with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Amend § 25.819 by revising paragraphs (b) and (f) to read as follows:

§ 25.819 Lower deck surface compartments (including galleys).

* * * * *

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

* * * * *

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(d), and must be able to withstand maximum flight loads when occupied.

* * * * *

Issued in Renton, Washington, on January 8, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1766 Filed 1–23–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards; Correction

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects part 542 of a proposed rule published in the **Federal Register** on December 26, 2001, regarding the Minimum Internal Control Standards. This correction remedies formatting changes made to the proposed rule and clarifies with which sections Tribal gaming operations are to comply.

FOR FURTHER INFORMATION CONTACT: Michele F. Mitchell, 202–632–7003.

Correction

In the proposed rule FR Doc. 01–30788, beginning on page 66500 in the issue of December 26, 2001, make the following correction:

1. On page 66506, in the second column, correct § 542.3(a)(1) to read as follows:

§ 542.3 How do I comply with this part?

(a) *Compliance based upon tier.*

(1) Tier A gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.20 through 542.23 of this part.

(2) Tier B gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.30 through 542.33 of this part.

(3) Tier C gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.40 through 542.43 of this part.

* * * * *

Dated: January 9, 2002.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–882 Filed 1–23–02; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125638–01]

RIN 1545–BA00

Guidance Regarding Deduction and Capitalization of Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking that will clarify the application of section 263(a) of the Internal Revenue Code to expenditures incurred in acquiring, creating, or enhancing certain intangible assets or benefits. This document also invites comments from the public regarding these standards. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by March 25, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–125638–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–125638–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions

electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax__regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Guy Traynor (202) 622–7180; concerning the proposals, Andrew J. Keyso (202) 927–9397 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The IRS and Treasury Department are reviewing the application of section 263(a) of the Internal Revenue Code to expenditures that result in taxpayers acquiring, creating, or enhancing intangible assets or benefits. This document describes and explains rules and standards that the IRS and Treasury Department expect to propose in 2002 in a notice of proposed rulemaking.

A fundamental purpose of section 263(a) is to prevent the distortion of taxable income through current deduction of expenditures relating to the production of income in future taxable years. See *Commissioner* v. *Idaho Power Co.,* 418 U.S. 1, 16 (1974). Thus, the Supreme Court has held that expenditures that create or enhance separate and distinct assets or produce certain other future benefits of a significant nature must be capitalized under section 263(a). See *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992); *Commissioner* v. *Lincoln Savings & Loan Ass'n,* 403 U.S. 345 (1971).

The difficulty of translating general capitalization principles into clear, consistent, and administrable standards has been recognized for decades. See *Welch* v. *Helvering,* 290 U.S. 111, 114–15 (1933). Because courts focus on particular facts before them, the results reached by the courts are often difficult to reconcile and, particularly in recent years, have contributed to substantial uncertainty and controversy. The IRS and Treasury Department are concerned that the current level of uncertainty and controversy is neither fair to taxpayers nor consistent with sound and efficient tax administration.

Recently, much of the uncertainty and controversy in the capitalization area has related to expenditures that create or enhance intangible assets or benefits. To clarify the application of section 263(a), the forthcoming notice of proposed rulemaking will describe the specific categories of expenditures incurred in acquiring, creating, or enhancing intangible assets or benefits that taxpayers are required to capitalize. In addition, the forthcoming notice of proposed rulemaking will recognize that many expenditures that create or enhance intangible assets or benefits do not create the type of future benefits for which capitalization under section 263(a) is appropriate, particularly when the administrative and record keeping costs associated with capitalization are weighed against the potential distortion of income.

To reduce the administrative and compliance costs associated with section 263(a), the forthcoming notice of proposed rulemaking is expected to provide safe harbors and simplifying assumptions including a ''one-year rule,'' under which expenditures relating to intangible assets or benefits whose lives are of a relatively short duration are not required to be capitalized, and ''de minimis rules,'' under which certain types of expenditures less than a specified dollar amount are not required to be capitalized. The IRS and Treasury Department are also considering additional administrative relief, for example, by providing a ''regular and recurring rule,'' under which transaction costs incurred in transactions that occur on a regular and recurring basis in the routine operation of a taxpayer's trade or business are not required to be capitalized.

The proposed standards and rules described in this document will not alter the manner in which provisions of the law other than section 263(a) (e.g., sections 195, 263(g), 263(h), or 263A) apply to determine the correct tax treatment of an item. Moreover, these standards and rules will not address the treatment of costs other than those to acquire, create, or enhance intangible assets or benefits, such as costs to repair or improve tangible property. The IRS and Treasury Department are considering separate guidance to address these other costs.

The following discussion describes the specific expenditures to acquire, create, or enhance intangible assets or benefits for which the IRS and Treasury Department expect to require capitalization in the forthcoming notice of proposed rulemaking. The IRS and Treasury Department anticipate that other expenditures to acquire, create, or enhance intangible assets or benefits generally will not be subject to capitalization under section 263(a).

A. Amounts Paid To Acquire Intangible Property

1. Amounts Paid To Acquire Financial Interests

Under the expected regulations, capitalization will be required for an amount paid to purchase, originate, or otherwise acquire a security, option, any other financial interest described in section 197(e)(1), or any evidence of indebtedness. For a discussion of related transaction costs see section C of this document.

For example, a financial institution that acquires portfolios of loans from another person or originates loans to borrowers would be required to capitalize the amounts paid for the portfolios or the amounts loaned to borrowers.

2. Amounts Paid To Acquire Intangible Property From Another Person

Under the expected regulations, capitalization will be required for an amount paid to another person to purchase or otherwise acquire intangible property from that person. For a discussion of related transaction costs see section C of this document.

For example, an amount paid to another person to acquire an amortizable section 197 intangible from that person would be capitalized. Thus, a taxpayer that acquires a customer base from another person would be required to capitalize the amount paid to that person in exchange for the customer base. On the other hand, a taxpayer that incurs costs to create its own customer base through advertising or other expenditures that create customer goodwill would not be required to capitalize such costs under this rule.

B. Amounts Paid To Create or Enhance Certain Intangible Rights or Benefits

1. 12-Month Rule

The IRS and Treasury Department expect to propose a 12-month rule applicable to expenditures paid to create or enhance certain intangible rights or benefits. Under the rule, capitalization under section 263(a) would not be required for an expenditure described in the following paragraphs 2 through 8 unless that expenditure created or enhanced intangible rights or benefits for the taxpayer that extend beyond the earlier of (i) 12 months after the first date on which the taxpayer realizes the rights or benefits attributable to the expenditure, or (ii) the end of the taxable year following the taxable year in which the expenditure is incurred.

The IRS and Treasury Department request comments on how the 12-month rule might apply to expenditures paid to create or enhance rights of indefinite duration and contracts subject to termination provisions. For example, comments are requested on whether costs to create contract rights that are terminable at will without substantial

penalties would not be subject to capitalization as a result of the 12-month rule.

2. Prepaid Items

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount prepaid for goods, services, or other benefits (such as insurance) to be received in the future.

For example, a taxpayer that prepays the premium for a 3-year insurance policy would be required to capitalize such amount under the rule.

Similarly, a calendar year taxpayer that pays its insurance premium on December 1, 2002, for a 12-month policy beginning the following February would be required to capitalize the amount of the expenditure. The 12-month rule would not apply because the benefit attributable to the expenditure would extend beyond the end of the taxable year following the taxable year in which the expenditure was incurred. On the other hand, if the insurance contract had a term beginning on December 15, 2002, the taxpayer could deduct the premium expenditure under the 12-month rule because the benefit neither extends more than 12 months beyond December 15, 2002 (the first date the benefit is realized by the taxpayer) nor beyond the taxable year following the year the expenditure was incurred.

3. Certain Market Entry Payments

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to an organization to obtain or renew a membership or privilege from that organization.

For example, subject to the 12-month rule, the rule would require capitalization of costs to obtain a stock trading privilege, admission to practice medicine at a hospital, and access to the multiple listing service. The rule does not contemplate requiring capitalization for costs to obtain ISO 9000 certification or similar costs.

4. Amounts Paid To Obtain Certain Rights From a Governmental Agency

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid to a governmental agency for a trade name, trademark, copyright, license, permit, or other right granted by that governmental agency.

For example, under the rule, a restaurant would be required to capitalize the amount paid to a state to obtain a license to serve alcoholic beverages that is valid indefinitely.

5. Amounts Paid To Obtain or Modify Contract Rights

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount (e.g., $5,000) paid to another person to induce that person to enter into, renew, or renegotiate an agreement that produces contract rights enforceable by the taxpayer, including payments for leases, covenants not to compete, licenses to use intangible property, customer contracts and supplier contracts. The IRS and Treasury Department request comments on whether there are standards other than the standard described above that would be more appropriate for determining whether expenditures related to the creation or enhancement of contractual rights should be capitalized.

Subject to the 12-month rule, this rule would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to enter into a lease. This rule also would require a lessee to capitalize an amount paid to a lessor in exchange for the lessor's agreement to terminate a lease and enter into a new lease. See, e.g., *U.S. Bancorp* v. *Commissioner,* 111 T.C. 231 (1998). However, this rule would not require a lessee to capitalize an amount paid to a lessor to terminate a lease where the parties do not enter into a new or renegotiated agreement. This rule also would not require a taxpayer to capitalize a payment that does not create enforceable contract rights but, for example, merely creates an expectation that a customer or supplier will maintain its business relationship with the taxpayer. See, e.g., *Van Iderstine Co.* v. *Commissioner,* 261 F.2d 211 (2nd Cir. 1958).

6. Amounts Paid To Terminate Certain Contracts

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of an amount paid by a lessor to a lessee to induce the lessee to terminate a lease of real or tangible personal property or by a taxpayer to terminate a contract that grants another person the exclusive right to conduct business in a defined geographic area.

For example, under the rule, a lessor that pays a lessee to terminate a lease of real property with a remaining term of 24 months would be required to capitalize such payment. See, e.g., *Peerless Weighing and Vending Machine Corp.* v. *Commissioner,* 52 T.C. 850 (1969). On the other hand, if the lease had a remaining term of 6 months, the 12-month rule would apply, and the taxpayer would not be required to capitalize the termination payment under the rule.

As a further example, where a taxpayer grants another person the exclusive right to develop the taxpayer's motel chain in four states, and the taxpayer later pays that other person to terminate such right at a time when the remaining useful life of the right is 5 years, the taxpayer would be required to capitalize the termination payment under the rule. *See Rodeway Inns of America* v. *Commissioner,* 63 T.C. 414 (1974).

7. Amounts Paid in Connection With Tangible Property Owned by Another

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts in excess of a specified dollar amount paid to facilitate the acquisition, production, or installation of tangible property that is owned by a person other than the taxpayer where the acquisition, production, or installation of the tangible property results in the type of intangible future benefit to the taxpayer for which capitalization is appropriate. This rule would apply even though there is no contractual relationship between the taxpayer and the other person. This rule is intended to require capitalization of expenditures that produce intangible future benefits similar to those that were in issue in *Kauai Terminal Ltd.* v. *Commissioner,* 36 B.T.A. 893 (1937) (expenditure incurred to construct a publicly owned breakwater for the purpose of increasing taxpayer's freight lighterage operation). The IRS and Treasury Department request comments on standards that can be established to ensure that the expenditures described in this rule result in the type of future benefits that are similar to those in *Kauai Terminal* and therefore should be capitalized. The IRS and Treasury Department also request comments on whether safe harbors or dollar thresholds should be used to determine whether capitalization of such expenditures is appropriate under section 263(a).

8. Defense or Perfection of Title to Intangible Property

Subject to the 12-month rule, the IRS and Treasury Department expect to propose a rule that requires capitalization of amounts paid to defend or perfect title to intangible property.

For example, under the rule, if a taxpayer and another person both claim title to a particular trademark, the taxpayer must capitalize any amount paid to the other person for relinquishment of such claim. See, e.g., *J.J. Case Company* v. *United States,* 32 F.Supp. 754 (Ct. Cl. 1940).

C. Transaction Costs

The IRS and Treasury Department expect to propose a rule that requires a taxpayer to capitalize certain transaction costs that facilitate the taxpayer's acquisition, creation, or enhancement of intangible assets or benefits described above (regardless of whether a payment described in sections A or B of this document is made). In addition, this rule would require a taxpayer to capitalize transaction costs that facilitate the taxpayer's acquisition, creation, restructuring, or reorganization of a business entity, an applicable asset acquisition within the meaning of section 1060(c), or a transaction involving the acquisition of capital, including a stock issuance, borrowing, or recapitalization. However, this rule would not require capitalization of employee compensation (except for bonuses and commissions that are paid with respect to the transaction), fixed overhead (e.g., rent, utilities and depreciation), or costs that do not exceed a specified dollar amount, such as $5,000. The IRS and Treasury Department request comments on how expenditures should be aggregated for purposes of applying the de minimis exception, whether the de minimis exception should allow a deduction for the threshold amount where the aggregate transaction costs exceed the threshold amount, and whether there are certain expenditures for which the de minimis exception should not apply (e.g., commissions).

The IRS and Treasury Department are considering alternative approaches to minimize uncertainty and to ease the administrative burden of accounting for transaction costs. For example, the rules could allow a deduction for all employee compensation (including bonuses and commissions that are paid with respect to the transaction), be based on whether the transaction is regular or recurring, or follow the financial or regulatory accounting treatment of the transaction. The IRS and Treasury Department request comments on whether the recurring or nonrecurring nature of a transaction is an appropriate consideration in determining whether an expenditure to facilitate the transaction must be capitalized under section 263(a) and, if so, what criteria should be applied in distinguishing between recurring and nonrecurring transactions. In addition, the IRS and Treasury Department request comments on whether a taxpayer's treatment of transaction costs for financial or regulatory accounting purposes should be taken into account when developing simplifying assumptions.

For example, under the rule described above, a taxpayer would be required to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in drafting a 3-year covenant not to compete because such costs facilitated the creation of the covenant not to compete. Similarly, the rule would require a taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside attorneys for services rendered in defending a trademark owned by the taxpayer.

Conversely, a taxpayer that originates a loan to a borrower in the course of its lending business would not be required to capitalize amounts paid to secure a credit history and property appraisal to facilitate the loan where the total amount paid with respect to that loan does not exceed the threshold dollar amount. The taxpayer also would not be required to capitalize the amount of salaries paid to employees or overhead costs of the taxpayer's loan origination department.

In addition, the rule would require a corporate taxpayer to capitalize legal fees in excess of the threshold dollar amount paid to its outside counsel to facilitate an acquisition of all of the taxpayer's outstanding stock by an acquirer. See, e.g., *INDOPCO, Inc.* v. *Commissioner,* 503 U.S. 79 (1992). However, the rule would not require capitalization of the portion of officers' salaries that is allocable to time spent by the officers negotiating the acquisition. Cf. *Wells Fargo & Co.* v. *Commissioner,* 224 F.3d 874 (8th Cir. 2000).

The rule also would not require capitalization of post-acquisition integration costs or severance payments made to employees as a result of an acquisition transaction because such costs do not facilitate the acquisition.

D. Other Items on Which Public Comment is Requested

1. Other Costs of Creating, Acquiring or Enhancing Intangible Assets or Benefits That Require Capitalization

The IRS and Treasury Department are considering what general principles of capitalization should be used to identify the costs of acquiring, creating, or enhancing intangible assets or benefits that should be capitalized under section 263(a) but are not described above. The IRS and Treasury Department anticipate that these general principles will apply in rare and unusual circumstances to require capitalization of costs that are similar to those described above. Comments are requested on capitalization principles (for example, a separate and distinct asset test or a significant future benefit test) that can be used to identify other costs that should be capitalized under section 263(a) and the administrability of such principles. The IRS and Treasury Department also request comments on other categories of costs associated with intangible assets or benefits that should be capitalized under section 263(a), but are not described above.

2. Book-Tax Conformity

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which the taxpayer's treatment for financial or regulatory accounting purposes should be taken into account in determining the treatment for federal income tax purposes or to simplify tax reporting.

3. Amortization Periods

Certain intangibles have readily ascertainable useful lives that can be determined with reasonable accuracy, while others do not. The IRS and Treasury Department expect to provide safe harbor recovery periods and methods for certain capitalized expenditures that do not have readily ascertainable useful lives. Comments are requested regarding whether guidance should provide one uniform period or multiple recovery periods and what the recovery periods and methods should be.

4. *De Minimis* Rules

The IRS and Treasury Department request comments on whether there are types of expenditures other than those discussed above for which it would be appropriate to prescribe de minimis rules that would not require capitalization under section 263(a). If there are such categories or thresholds, comments are requested on how expenditures would be aggregated in applying these de minimis rules.

5. Costs of Software

The IRS and Treasury Department request comments on what rules and principles should be used to distinguish acquired software from developed software and the administrability of

those rules and principles. See Rev. Proc. 2000–50, 2000–2 C.B. 601.

Heather C. Maloy,

Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–1678 Filed 1–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

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

ACTION: Limited re-opening of the rulemaking record for Occupational Exposure to Tuberculosis (TB).

SUMMARY: The Agency is re-opening the record in the TB rulemaking to allow interested persons to review the National Academy of Sciences/Institute of Medicine (NAS/IOM) report, ''Tuberculosis in the Workplace'' and the comments by the peer reviewers on OSHA's draft final risk assessment. This record re-opening is limited to the draft final risk assessment, the peer review comments on that assessment, and the NAS/IOM report.

DATES: Comments and data must be postmarked no later than March 25, 2002. Comments submitted electronically or by FAX must be submitted by March 25, 2002.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments of 10 pages or fewer may be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov.* Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the docket office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the peer reviewers' reports, OSHA's draft final risk assessment and the NAS/IOM report, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Amanda Edens, Directorate of Health Standards Programs, Occupational Safety and Health Administration, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–2270, FAX (202) 693–1678.

SUPPLEMENTARY INFORMATION: On October 17, 1997, OSHA published a proposed standard for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination based on a review of the available data that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures potentially involving exposure to TB.

Many persons submitted comments addressing OSHA's preliminary quantitative risk assessment and suggested that OSHA should use more current data in developing its final quantitative risk assessment. In response to these concerns, OSHA reopened the rulemaking record to solicit data and comments with respect to assessing the occupational risk of TB infection and disease (64 FR 34625, June 28, 1999). In addition, the Agency provided a draft of its final risk assessment (Ex. 184) for peer review to two experts in the fields of TB epidemiology and risk assessment. The peer reviewers selected were Dr. Richard Menzies and Dr. Mark Nicas. Dr. Menzies, Professor and Director of the Respiratory Epidemiology Unit at McGill University in Montreal, Canada, is a physician experienced in the epidemiology, diagnosis and treatment of TB and is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to and treatment of TB. Dr. Menzies is also an expert in the use of tuberculin skin testing as a diagnostic for infection. Dr. Mark Nicas, Professor at the University of California Berkeley and a Certified Industrial Hygienist, is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to TB and the development of mathematical models for TB transmission. These two reviewers evaluated the overall methodology used by OSHA in the draft final risk assessment, the appropriateness of these studies for the exposure scenarios, the adequacy of the mathematical models, the values of the parameters used to estimate the TB case activation and death rates, the use and estimates of state background infection rates, and the uncertainties associated with the OSHA risk estimates. (Exs. 185 and 186)

In 1999, the U.S. Congress requested that the National Academy of Sciences undertake a short-term study of occupational TB (Public Law 106–113) including evaluation of the risks to health care workers due to occupational exposure to TB, the extent to which the TB guidelines of the Centers for Disease Control and Prevention are being implemented, and the effectiveness of an OSHA TB standard to protect workers from occupational exposure to TB. The report that was prepared by the IOM, the health policy arm of the Academy, was released on January 16, 2001. In view of the significance of this report, OSHA is placing it in the record for comment. (Ex. 187)

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed at Washington, DC, this 17th day of January, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–1712 Filed 1–23–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–11358]

RIN 2135–AA13

Seaway Regulations and Rules: Ballast Water

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and