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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amdt. No. 357]

RIN 0584-AB91

Food Stamp Program: Disqualification Penalties for Intentional Program Violations

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes a proposed rulemaking published on August 29, 1994. It amends Food Stamp Program regulations to implement section 13942 of the Mickey Leland Hunger Relief Act, which increases the disqualification penalties for individuals who are found guilty in a Federal, State or local court of trading or receiving food stamp coupons for firearms, ammunition, explosives or controlled substances. This rule also implements a change which makes it easier for a State agency to conduct an administrative disqualification hearing by eliminating the proof of receipt requirement. In addition, this rule clarifies the Department's policy on the imposition of disqualification periods for intentional Program violations. Finally, this rule eliminates two model forms used in administrative disqualification hearings.

DATES: This rule is effective October 23, 1995, except that 7 CFR 273.16(b) is effective retroactive to September 1, 1994.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive,

Alexandria, Virginia 22302, (703) 305-2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Implementation" section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program by simplifying the requirements for giving advance notice of hearing to food stamp recipients. It will also modify the penalties applicable to individuals who engage in Program misconduct.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping burden associated with this final rule has been approved by the Office of Management and Budget (OMB) under OMB number 0584-0064. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

Background

On August 29, 1994, the Department published a proposed rule at 59 FR 44343 to implement section 13942 of the Mickey Leland Childhood Hunger Relief Act (Pub. L. 103-66) (Leland Act). Section 13942 of the Leland Act amended the Food Stamp Act of 1977 (7 U.S.C. 2011-2032) (the Act) to increase the disqualification penalties for certain types of intentional Program violations. In addition, the proposed rule included regulatory changes with regard to the delivery of administrative disqualification hearing notices and the initiation of disqualification periods for intentional Program violations. The proposed rule also included regulatory changes to eliminate two model forms used in administrative disqualification hearings.

The Department received nine comment letters which addressed provisions of the proposed rule. All of the commenters were State agencies. The Food and Consumer Service has given careful consideration to all comments received. The major concerns of the commenters are discussed below. For additional information on the provisions discussed in this rule, the reader should refer to the preamble of the proposed rule at 59 FR 44343-46.

Increased Disqualification Penalties for Intentional Program Violations

Section 13942 of the Leland Act requires that an individual be disqualified for 12 months for a first finding by a court, and permanently for a second finding by a court that the person has either traded or received controlled substances using food stamp coupons. This section of the Leland Act also requires that an individual be permanently disqualified for the first finding by a court that the individual has either traded or received firearms, ammunition, or explosives using food stamp coupons. Of the nine comment

letters received, two commenters specifically supported this provision of the proposed rule. However, some commenters had concerns on the applicability of the increased penalties.

Two commenters were concerned about the applicability of the increased penalties to deferred adjudications. The proposed rule would have applied the increased penalties in cases with deferred adjudication if a finding of culpability has been made. The first commenter felt that some deferred adjudications should not be subjected to the increased penalties and that specific criteria should be established for having deferred adjudications result in the same increased penalties as would apply to an adjudication by a court. The second commenter felt that the finding of culpability clause would require State agencies to conduct a difficult and costly analysis of the court order or terms of the deferred adjudication. The Department recognizes that there are complexities involved in making the proper determination of whether a finding of culpability exists. However, given the fact that the standard penalties are applied in instances of deferred adjudication, the Department believes the increased penalties should also be imposed when applicable in cases of deferred adjudication. Therefore, the Department has retained 7 CFR 273.16(b)(4) of the final rule, as proposed.

One commenter requested clarification as to whether the penalties applied to non-recipients as well as recipients. Section 6(b)(1) of the Act refers to any "person" and not "recipient" in its discussion of applying disqualification penalties. The Act also provides that penalties apply to "further participation in the Program." The language in the proposed rule at § 273.16(b)(1), which discusses the application of the penalties, is consistent with the Act in that it uses "individual" and not "recipient" or "household member." The disqualification penalties apply to any individual found to have committed an intentional Program violation regardless of whether he/she is a recipient. The provision in § 273.16(a)(1) states that the disqualification shall take effect in such cases immediately after the individual applies and is found eligible to participate in the Program.

One commenter recommended a revision to the proposed rule at § 273.16(b)(5) to clarify the Department's intent. The commenter suggested using the phrase "* * * fails to impose a disqualification or a disqualification period * * *" instead of "* * * fails to impose a

disqualification period * * *" as proposed in § 273.16(b)(5). The reason for the suggested change, according to the commenter, is because questions have arisen regarding the Department's intent on whether a disqualification period should be imposed if the court finds that the intentional Program violation was committed but does not specify in the court order whether there should be a disqualification. The Department's longstanding position on this issue is to have the appropriate disqualification period imposed by the State agency unless it is expressly forbidden by the court or a different disqualification period is specified in the court order. Therefore, the Department is including in the final rule the clarification to 7 CFR 273.16(b)(5) suggested by the commenter.

In addition to changes reflected in the final rule because of the comments received regarding this provision, the Department is revising a paragraph in the regulations for clarification purposes. This paragraph discusses the treatment of disqualifications which occurred prior to the implementation of the disqualification periods set forth in a February 15, 1983 rulemaking (48 FR 6836). The final rule provides clarification in 7 CFR 273.16(b)(6) and 7 CFR 273.16(i)(5) by referring to the actual implementation date (April 1, 1983) of the provision contained in the February 15, 1983 rulemaking instead of making reference to the paragraph containing the penalties. The change has no substantive effect and is for purposes of clarification only.

Advance Notice of Administrative Disqualification Hearings

The Department proposed giving State agencies the option to deliver advance notices of administrative disqualification hearings via first class mail. The current regulations at 7 CFR 273.16(e)(3)(i) require that, if notices are mailed, they must be sent via certified mail—return receipt requested, and proof of receipt must be obtained. The proposed rule essentially eliminates the proof of receipt requirement. Of the nine comment letters received, six commenters specifically supported this provision of the proposed rule. However, some commenters had concerns regarding its applicability.

One commenter supported this proposal as a State agency option, rather than a requirement, citing that flexibility is necessary because of differences between State agencies in Program administration. The proposed rule would, in fact, make it an option by stating that, if mailed, the notice would be sent either via first class or certified

mail—return receipt requested. The Department is keeping this as an option in the final rule.

One commenter suggested that the Department add a qualifier to specify that returned first class mail constitutes failure to provide advance notice of an administrative disqualification hearing. In this manner, the commenter felt that the rule would be clear that the hearing would be canceled in such an event. The current regulations at 7 CFR 273.16(e)(4) state that if the affected individual "* * * cannot be located * * * the hearing shall be conducted without the household member being represented." This is not being changed in the final rule.

The Department proposed to make non-receipt of an advance notice a good cause criterion under 7 CFR 273.16(e)(4). Under the proposal, if the household member shows non-receipt of the notice in a timely fashion, any previous decision determined *in absentia* would no longer remain valid and the State agency would conduct a new hearing. The Department received a comment concerning the issue of what constituted a "showing of non-receipt" of the hearing notice in order to request a new hearing. The Department has determined that the circumstances in which non-receipt constitutes a good cause should be left up to each State agency to decide. This is being done to increase the degree of State agency flexibility in this area. However, each State agency's policy regarding the required circumstances shall be consistently applied within the State agency. This is reflected in 7 CFR 273.16(e)(3)(ii) in the final rule.

The Department also received three comments concerning the issue of what is considered "timely fashion" for individuals to show non-receipt of an advance notice. Two commenters stated that "timely fashion" needs to be defined. One commenter was concerned about the relevance to the current regulations at 7 CFR 273.16(e)(4) which state that the household has 10 days from the date of the scheduled hearing to present reasons indicating good cause for failure to appear at the hearing. The commenter suggested that the existing 10-day limit for presenting good cause be eliminated. The Department feels that the existing 10-day limit should remain intact for circumstances in which the individual is claiming good cause based upon circumstances other than non-receipt of the notice of the hearing. However, because mailing the hearing decision acts as a notice to the recipient of what occurred, the Department has determined that it is more meaningful to define "timely

fashion" for a good cause claim of non-receipt of the notice of hearing as being within 30 days after the date of the written notice of the hearing decision. This is reflected in 7 CFR 273.16(e)(4) in the final rule.

Imposition of Disqualification Penalties

The proposed rule clarifies existing regulations at 7 CFR 273.16(a), (e), (f) (g) and (h) by stating that an individual disqualified while not currently participating in the Food Stamp Program would have his/her disqualification period begin immediately after applying for and becoming eligible to receive benefits. This clarification became necessary because the use of the word "postponed" in the current regulations, when compared to "immediately" in the Act, became a cause of confusion which led to some court suits.

Of the nine comments received for this proposed rule, two commenters specifically supported this proposal. However, two other commenters had concerns regarding its applicability.

The first commenter stated that "immediately" should be interpreted to signify that the disqualification period begins once the appropriate State agency staff becomes aware that the individual to be disqualified has returned to the Program. The commenter further stated that this is a problem if the State agency is not promptly notified by the court of the decision. While the Department recognizes that disqualifying individuals may require coordination among various agencies within the State, the Department feels that allowing the disqualification to be delayed simply because the appropriate individuals within the State agencies are unaware of its existence is unfair to the individual being disqualified.

The second commenter suggested a wording change in § 273.16(a)(1) of the proposed rule. The commenter recommended changing "nonparticipants," in the last sentence of this section, to "persons not eligible to participate in the Program." The reason for the suggestion, according to the commenter, is for consistency purposes. The Department concurs that a wording change is necessary for clarification purposes. However, the Department feels that the change suggested by the commenter needs to be expanded. The basis for this is that the commenter's wording may suggest that the decision on the timing of the disqualification when the intentional Program violation determination is made is based on whether the individual is eligible to participate. This

implies that an eligibility determination must be completed at the time the intentional Program violation determination is rendered. This is not the Department's intent. The wording used in 7 CFR 273.16(a)(1) in the final rule, "* * * persons not currently certified to participate in the Program * * *," accurately describes the Department's intent because there is no implication of a test of eligibility.

Model Forms

The proposed rule would eliminate reference to the Food and Consumer Service providing two model forms currently used in the administrative disqualification hearing process. Most State agencies have designed their own State-specific forms based on regulatory requirements, thus reducing the effectiveness of and need for these models. No comments were received regarding this proposal. As part of an ongoing effort to do away with unnecessary Federal forms while affording State agencies maximum flexibility, the Department will no longer be providing these model forms.

Implementation

No comments were received on the implementation dates. The provision relating to the increased penalties at 7 CFR 273.16(b) is effective and was to be implemented no later than September 1, 1994. Current regulations at 7 CFR 273.2(b)(ii) and 7 CFR 273.16(d) require that the notice of disqualification penalties be included on the Food Stamp application form. Therefore, the Department, on March 16, 1994, issued an implementation memorandum requiring notice of the enhanced intentional Program violation disqualification penalties to be included on the Food Stamp application form by September 1, 1994.

The remaining provisions are effective and must be implemented October 23, 1995.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph(g)(142) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(142) *Amendment No. 357.* The provisions of Amendment No. 357 are effective and must be implemented as follows:

(i) The provision relating to the increased penalties at 7 CFR 273.16(b) is effective and must be implemented retroactive to September 1, 1994. This includes providing notification of the increased penalties on the application form.

(ii) The remaining provisions are effective and must be implemented October 23, 1995.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.16:
- a. The last sentence of paragraph (a)(1) is revised;
 - b. Paragraph (b) is revised;
 - c. Paragraph (e)(3) is revised;
 - d. The next to last sentence of paragraph (e)(4) is removed, and two sentences are added in its place;
 - e. Paragraph (e)(8)(iii) is revised;
 - f. The last sentence of paragraph (e)(9)(iii) is removed;
 - g. Paragraph (f)(2)(iii) is revised;
 - h. Paragraph (g)(2)(ii) is revised;
 - i. Paragraph (h)(1)(ii)(C) is revised;
 - j. Paragraph (h)(2)(ii) is revised; and
 - k. The second sentence of paragraph (i)(5) is revised.

The revisions and additions read as follows:

§ 273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) * * * For those persons not currently certified to participate in the Program at the time of the administrative disqualification or court decision, the disqualification period shall take effect immediately after the individual applies for and is determined eligible for Program benefits.

* * * * *

(b) *Disqualification penalties.* (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an

administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of six months for the first intentional Program violation, except as provided under paragraphs (b)(2) and (b)(3) of this section;

(ii) For a period of twelve months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2) and (b)(3) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twelve months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) The penalties in paragraphs (b)(2) and (b)(3) of this section shall also apply in cases of deferred adjudication as described in paragraph (h) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (b)(2) or (b)(3) of this section.

(5) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2) or (b)(3) of this section unless it is contrary to the court order.

(6) One or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(7) Regardless of when an action taken by an individual which caused an intentional Program violation occurred, the disqualification periods specified in paragraphs (b)(2) and (b)(3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(8) State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(9) Even though only the individual is disqualified, the household, as defined in § 273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims shall be established and collected in accordance with the procedures set forth in § 273.18.

* * * * *

(e) *Disqualification hearings.* * * *

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

(ii) If no proof of receipt is obtained, a timely (as defined in paragraph (e)(4) of this section) showing of nonreceipt by the individual due to circumstances specified by the State agency shall be considered good cause for not appearing at the hearing. Each State agency shall establish the circumstances in which non-receipt constitutes good cause for failure to appear. Such circumstances shall be consistent throughout the State agency.

(iii) The notice shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(E) A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in disqualification periods as determined by paragraph (b) of this

section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the individual's rights as contained in § 273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(iv) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the individual of his/her right to obtain a copy of the State agency's published hearing procedures upon request.

(v) Each State agency shall develop an advance notice form which contains the information required by this section.

(4) *Scheduling of hearing.* * * * In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice as specified in paragraph (e)(3)(ii) of this section, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. * * *

* * * * *

(8) *Imposition of disqualification penalties.* * * *

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

* * * * *

(f) *Waived hearings.* * * *

(2) *Imposition of disqualification penalties.* * * *

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

* * * * *

(g) *Court Referrals.* * * *

(2) *Imposition of disqualification penalties.* * * *

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately

after the individual applies for and is determined eligible for benefits.

- * * * * *
- (h) *Deferred adjudication.* * * *
- (1) *Advance notification.* * * *
- (ii) * * *

(C) A warning that the disqualification periods for intentional Program violations under the Food Stamp Program are as specified in paragraph (b) of this section, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

* * * * *

(2) *Imposition of disqualification penalties.* * * *

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

- * * * * *
- (i) *Reporting requirements.* * * *

(5) * * * However, one or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. * * *

* * * * *

Dated: August 15, 1995.

George A. Braley,
Acting Administrator, Food and Consumer Service.
 [FR Doc. 95-20687 Filed 8-21-95; 8:45 am]
 BILLING CODE 3410-30-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-121-AD; Amendment 39-9334; AD 95-17-05]

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that requires inspections to detect loose self-locking nuts and damaged cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand main landing gear (MLG), and

correction of discrepancies. This amendment also provides an optional terminating action for the repetitive inspections. This amendment is prompted by reports of loose nuts and sheared cotter pins found on in-service airplanes. The actions specified by this AD are intended to prevent an undampened free fall of the left- and right-hand MLG, which subsequently could lead to the inability to retract the MLG and damage to other airplane systems.

DATES: Effective September 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. 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: Tim Backman, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1149.

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 Airbus Model A310 series airplanes was published in the **Federal Register** on November 19, 1993 (58 FR 61037). That action proposed to require repetitive inspections to detect loose self-locking nuts and damaged cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand main landing gear (MLG). That action also proposed to require replacement of loose nuts with new washers and new nuts, and torque tightening the nuts; replacement of damaged cotter pins with new cotter pins; and submission of inspection reports.

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

One commenter supports the proposed rule.

Certain commenters request that the proposed rule be revised to cite the latest revision of Messier Bugatti Airbus A310 Service Bulletin 470-32-744 as an

additional source of service information. The FAA concurs. Since the issuance of the proposed rule, Messier Bugatti (the manufacturer of the MLG assembly) has issued Revision 1 of Messier Bugatti Airbus A310 Service Bulletin 470-32-744, dated January 13, 1994. This revised service bulletin is essentially identical to the original version and does not entail any additional work. Therefore, the final rule has been revised to reference Revision 1 of the service bulletin as an additional source of service information.

Three commenters request that the FAA revise the proposal to reference the accomplishment of the modification procedures described in Messier Bugatti Airbus A310 Service Bulletin 470-32-760 as a terminating modification for the repetitive inspection requirements. One of these commenters states that the modification described in this service bulletin includes a new hinge pin design that will preclude the previously identified problems.

The FAA concurs. Since issuance of the proposed rule, Messier Bugatti has issued Airbus A310 Service Bulletin 470-32-760, dated December 31, 1993, as revised by Change Notice 1, dated January 28, 1994. This service bulletin describes procedures for modification of the actuating cylinder/drag strut attachment of the MLG. The modification entails modifying the greasing duct to enable simultaneous rotation of the duct and cupel. The modification also entails modifying the anti-warping washer to provide rotation play with the actuating cylinder hinge pin. The modification will eliminate the risk of rupture of the cotter pin. Accomplishment of this modification eliminates the need for the repetitive inspections. Additionally, Airbus has issued Service Bulletin A310-32-2076, Revision 1, dated December 13, 1994, which references this Messier Bugatti service bulletin and is essentially identical to it.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory. However, the FAA finds that the actions specified in the service bulletins may be provided as an optional terminating modification for the repetitive inspection requirements of the AD. The FAA has determined not to mandate the modification, since the inspection area is easily accessible, the discrepancies can be easily detected, and the inspection is easily performed without the need to remove any intervening structure. The FAA has added a new paragraph (c) to the final rule, which provides for this