

a reasonable fee for the notices provided under §§ 551.100(a), (d), and (e).

### Subpart C—Settlement of Securities Transactions

#### § 551.130 When must I settle a securities transaction?

(a) You may not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the latest of:

(1) The third business day after the date of the contract. This deadline is no later than the fourth business day after the contract for contracts involving the sale for cash of securities that are priced after 4:30 p.m. Eastern Standard Time on the date the securities are priced and:

(i) Are sold by an issuer to an underwriter under a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, or

(ii) Are sold by you to an initial purchaser participating in the offering;

(2) Such other time as the SEC specifies by rule (*see* SEC Rule 15c6–1, 17 CFR 240.15c6–1); or

(3) Such time as the parties expressly agree at the time of the transaction. The parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities under a firm commitment offering, if the managing underwriter and the issuer have agreed to the date for all securities sold under the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

(b) The deadlines in paragraph (a) of this section do not apply to the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are disseminated through an automated quotation system of a registered securities association.

### Subpart D—Securities Trading Policies and Procedures

#### § 551.140 What policies and procedures must I maintain and follow for securities transactions?

If you effect securities transactions for customers, you must maintain and follow policies and procedures that meet all of the following requirements:

(a) Your policies and procedures must assign responsibility for the supervision of all officers or employees who:

(1) Transmit orders to, or place orders with, registered broker-dealers;

(2) Execute transactions in securities for customers; or

(3) Process orders for notice or settlement purposes, or perform other back office functions for securities transactions that you effect for customers. Policies and procedures for personnel described in this paragraph (a)(3) must provide supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) and (2) of this section.

(b) Your policies and procedures must provide for the fair and equitable allocation of securities and prices to accounts when you receive orders for the same security at approximately the same time and you place the orders for execution either individually or in combination.

(c) Your policies and procedures must provide for securities transactions in which you act as agent for the buyer and seller (crossing of buy and sell orders) on a fair and equitable basis to the parties to the transaction, where permissible under applicable law.

(d) Your policies and procedures must require your officers and employees to file the personal securities trading reports described at § 551.150, if the officer or employee:

(1) Makes investment recommendations or decisions for the accounts of customers;

(2) Participates in the determination of these recommendations or decisions; or

(3) In connection with their duties, obtains information concerning which securities you intend to purchase, sell, or recommend for purchase or sale.

#### § 551.150 How do my officers and employees file reports of personal securities trading transactions?

An officer or employee described in § 551.140(d) must report all personal transactions in securities made by or on behalf of the officer or employee if he or she has a beneficial interest in the security.

(a) Contents and filing of report. The officer or employee must file the report with you within ten business days after the end of each calendar quarter. The report must include the following information:

(1) The date of each transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security involved.

(2) The nature of each transaction (*i.e.*, purchase, sale, or other type of acquisition or disposition).

(3) The price at which each transaction was effected.

(4) The name of the broker, dealer, or other intermediary effecting the transaction.

(5) The date the officer or employee submitted the report.

(b) Report not required for certain transactions. Your officer or employee is not required to report a transaction if:

(1) He or she has no direct or indirect influence or control over the account for which the transaction was effected or over the securities held in that account;

(2) The transaction was in shares issued by an open-end investment company registered under the Investment Company Act of 1940;

(3) The transaction was in direct obligations of the government of the United States;

(4) The transaction was in bankers' acceptances, bank certificates of deposit, commercial paper or high quality short term debt instruments, including repurchase agreements; or

(5) The officer or employee had an aggregate amount of purchases and sales of \$10,000 or less during the calendar quarter.

(c) Alternate report. When you act as an investment adviser to an investment company registered under the Investment Company Act of 1940, an officer or employee that is an "access person" may fulfill his or her reporting requirements under this section by filing with you the "access person" personal securities trading report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d).

Dated: May 23, 2002.

By the Office of Thrift Supervision.

**James E. Gilleran,**  
*Director.*

[FR Doc. 02–14317 Filed 6–10–02; 8:45 am]

BILLING CODE 6720–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001–NM–378–AD]

RIN 2120–AA64

#### **Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness

directive (AD), applicable to all Airbus Model A300 B4-600, B4-600R, and F4-600R (collectively called A300-600) series airplanes, that currently requires repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. This action would continue to require those actions but would shorten the compliance time and repetitive inspection intervals. This action also would expand the applicability to include additional airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of fuselage frame 47.

**DATES:** Comments must be received by July 11, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-378-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-378-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2797; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001-NM-378-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket 2001-NM-378-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

On August 29, 1996, the FAA issued AD 96-18-18, amendment 39-9744 (61 FR 47808, September 11, 1996), applicable to all Airbus Model A300-600 series airplanes, to require repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. That action was prompted by results of full-scale fatigue testing, which revealed cracking in the upper radius of frame 47. The requirements of that AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of frame 47 of the fuselage.

**Actions Since Issuance of Previous Rule**

Based on investigations and analyses and reports by the manufacturer, and in concert with the determination by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, the FAA has determined that the inspection thresholds and intervals required by AD 96-18-18 must be shortened. This proposed AD follows from these findings.

**Related Rulemaking**

The FAA issued a related AD that applies to Model A300 B2 and B4 series airplanes. AD 96-13-11, amendment 39-9679 (61 FR 35122, July 5, 1996), mandates the incorporation of Airbus Industrie A300 Supplemental Structural Inspection Document (SSID). That SSID includes a requirement to inspect in accordance with Airbus Service Bulletin A300-53-0246, which would be required by paragraph (d) of this proposed AD.

**Explanation of Relevant Service Information**

Airbus has issued Service Bulletin A300-53-6029, Revision 05, dated April 11, 2001 (for Model A300-600 series airplanes). AD 96-18-18 cited Revision 02 of this service bulletin as the appropriate source of service information for accomplishment of the required repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47. Subsequent service bulletin revisions provide improved inspection methods. Flight cycles were incorporated into the compliance times and the corresponding values were adjusted in flight hours.

Airbus has also issued Service Bulletin A300-53-0246, Revision 03, dated April 11, 2001, which describes the same procedures as those in Service Bulletin A300-53-6029 for inspecting the same area on Model A300 B2 and B4 series airplanes.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001-355(B), dated August 8, 2001, to ensure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the

applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### **Explanation of Proposed Requirements**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96-18-18 to continue to require repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below. The proposed AD also would require that operators report results of inspection findings to Airbus. These inspection reports will enable the DGAC, the FAA, and the manufacturer to develop a better understanding of the nature and extent of the problem. This understanding will aid in developing a more permanent resolution to the cracking problem. The results of these reports may warrant further rulemaking.

#### **Differences Between Proposed AD and Service Bulletins**

Although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Unlike the procedures described in the service bulletins, this proposed AD would prohibit further flight if cracks are detected in the upper radius of the forward fitting of frame 47. However, the FAA may consider allowing continued flight with cracks on a case-by-case basis. Paragraph (f)(1) of this proposed AD would allow operators to request an alternative method of compliance that would allow continued flight with cracks, provided data are

presented to justify the use of such an alternative method. The manufacturer has advised that it may propose an alternative method of compliance with the requirements of this AD to include a repetitive inspection interval that is based on crack size. Once this method is developed, approved, and available, the FAA may consider additional rulemaking.

In addition, the FAA finds that the thresholds specified in the service bulletin for Model A300-600 series airplanes (11,500 total flight cycles/29,600 total flight hours) are inadequate to ensure the safety of affected airplanes. Cracking has recently been found on an airplane at a lower threshold, so the FAA has determined that those thresholds must be reduced to 10,000 total flight cycles/26,000 total flight hours.

#### **Explanation of Proposed Change to Paragraph (c)**

Due to organizational restructuring within the Transport Airplane Directorate since AD 96-18-18 was issued, this proposed AD specifies that operators direct their requests for repair method approvals to the Manager of the FAA's International Branch, ANM-116 (not the Standardization Branch).

#### **Clarification of Model Designation**

The applicability of AD 96-18-18 and this proposed AD includes Model A300-600 series airplanes. However, the model designation of these airplanes has been revised in this proposed AD to conform to the type certificate data sheet listing.

#### **Explanation of Change in Terminology**

AD 96-18-18 specifies the compliance times in terms of "landings." This proposed AD refers instead to "flight cycles" to more closely correspond to the terminology of the French airworthiness directive and the revised service bulletins described previously.

#### **Interim Action**

This is considered to be interim action. The manufacturer has advised that it currently is developing repair procedures that will address the unsafe condition identified in this AD and terminate the repetitive inspections. Once these procedures are developed, approved, and available, the FAA may consider additional rulemaking.

#### **Cost Impact**

There are approximately 127 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 96-18-18, and retained in this proposed AD, takes approximately 4 work hours per airplane, per inspection cycle, to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be \$240 per airplane, per inspection cycle.

The new proposed actions would take approximately 5 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$38,100, or \$300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### **Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9744 (61 FR 47808, September 11, 1996), and by adding a new airworthiness directive (AD), to read as follows:

**AIRBUS:** Docket 2001-NM-378-AD.

Supersedes AD 96-18-18, Amendment 39-9744.

**Applicability:** All Model A300 B2 and B4 series airplanes; and all Model A300 B4-600, B4-600R, and F4-600R (collectively called A300-600) series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper radius of the forward fitting of fuselage frame 47, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of frame 47, accomplish the following:

#### Model A300-600: Inspection

(a) For Model A300-600 series airplanes: At the earlier of the times specified by paragraphs (a)(1) and (a)(2) of this AD, perform an eddy current inspection to detect cracking of the upper radius of the left and right forward fitting of frame 47, in accordance with Airbus Service Bulletin A300-53-6029, Revision 2, dated November 7, 1994; or Revision 05, dated April 11, 2001. After the effective date of this AD, only Revision 05 of the service bulletin may be used.

**Note 2:** Accomplishment of an inspection before the effective date of this AD in accordance with Airbus Service Bulletin A300-53-6029, Revision 03, dated October 7, 1997, or Revision 04, dated October 25, 1999,

is acceptable for compliance with the initial inspection requirements of paragraph (a) of this AD.

(1) Before the accumulation of 17,300 total flight cycles, or within one year after October 16, 1996 (the effective date of AD 96-18-18, amendment 39-9744), whichever occurs later.

(2) At the later of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 total flight cycles or 26,000 total flight hours, whichever occurs first.

(ii) Within 60 days after the effective date of this AD.

#### A300-600: Follow-on Inspections

(b) For Model A300-600 series airplanes on which no cracking is found during any inspection required by paragraph (a) of this AD:

(1) If the initial inspection WAS accomplished before the effective date of this AD, repeat the inspection within 6,600 flight cycles after that inspection or within 60 days after the effective date of this AD, whichever occurs first. Thereafter, repeat the inspection at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

(2) If the initial inspection was NOT accomplished before the effective date of this AD, repeat the inspection thereafter at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

#### Model A300-600: Corrective Action

(c) For Model A300-600 series airplanes on which any cracking is found during any inspection required by this AD: Before further flight, repair and/or reinspect the airplane in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated representative).

**Note 3:** Repair and/or reinspection accomplished before the effective date of this AD in accordance with a method approved by the Manager of the Standardization Branch is acceptable for compliance with the requirements of paragraph (c) of this AD.

#### Model A300 B2 and B4: Inspection and Follow-On Actions

(d) For Model A300 B2 and B4 series airplanes: At the applicable time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, perform repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47, left and right sides, per Airbus Service Bulletin A300-53-0246, Revision 03, dated April 11, 2001. If any cracking is found: Before further flight, repair and/or reinspect the airplane in accordance with a method approved by the Manager, International Branch, ANM-116; or the DGAC (or its delegated agent). This requirement terminates the corresponding inspection requirement of the A300 Supplemental Structural Inspection Document (SSID) for Model A300 B2 and B4 series airplanes. That SSID is mandated by AD 96-13-11, amendment 39-9679.

(1) For Model A300 B2 series airplanes: Perform the initial inspection at the later of

the times specified by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. Repeat the inspection thereafter at least every 10,400 flight cycles or 13,300 flight hours, whichever occurs first.

(i) Before the accumulation of 16,500 total flight cycles or 21,000 total flight hours, whichever occurs first.

(ii) Within 1,000 flight cycles or 1,300 flight hours after the effective date of this AD, whichever occurs first.

(2) For Model A300 B4-100 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(2)(i) and (d)(2)(ii) of this AD. Repeat the inspection thereafter at least every 8,500 flight cycles or 16,400 flight hours, whichever occurs first.

(i) Before the accumulation of 10,300 total flight cycles or 19,800 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(3) For Model A300 B4-200 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(3)(i) and (d)(3)(ii) of this AD. Repeat the inspection thereafter at least every 7,000 flight cycles or 13,600 flight hours, whichever occurs first.

(i) Before the accumulation of 11,000 total flight cycles or 21,200 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

#### Reporting Requirement

(e) At the applicable time specified in paragraph (e)(1) or (e)(2) of this AD: Submit a report of all results of each inspection required by paragraphs (a) and (d) of this AD to Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, Attention Jacques Leborgne, fax 33-5-61-93-36-14. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

#### Alternative Methods of Compliance

(f)(1) 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, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, International Branch, ANM-116.

(2) Alternative methods of compliance, approved previously in accordance with AD 96-18-18, amendment 39-9744, and AD 96-13-11, amendment 39-9679, are approved as alternative methods of compliance with the requirements of paragraphs (c) and (d) of this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

#### Special Flight Permits

(g) 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.

**Note 5:** The subject of this AD is addressed in French airworthiness directive 2001-355(B), dated August 8, 2001.

Issued in Renton, Washington, on June 4, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.

[FR Doc. 02-14585 Filed 6-10-02; 8:45 am]

BILLING CODE 4910-13-P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AF37

#### Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of "Special Profile" into Regulations

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** For purposes of this notice, "we," "our," and "SSA" refer to the Social Security Administration and State agencies that make disability determinations for the Social Security Administration. "You" and "your" refer to individuals who claim benefits from the Social Security Administration based on "disability."

This document proposes to clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. This includes our rules about when we assess your residual functional capacity (RFC) and how we use this RFC assessment when we

decide whether you can do your past relevant work or other work. These clarifications address issues of responsibility raised by some courts in recent cases.

We also propose to clarify that we may use vocational experts, vocational specialists, or other resources to obtain information we need to determine whether your impairment(s) prevent you from doing your past relevant work;

Add a special provision to our rules stating that, if you are at least 55 years old, and specific other circumstances are present, we will find that you are disabled; and

Make a number of minor editorial changes to clarify and update the language of our rules, and to use simpler language in keeping with our goal of using plain language in our regulations.

**DATES:** To be sure that we consider your comments, submit them no later than August 12, 2002.

**ADDRESSES:** You may give us your comments by using: our Internet site facility (i.e., Social Security Online) at <http://www.ssa.gov/regulations/>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to 410-966-2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703.

You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them during these same hours by making arrangements with the contact person shown in this preamble.

**Electronic Version:** The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at: [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). It is also available on the Internet site for SSA: <http://www.ssa.gov/regulations/>.

**FOR FURTHER INFORMATION CONTACT:** Georgia E. Myers, Regulations Officer, Social Security Administration, 2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-3632 or TTY 800-966-5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 800-772-1213 or TTY 800-325-0778, or visit our Internet website, Social Security Online, at <http://www.ssa.gov>.

#### SUPPLEMENTARY INFORMATION:

#### What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions we make for you under title II and title XVI of the Act. In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

#### Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act;
- Children of insured workers; and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you have limited income and resources.

#### How Do We Define "Disability"?

Under both the title II and title XVI programs, disability means the inability to ". . . engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (Sections 223(d)(1)(A) and 1614(a)(3)(A) of the Act.) This definition applies if you file a claim under title II or if you file a claim as an adult under title XVI. (There is a different definition of disability for children filing under title XVI. See section 1614(a)(3)(C) of the Act.)

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, or whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the