial decision ordering interim relief and such petition includes a challenge to the agency's compliance with the interim relief order, upon order of the Board the agency must submit evidence that it has provided the interim relief required or that it has satisfied the requirements of 5 U.S.C. 7701(b)(2)(A)(ii) and (B).

(4) Failure by an agency to provide the certification required by paragraph (b)(1) of this section with its petition or cross petition for review, or to provide evidence of compliance in response to a Board order in accordance with paragraph (b)(2) or (b)(3) of this section, may result in the dismissal of the agency's petition or cross petition for review.

(c) Nothing in paragraph (b) of this section shall be construed to require any payment of back pay for the period preceding the date of the judge's initial decision or attorney fees before the decision of the Board becomes final.

* * * * *

Dated: May 18, 1999.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 99-12976 Filed 5-21-99; 8:45 am]

BILLING CODE 7400-01-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR 318 and 319

[Docket No. 94-015DF]

RIN 0583-AB82

Use of Soy Protein Concentrate, Modified Food Starch, and Carrageenan as Binders in Certain Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to allow the use of soy protein concentrate, both singly and in combination with modified food starch or carrageenan, as a binder in cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients," and to increase the permitted use level of modified food starch as a binder in

"Ham and Water Product—X% of Weight is Added Ingredients" products. These binders will be used to reduce purging of the pumped brine solution from the products. FSIS is proceeding with this direct final rule in response to petitions submitted by Central Soya and the National Starch and Chemical Company and informal requests from several food manufacturers.

DATES: This rule will be effective July 23, 1999, unless FSIS receives written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking on or before June 23, 1999.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, DOCKET #94-015DF, U.S. Department of Agriculture, Food Safety and Inspection Service, Cotton Annex, room 102, 300 12th Street, SW, Washington, DC 20250-3700. Any written comments submitted in response to this direct final rule and reference materials cited in this document will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Post, Director, Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700; (202) 205-0279.

SUPPLEMENTARY INFORMATION:

Background

During the manufacturing of cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients," the products are pumped or injected with a brine solution in an amount equal to various percentages of the weight of the raw, unprocessed product. These pork products are normally packaged in clear plastic and enclosed by a vacuum seal before curing. As the brine purges from them during the curing process, it settles in the package of the product. As a result, some retailers remove and discard these products well before their shelf life expiration date, creating economic losses for both industry and consumers.

Section 318.7(c)(4) of the Federal meat inspection regulations currently permits the use of soy protein concentrate as a binder in sausage products at up to 3.5 percent of formulations and in spaghetti with

meatballs, chili con carne, and similar products at up to 8 or 12 percent, depending on the product in which it is used. Section 318.7(c)(4) of the Federal meat inspection regulations also permits the use of modified food starch or carrageenan as a binder in cured pork products, as provided in 9 CFR 319.104, at a level not to exceed 2 percent and 1.5 percent, respectively, of the product formulation, to inhibit purging of brine solution. Section 319.104 provides for the use of certain binders or extenders in "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients" products.

Modified Food Starch

FSIS was petitioned by the National Starch and Chemical Company¹ to amend the Federal meat inspection regulations to permit an increase in the use level of modified food starch from 2 percent to 3.5 percent of product formulation in cured pork products labeled as "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients" to reduce and control purging of brine during product retail shelf life. The petitioner contended that certain cured pork products, i.e., those injected with brine solutions that remain in the product, require higher levels of modified food starch than the currently allowed level of 2 percent to accomplish purge reduction.

According to research data submitted by the petitioner, a level of 2 percent modified food starch in a "Ham Water Added" product pumped to contain 35 percent of the solution is sufficient to effectively reduce purge. These data are also applicable to the use of modified food starch in "Ham with Natural Juices" products. Once the level of modified food starch is increased above 2 percent, and the pump level remains the same (35 percent), the modified food starch will not properly hydrate due to excessive competition for water. Therefore, modified food starch is a self-limiting ingredient in products labeled as "Ham Water Added" and "Ham with Natural Juices."

However, when the overall water level is increased in products labeled "Ham and Water Product—X% of Weight is Added Ingredients," the level of modified food starch must be increased because a level of 2 percent can only bind a limited quantity of water and is not adequate to reduce the

¹ A list of all data and information submitted to FSIS in support of this direct final rule is attached at the end of this document. The data are available for review in the FSIS Docket Clerk's Office.

purge of the pumped brine solution in such products during retail shelf life. The increase in the use level of modified food starch in this product from 2.0 percent to 3.5 percent is also consistent with the use of other approved binders (e.g., whey protein concentrate, soy flour, vegetable starch, wheat gluten, tapioca dextrin) in the formulation of standardized meat food products. Hence, a use level of 3.5 percent modified food starch in "Ham and Water Product—X% of Weight is Added Ingredient" products is appropriate.

Food and Drug Administration (FDA) regulations list food starch-modified as a direct food additive in 21 CFR 172.892 for use in food when used in accordance with good manufacturing practices. In a letter to FSIS dated January 15, 1999, FDA's Center for Food Safety and Applied Nutrition indicated that "FDA's food additive regulation for the use of various food starches does not limit the levels of use in foods." With two exceptions, FDA does not have a concern about modified food starches listed in 21 CFR 172.892 for use in meat at levels up to 3.5 percent. (Food starch bleached with calcium hypochlorite may be used only as a component of batter in commercially processed foods (§ 172.892(b)) and food starch esterified with 1-octenyl succinic anhydride followed by treatment with *beta* amylase may be used only in beverage and beverage bases (§ 172.892(d).)

Soy Protein Concentrate

Among the attributes of an effective meat binder is the ability to provide good water absorption (i.e., control purge); good physical and chemical stability; and the ability to emulsify fat and water.² In order for a protein to be a good binder, it must possess both hydrophobic and hydrophilic properties. The proteins in meat are effective in binding fat and water. Because soy protein ingredients possess both hydrophobic and hydrophilic properties, and contain at least 50 percent protein, they serve to boost the protein content of meat and serve as excellent binders for meat products.³ Binders such as soy proteins serve the same functions in structured (i.e., whole muscle) products as they do as ingredients of formed ground and cubed meat products, such as sausages⁴ (most binders may be used in sausages up to a use level of 3.5 percent, § 318.7(c)(4)).

FSIS was petitioned by Central Soya to amend the Federal meat inspection regulations to permit the use of soy protein concentrate at a level of up to 3.5 percent in cured pork products labeled "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients" to bind and reduce purge of the pumped brine solution from the products. The technical data submitted by the petitioner indicate that the addition of soy protein concentrate at levels of up to 2 percent of the product formulation aids in water retention and reduces purging of the pumped brine solution from ham and water products. The addition of up to 3.5 percent soy protein concentrate, however, further reduces purge. Based on the data, FSIS finds that the purge reduction when 3.5 percent soy protein concentrate is used is greater than that observed when 2 percent is used (based on statistical analyses).

FDA does not currently list soy protein concentrate in its regulations. However, FDA does not object to the use of soy protein concentrate at levels up to 3.5 percent. In a letter to FSIS, dated January 15 1999, FDA's Center for Food Safety and Applied Nutrition said that "while FDA has not ruled formally on the generally recognized as safe (GRAS) status of soy protein, it has not challenged determinations that such use is GRAS."

Soy Protein Concentrate in Combination With Modified Food Starch

FSIS was petitioned by Central Soya to amend the Federal meat inspection regulations to permit the use of soy protein concentrate in combination with modified food starch at a level not to exceed 3.5 percent in cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients" to bind and reduce the purge of the pumped brine solution from the products.

The data submitted by the petitioner show that the lowest level of use of a binder, such as soy protein concentrate or modified food starch, needed to achieve the intended effect of water-holding may be higher or lower when it is used in combination with another binder, as compared to when it is used singly. The level of modified food starch needed for water-holding in certain cured pork products falls between 2 percent or 3.5 percent when used singly. When used in combination with soy protein concentrate, however, the level of modified food starch must be 3.0 percent while the level of soy protein concentrate must be 0.5 percent of the

product formulation. From single use to combination use, the levels of modified food starch do not remain constant in terms of water-holding effectiveness and purge control.

In combination, the binders work synergistically to attract and hold water molecules. This synergistic effect is a function of the chemical structure of the individual binders and the combined chemical structure they form. The technical data submitted by the petitioner establish that the combination of modified food starch at 3 percent of the formulation and soy protein concentrate at 0.5 percent of the formulation aids in water retention and effectively reduces purging of the pumped brine solution from ham and water products.

Soy Protein Concentrate in Combination With Carrageenan

FSIS was also petitioned by Central Soya to amend the Federal meat inspection regulations to permit the use of soy protein concentrate in combination with carrageenan at a level not to exceed 1.5 percent of the product formulation in cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients" to bind and reduce purge of the pumped brine solution from the products. The technical data submitted by the petitioner demonstrate that the addition of carrageenan singly and in combination with soy protein concentrate at levels not to exceed 1.5 percent of the formulation effectively reduces purging of pumped brine from these cured pork products. Ham products containing carrageenan singly and in combination with soy protein concentrate had significantly less purge than ham products without soy protein concentrate or carrageenan. The data clearly demonstrate that, when used in combination, soy protein concentrate and carrageenan reduce purge consistent with the current limitation on amounts of carrageenan used singly. The data also demonstrate that any percentages may be used in combining soy protein concentrate and carrageenan, as long as the levels of those binders do not collectively exceed 1.5 percent of the product formulation.

Gelatin

Over the years, FSIS has received several informal requests from food manufacturers to allow the use of gelatin as a food ingredient in certain emulsified cooked meat products, such as franks, sausages, and luncheon meat. According to these requests, gelatin would be used as a binder, singly or in

² *Handbook of Food Additives*, 2nd Edition, Volume 1, page 425.

³ *The Meat We Eat*, 13th Edition, Interstate Publishers, Inc., 1994, pages 806–809.

⁴ *Ibid*, pages 678–679.

combination with other binders already allowed in franks, sausages, and luncheon meat.

FDA evaluated the safety of gelatin under a comprehensive safety review in an effort to decide whether it can affirm that the use of gelatin is generally recognized as safe (GRAS). In May 1993, FDA published a tentative final rule on the GRAS status of gelatin as a direct human food ingredient (58 FR 27959). FDA has not finalized that tentative final rule. Therefore, FSIS is not providing for the use of gelatin as a food ingredient in certain emulsified cooked meat products. If and when FDA finalizes its review of the safety of the use of gelatin, FSIS will reconsider whether to permit the use of gelatin in emulsified meat products.

After reviewing the petitioners' technical data and information, FSIS is amending 9 CFR 318.7(c)(4) to permit the use of soy protein concentrate at a level not to exceed 3.5 percent of product formulation; permit the use of soy protein concentrate in combination with carrageenan or modified food starch at levels not to exceed 1.5 percent and 3.5 percent (3 percent modified food starch, .5 percent soy protein concentrate), respectively; and increase the use level of modified food starch from 2 percent to 3.5 percent of product formulation in "Ham and Water Product—X% of Weight is Added Ingredients" products. FSIS is also amending section 319.104(d) to permit the use of combined binders in cured pork products.

Use of soy protein concentrate, modified food starch, and carrageenan will not affect the protein fat-free determinations for the products to which they are added. All added proteins, such as those contributed by soy protein concentrate, modified food starch, and carrageenan, are subtracted from the total protein of the finished product before calculating the protein fat-free value of the product.

Pursuant to 9 CFR 318.7(a)(2)(iii), the Administrator, FSIS, has determined based upon the above data that the use of these binders will not render the products in which they are used adulterated or misbranded or otherwise not in compliance with the requirements of the Federal Meat Inspection Act, and that their use in these products at these levels is functional and suitable for the product and will be at the lowest level necessary to accomplish the stated technical effect.

Manufacturers opting to use soy protein concentrate singly or in combination with either modified food starch or carrageenan will be required to

list the binders in the products' ingredients statements by common or usual names in order of decreasing predominance by weight (9 CFR 317.2(f)(1)). This requirement will necessitate modification of labels, which can be done generically and printing of new labels. However, for manufacturers opting to increase their use of modified food starch from 2 to 3.5 percent, new labels will not be required for cured pork products labeled "Ham and Water Product—X% of Weight is Added Ingredients" that presently contain modified food starch, provided that the increase in the use level of the modified food starch does not change the order of predominance in the ingredients statement of product labels.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This direct final rule: (1) preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been determined to be not significant and, therefore, has not been reviewed by OMB.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this direct final will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This direct final rule will permit the use of soy protein concentrate singly and in combination with either modified food starch or carrageenan as a binder or binders in cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients," and allow an increase in the use level of modified food starch from 2 percent to 3.5 percent to control purging of the pumped brine solution from "Ham and Water Product—X% of Weight is Added Ingredients" products during shelf life.

This direct final rule will impose no new requirements on small entities. Use of soy protein concentrate, carrageenan, and modified food starch as binders in certain meat products is voluntary. However, manufacturers opting to use these binders will be required to revise their product labels to show their

presence in the ingredients statement. These manufacturers may also be required to submit the labels to FSIS for approval, unless they meet the conditions of generic labeling approval (9 CFR 317.5 and 381.133). However, labels will not have to be revised for increasing the use level of modified food starch in "Ham and Water Product—X% of Weight is Added Ingredients" products that presently contain modified food starch, provided the increase does not change the order of predominance in the ingredient statement.

Currently, there are approximately 1,079 establishments producing "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product—X% of Weight is Added Ingredients." All small entities producing these products and certain products classified as emulsified meat that choose to use soy protein concentrate, carrageenan, or modified food starch in the manner and at the levels established by this direct final rule will be affected by it. Decisions by individual manufacturers concerning whether to use these binders in the proposed manner would be based on their conclusions that the benefits outweigh the implementation costs.

Paperwork Requirements

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this direct final rule in accordance with the Paperwork Reduction Act. This direct final rule requires manufacturers opting to use soy protein concentrate, singly or in combination with either modified food starch or carrageenan, as binders and extenders in certain meat products to revise their product labels and submit them to FSIS for approval. However, labels will not have to be revised for increasing the use level of modified food starch in "Ham and Water Product—X% of Weight is Added Ingredients" products that presently contain modified food starch, provided the increase in the use level does not change the order of predominance of the ingredients.

Estimate of Burden: Establishments must develop product labels in accordance with the regulations. To receive approval of the labels, establishments must complete FSIS Form 7234-1. FSIS program employees review FSIS Form 7234-1 to ensure that the information on the labels complies with the regulations. FSIS estimates that it will take 60 minutes to design and develop modified product labels in accordance with this direct final rule and, in instances where labels cannot be

generically approved by establishments, 15 minutes to prepare FSIS Form 7234-1 and submit it, along with the sketch label, to FSIS.

Respondents: Meat establishments.

Estimated number of Respondents: 1,079.

Estimated number of Responses per Respondent: FSIS estimates that each establishment would modify about 2 product labels.

Estimated Total Annual Burden on Respondents: 2,698 hours.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lee Puricelli, Paperwork Specialist, see address above, and Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

List of Subjects

9 CFR Part 318

Food Additives, Meat Inspection.

9 CFR Part 319

Food Labeling, Meat Inspection.

For the reasons set out in the preamble, 9 CFR parts 318 and 319 are amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695, 7 CFR 2.18, 2.53.

2. In section 318.7(c)(4), under the Class of substance “Binders and extenders,” after the entry for “xanthan gum,” the substances “carrageenan” and “food starch modified” are revised, and immediately after the substance “food starch modified” add a new entry for the substance “soy protein concentrate” to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
* Binders and extenders.	* Carrageenan ..	* To prevent purging of brine solution.	* Cured pork products as provided in 9 CFR 319.104(d).	* Not to exceed 1.5 percent of product formulation; permitted in combination only with soy protein concentrate, combination not to exceed 1.5 percent of product formulation; in accordance with 21 CFR 172.620, 172.623 and 172.626.
	* Food starch modified.dodo	* Not to exceed 2 percent of product formulation in “Ham Water Added” and “Ham with Natural Juices” products; not to exceed 3.5 percent of product formulation in “Ham and Water Product—X% of Weight is Added Ingredients” products; permitted in combination only with soy protein concentrate, with combination of modified food starch at 3 percent of product formulation and soy protein concentrate at 0.5 percent of product formulation; in accordance with 21 CFR 172.892.
	* Soy protein concentrate.	* To prevent purging of brine solution.	* Cured pork products as provided in 9 CFR 319.104(d).	* Not to exceed 3.5 percent of product formulation; permitted in combination only with modified food starch, with combination of modified food starch at 3 percent of product formulation and soy protein concentrate at 0.5 percent of product formulation; permitted in combination only with carrageenan, combination not to exceed 1.5 percent of product formulation.
*	*	*	*	*

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695, 7 CFR 2.18, 2.53.

4. The second sentence of § 319.104(d) is revised to read as follows:

§ 319.104 Cured pork products.

* * * * *

(d) * * * Unless explicitly provided for in § 318.7(c)(4), these binders are not permitted to be used in combination with another such binder approved for use in cured pork products. * * *

Done at Washington, DC, on: May 14, 1999.

Thomas J. Billy,
Administrator.

Attachment 1

References

1. March 1, 1994 letter and data from the National Starch and Chemical Company, Bridgewater, NJ, to the Food Safety and Inspection Service, supporting an increase in the use of modified food starch from 2 to 3.5 percent of product formulation to control the

purge of brine in "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients."

2. Food Safety and Inspection Service Policy Memo 121B, *Labeling of Modified, Substitute Versions of Fresh (Species) Sausage, Hamburger, or Ground Beef Products with Added Ingredients Used to Replace Fat that Qualify for Use of Certain Nutrient Content Claims Associated with a Reduction in Fat Content*, January 20, 1995.

3. Food Safety and Inspection Service Policy Memo 123, *Modified Breakfast Sausage, Cooked Sausage, and Fermented Sausage Products Identified by a Nutrient Content Claim and a Standardized or Traditional Name*, January 20, 1995.

4. December 30, 1996 letter and data from the Central Soya Company, Inc., Fort Wayne, IN, to the Food Safety and Inspection Service, supporting the use of soy protein concentrate, a combination of soy protein concentrate and modified food starch, and a combination of soy protein concentrate and carrageenan to control the purge of brine in "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients."

5. *Functionality of Soy Protein Concentrate in Injected and Tumbled Ham*, Central Soya Company, Inc., Fort Wayne, IN, Linda Wells-Beck and George Rakes, 1995–1996.

6. *Functionality of Soy Protein Concentrate and Food Starch-Modified in Injected and Tumbled Ham*, Central Soya Company, Inc., Fort Wayne, IN, Linda Wells-Beck and George Rakes, 1995–1996.

7. January 15, 1999 letter from the Food and Drug Administration (FDA), Center for Applied Nutrition and Safety, to the Food Safety and Inspection Service, stating that FDA is not concerned about the use of modified food starches listed in 21 CFR 172.892, including soy protein concentrate, in meat at levels up to 3.5 percent.

[FR Doc. 99–12882 Filed 5–21–99; 8:45 am]

BILLING CODE 3410-DN-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–383–AD; Amendment 39–11175; AD 99–11–05]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, that requires repetitive displacement tests of the secondary slide in the dual concentric servo valve of the power control unit (PCU) for the

rudder, and replacement of the valve assembly with a modified valve assembly, if necessary. This amendment is prompted by reports of cracking found in PCU secondary servo valve slides. The actions specified by this AD are intended to prevent failure of the secondary slide and consequent rudder hardover and reduced controllability of the airplane.

DATES: Effective June 28, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1999.

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

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes was published in the **Federal Register** on January 13, 1999 (64 FR 2161). That action proposed to require repetitive displacement tests of the secondary slide in the dual concentric servo valve of the power control unit (PCU) for the rudder, and replacement of the valve assembly with a modified valve assembly, if necessary.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Opportunity To Comment

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

Support for the Proposed Rule

Several commenters express support for the proposed rule.

1. Requests To Extend the Initial Compliance Time

Several commenters request that the initial compliance time be extended for the displacement test. While the proposed rule specifies an initial compliance time of 4 months for certain airplanes, the commenters suggest extensions of the initial compliance time ranging from an initial compliance time of 8 months to an initial compliance time of 2 years. The following identifies justifications provided by the commenters for increasing the compliance time:

- Some of the commenters state that testing and analysis to date indicate that the servo valve of the PCU can sustain the highest loads expected to occur in the normal service life of the Model 737 fleet of airplanes. The testing and analysis also indicate that a single valve leg crack still permits the PCU to function normally for periods of time much greater than the proposed 4-month compliance time.

- Other commenters assert that an inadequate number of qualified repair facilities exist, and that the number of PCU's in the fleet are inadequate to permit compliance with the proposed AD. To meet the compliance time for the 3,000 and more PCU's that would require testing would likely ground a significant number of airplanes.

- Two commenters state that the financial implications of meeting the proposed compliance time could result in bankruptcy of one or more small airlines.

- One commenter states that the shipping time alone, without consideration of any other factors, would prevent operators from completing the displacement tests within the compliance time specified in the proposal.

- Several commenters state that all spares facilities are at maximum use and spare PCU's are all being used in order to comply with the requirements of AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997).

- Another commenter states that the turnaround time for replacing units not modified in accordance with AD 97–14–04 is approximately 30 to 45 days. Such turnaround time for those units would prevent some operators from complying within the proposed compliance time.

- One other commenter expresses a serious concern that accomplishment of all the testing done in the limited time proposed (4 months) could result in the introduction of various maintenance errors that would possibly introduce a new unsafe condition.

The FAA concurs that the initial compliance time for accomplishment of