monitoring device that is permanently installed on each cargo tank by [*Either* **OPTION ONE,** five years after effective date, *or* **OPTION TWO**, three years after the effective date].

(b) Each device must meet the following requirements:

(1) Be intrinsically safe as per 46 CFR 111.105;

(2) Indicate any loss of power or failure of the tank level or pressure monitoring device and monitor the condition of the alarm circuitry and sensor by an electronic self-testing feature;

(3) Alarm at or before the cargo in the cargo tank either increases or decreases by a level of one percent from the cargo quantity in the tank after securing cargo transfer operations;

(4) Operate in heavy seas, moisture, and varying weather conditions; and

(5) Have audible and visual alarm indicators which are distinctly identifiable as cargo tank level or pressure monitoring alarms that can be seen and heard on the navigation bridge of the tank ship or towing vessel and on the cargo deck area.

(c) Double-hull tank vessels are exempt from the requirements of this section.

(d) This section does not apply to tank vessels that carry asphalt as their only cargo.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

3. The authority citation for 33 CFR Part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

4. Add in § 156.120 paragraph (ee) as follows:

§ 156.120 Requirements for transfer.

* * * * *

(ee) Each tank level or pressure monitoring device must be activated and monitored whenever the tank is not actively being subjected to cargo operations.

46 CFR Chapter I

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

5. The authority citation for Part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–308, 104 Stat. 515.

Subpart 32.22T [Removed]

6. Remove subpart 32.22T (§§ 32.22 T–1 and 32.22T–5).

Dated: September 26, 2001.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 01–24493 Filed 9–26–01; 4:44 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AH21

Total Disability Ratings Based on Inability of the Individual To Engage in Substantially Gainful Employment

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend those portions of its adjudication regulations and its Schedule for Rating Disabilities dealing with the issue of total disability ratings based on inability of the individual to engage in substantially gainful employment in claims for service-connected compensation or non-service-connected pension. The purpose of these proposed changes is to revise and clarify the procedures and substantive standards for determining whether a veteran's disabilities, although they do not meet the schedular requirements for a total rating, nonetheless prevent him or her from engaging in substantially gainful employment. The intended effect of this action is to establish clear standards for assigning a total rating based on the individual's inability to engage in substantially gainful employment and to ensure consistency of decisions in such claims.

DATES: Comments must be received on or before November 30, 2001.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AH21.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Janice Jacobs, Consultant, Regulations Staff, Compensation and Pension Service (211), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7223.

SUPPLEMENTARY INFORMATION: It is a long-standing VA policy to assign a total (100 percent) rating for an individual veteran who is unable to engage in a substantially gainful occupation because of his or her disabilities. When the veteran does not meet the requirements for a total rating under the Schedule for Rating Disabilities, 38 CFR part 4, but because of unusual individual circumstances, he or she is nonetheless prevented from engaging in substantially gainful employment because of disability, VA may assign a total rating.

The regulations governing these extra-schedular ''individual unemployability'' ratings are scattered throughout part 3 and subpart A of part 4 of 38 CFR. (*See* 38 CFR 3.321, General rating considerations; § 3.340, Total and permanent total ratings and unemployability; § 3.341, Total disability ratings for compensation purposes; § 3.342, Permanent and total disability ratings for pension purposes; § 4.15, Total disability ratings; § 4.16, Total disability ratings for compensation based on unemployability of the individual; § 4.17, Total disability ratings for pension based on unemployability and age of the individual; and § 4.18, Unemployability.) The United States Court of Appeals for Veterans Claims (the Court) has characterized these regulations as ''a confusing tapestry for the adjudication of claims.'' *Hatlestad* v. *Derwinski,* 1 Vet. App. 164, 167 (1991); *see also Talley* v. *Derwinski,* 2 Vet. App. 282 (1992). In addition to being scattered and confusing, the current regulations neither define the terms used nor clearly state specific requirements for entitlement to a total rating based on inability of the individual to engage in substantially gainful employment.

In order to address these problems and make the provisions clearer and more uniform, we propose to make a number of changes throughout §§ 4.15 through 4.18. The current regulations use the various terms ''secure and follow,'' ''secure or follow'' and ''follow'' substantially gainful employment. We propose to employ a single term, ''engage in'' substantially gainful employment. We propose to define terms used and outline specific requirements for these special ratings. We propose to make the regulations in 38 CFR part 3 (§§ 3.321, 3.340, 3.341,

and 3.342) consistent with the proposed provisions of part 4, subpart A and in both part 3 and part 4, remove redundant or otherwise unnecessary material, i.e., material which neither prescribes VA policy nor establishes procedures decisionmakers must follow. We also propose to make other changes to both part 3 and part 4 for purposes of clarity and to amend authority citations as appropriate.

A portion of the current § 4.15 repeats the purpose of the rating schedule already contained in § 4.1, stating that the rating is based primarily upon the average impairment in earning capacity. It also states, among other things: that the ability to overcome the handicap of disability varies widely among individuals; that full consideration must be given to unusual physical or mental defects in individual cases that might prevent the usual amount of success in overcoming the handicap of disability; that total disability will be considered to exist when there is present any impairment of mind or body sufficient to render it impossible for the average person to follow a substantially gainful occupation; and that specific disabilities are considered permanently and totally disabling. Some of this information is also contained in § 3.321, which provides for approval of extra-schedular ratings for those cases where the percentage evaluation provided by the rating schedule does not reflect the actual limitations imposed by the service-connected disabilities.

We propose to eliminate as unnecessary the portions of § 4.15 that are stated elsewhere and to rewrite the section so that it will clearly state VA's long-standing policy to assign a total rating in individual cases where permanent physical or mental impairment results in an inability to engage in substantially gainful employment.

Since the specific disabilities listed in § 4.15 as permanently and totally disabling (i.e., permanent loss of use of both hands (DC 5106, 5109); both feet (DC 5107, 5110); one hand and one foot (DC 5104, 5105, 5108, 5111); and sight of both eyes (DC 6061–6063, 6067, 6071)) all warrant a 100 percent schedular rating under subpart B of the Schedule for Rating Disabilities, it is redundant to designate them as permanently and totally disabling here.

Section 4.15 also provides that permanent helplessness or permanently-bedridden status will constitute permanent total disability. In service-connected compensation claims, those provisions are superfluous because 38 U.S.C. 1114(l) and (m) provide for compensation amounts greater than those payable for 100 percent disability in cases where a veteran is, due to service-connected disability, permanently bedridden or so helpless as to be in need of regular aid and attendance. For purposes of pension entitlement, although permanent helplessness or permanently-bedridden status may provide sufficient evidence of permanent and total disability, there may be cases where such status would not establish the existence of permanent and total disability (such as where the veteran is employed and earning significant income from employment). Accordingly, in our judgment, it is preferable to establish a uniform standard for determining whether a claimant whose disabilities are rated less than 100 percent disabling is unable to engage in substantially gainful employment, rather than to presume such inability based on helplessness or bedridden status. (*See* 38 CFR 3.351, 3.352.)

Section 4.16 currently states that a total rating for compensation purposes may be assigned if the schedular rating is less than total but, in the judgment of the rating activity, the veteran is unable to secure or follow a substantially gainful occupation due to service-connected disabilities. However, the factors that would trigger rating activity consideration and the specific requirements for these total ''extra-schedular'' ratings are not specified. We propose to reorganize and rewrite this section to establish clear requirements.

In proposed section 4.16(a) we provide that a total rating based on individual unemployability may be assigned only if the veteran's disabilities do not warrant a total schedular rating. Because these extra-schedular provisions are for application only when a total schedular rating cannot be established, a decision to assign an extra-schedular rating always requires review of the particular circumstances in that case. Disability ratings are to be based as far as practicable on the rating schedule. Current regulations in § 4.16(a) make clear that total disability ratings based on individual unemployability are intended only to ensure appropriate compensation to persons who are unemployable due to disability but do not meet the schedular requirements for a total disability rating. Consequently, when a veteran is entitled to a total schedular rating, the justification for a total disability rating based on individual unemployability ceases to exist. We therefore propose to state in § 4.16(a) that a total schedular rating cancels an existing rating that was assigned based on inability to engage in substantially gainful employment. The cancellation of a total rating based on individual unemployability under these circumstances will not result in a reduction of benefits, and the procedural provisions concerning the reduction or discontinuance of benefits are not applicable. We propose to amend § 3.343(c) to make clear that the procedural provisions to which it refers for reduction of benefits are not applicable when a total disability rating based on individual unemployability is replaced by a total schedular rating.

In § 4.16(b), we propose to clarify that a total disability rating based on individual unemployability will not be assigned if the veteran already has a total schedular rating. A total disability rating based on individual unemployability could not result in any additional benefits to a veteran who already has a total service-connected rating. This provision is not a change, but merely a clarification of principles established by existing regulations.

Claimants may establish entitlement to a total rating based on inability to engage in substantially gainful employment if circumstances unique to their individual situations cause the effects of their disabilities to be more severe than they would be in the average person. We propose to specifically state in § 4.16(b) that a total rating for compensation purposes assigned because of inability of the individual to engage in substantially gainful employment encompasses all service-connected disabilities existing at the time the total rating is assigned. The intent of this change is to ensure that the overall effect of the service-connected disabilities and their impact upon one another is fully considered in determining if those disabilities prevent the individual from engaging in substantially gainful employment.

We propose to state in § 4.16(d) that a determination as to whether a veteran is unable to engage in substantially gainful employment due to service-connected disability or disabilities will be based upon evidence of the veteran's ability to perform the activities normally required for substantially gainful employment with the regularity and for the duration required for substantially gainful employment. We propose to include a list of specific factors which the rating activity must address in every claim for a total rating for compensation purposes based on inability of the individual to engage in substantially gainful employment.

In *Moore* v. *Derwinski,* 1 Vet. App. 356, 359 (1991), the Court suggested that VA regulations on this issue address what a veteran can and cannot do in a practical rather than a theoretical

manner. In § 4.16(d)(1), we propose to require that the rating activity consider medical evidence describing the veteran's service-connected disabilities and the extent to which they limit the veteran's ability to perform ''activities normally required for substantially gainful employment.'' This phrase, as defined in proposed § 4.16(g)(2), means both exertional and non-exertional activities that, as a group, affect the ability to engage in any form of employment. Exertional activities would include, but would not be limited to, the ability to sit, stand, walk, push, pull, use hands, reach, lift and carry. Non-exertional activities would include, but would not be limited to, the ability to communicate, remember, follow instructions, use judgment, adapt to changes, and deal with people, including supervisors, co-workers, and the public. Requiring the rating decision to be based upon the veteran's ability to perform these specific activities would assure that each decision would be based on more objective findings rather than merely on the evaluator's interpretation of the subjective term ''unemployable.''

In § 4.16(d)(2), we propose to require that the rating activity consider evidence of any other unusual limitations imposed by the service-connected disabilities, such as that they require uncharacteristically frequent periods of hospitalization, or that there are unusual effects of medication, etc. We believe that these factors could affect an individual's ability to perform activities necessary for employment and thus should be part of any unemployability determination.

Under current provisions of § 4.16, entitlement to a total rating for compensation purposes because of inability of the individual to engage in substantially gainful employment is based solely on service-connected disability or disabilities without considering age and non-service-connected disabilities in making the determination. (*See* §§ 4.19 and 3.341.) We propose to include at § 4.16(e) a list of factors that VA would disregard in determining entitlement to this rating. In addition to age and non-service-connected disabilities, we propose that VA would disregard: the veteran's training or lack thereof unless service-connected disabilities would impede further training; the state of the economy in the veteran's community; and the fact that prior employment may have been terminated due to such factors as employer relocation or technological advances that make a prior job obsolete. In our judgment these factors have no bearing on the effect of service-connected disability on the claimant's ability to perform activities deemed necessary for employment.

We propose to state at § 4.16(e)(3) that VA will not consider a veteran's training or lack thereof in the rating decision because training in one field does not preclude employment in some other area, nor does lack of training preclude a veteran from being successfully trained to engage in some form of substantially gainful employment. However, if further training is not feasible because of service-connected disabilities, that is a factor VA should take into account in assessing the veteran's ability to engage in substantially gainful employment.

Similarly, neither the state of the economy in the veteran's community nor the fact that a job the veteran previously held has been eliminated because of technological advances or employer relocation renders the veteran incapable of performing other substantially gainful employment. We propose to exclude these factors from consideration at § 4.16(e)(4) and (e)(5) in order to focus the determination on whether a veteran can perform activities necessary to engage in substantially gainful employment rather than on whether he or she is unemployed.

We propose that § 4.16(f)(1) will state the percentages required for a rating activity to assign a total evaluation without referral to any other VA official. Current regulations in § 4.16(a) provide that a rating board may assign a total rating without referral to any other official if the veteran has a single service-connected disability rated at least 60 percent disabling or has a single service-connected disability rated at least 40 percent disabling and sufficient additional service-connected disability to result in a combined rating of at least 70 percent. Current § 4.16(a) also states that certain combinations of disabilities may be considered as a single disability for purposes of this determination. We are proposing to retain the current requirement of a 60 percent evaluation for a single disability now contained in § 4.16(a). However, we propose to reduce the threshold for combined ratings from 70 percent to 60 percent and to eliminate the requirement that one of the disabilities must be rated at least 40 percent disabling. In our view, multiple service-connected disabilities combining to a 60 percent evaluation are no less likely to result in total disability based on individual unemployability than single service-connected disabilities evaluated as 60 percent or higher. We also believe that disabilities resulting in a combined rating of 60 percent may have approximately the same effect on a veteran's ability to engage in substantially gainful employment, regardless of whether one of the disabilities is rated at 40 percent or more. The proposed rule would, therefore, apply the same standard to all veterans having a combined rating of 60 percent or more.

Because the proposed rules would eliminate the different percentage thresholds applicable to single disability ratings and combined ratings, there is no need to retain the provisions in current § 4.16(a) stating that certain combinations of disabilities (e.g., multiple disabilities incurred in combat or in a single accident) may be treated as a single disability for purposes of applying those threshold requirements. Accordingly, we are not including those provisions in the proposed rules.

Consistent with current regulations, we propose to require that if the specified percentage ratings are not met, but in the judgment of the rating activity the evidence shows that the veteran is unable to engage in substantially gainful employment due to service-connected disabilities, the rating activity will prepare an extra-schedular total rating for the approval of the Director of the Compensation and Pension Service.

The Court has held that, under the current regulation, the Board of Veterans' Appeals (BVA) is precluded from assigning an extra-schedular rating in the first instance. (See *Floyd* v. *Brown,* 9 Vet. App. 88 (1996).) In our judgment, requiring BVA to remand such cases to a regional office for a decision not only serves no useful purpose, it significantly increases the time that a claimant must wait for a decision on his or her appeal. We therefore propose to state in § 4.16(f)(3) that, in cases before BVA on appellate review, the authority to authorize extra-schedular ratings extends to BVA. This proposal would reduce the number of cases remanded by BVA for regional office consideration and improve timeliness of appeals.

The current unemployability regulations provide no clear definition of what constitutes ''substantially gainful employment.'' The regulations state that marginal employment (defined, generally, as earned annual income below the level established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person) is not considered substantially gainful employment. The Court has pointed out, however, that a purely negative definition, i.e., one that states what is not substantially gainful employment, is not adequate. (*See Ferraro* v. *Derwinski,*

1 Vet. App. 326, 333 (1991).) We propose to: eliminate the concept of marginal employment; define ''substantially gainful employment''; and state that if a veteran is employed, earned income that exceeds an amount that is more than twice the Maximum Annual Pension Rate (MAPR) for a veteran without dependents under 38 U.S.C. 1521(b) (as increased under 38 U.S.C. 5312(a)) will be considered conclusive evidence that the veteran is engaged in substantially gainful employment.

We propose to define ''substantially gainful employment'' as any work that is generally done for pay or profit that the veteran is able to perform with sufficient regularity and duration to provide a reliable source of income. This definition takes into account that general abilities and skills are necessary for any type of employment and that in order for employment to be ''substantially gainful,'' work must be performed with reasonable consistency and for a reasonable period of time.

As noted above, we propose to state that if a veteran is employed, earned income that exceeds an amount that is twice the MAPR for a veteran without dependents under 38 U.S.C. 1521(b) (as increased under 38 U.S.C. 5312(a)) will be considered conclusive evidence that the veteran is engaged in substantially gainful employment. This amount roughly doubles the current level used to define ''marginal'' employment. Although the current regulation at § 4.16 defines marginal employment according to a level of earnings, it also allows exceptions. For example, employment may be held to be ''marginal,'' and therefore not substantially gainful, when earnings exceed the established level if a veteran is employed in a ''protected environment.'' We propose to eliminate such exceptions so that the standard to determine whether a veteran is able to engage in substantially gainful employment applies equally to all veterans in an objective and impartial manner.

The MAPR reflects the reasoned judgment of Congress concerning levels of income which are adequate to meet the ordinary needs of individuals with no other income and was designed to create a national minimum standard necessary to meet basic needs. This judgment is outlined in the legislative history of the Veterans' and Survivors' Pension Improvement Act of 1978, Pub. L. No. 95–588 (*See* H.R. Rep. No. 1225, 95th Cong., 2d Sess. 27 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5583, 5608–5609). The MAPR is regularly adjusted for cost-of-living increases pursuant to 38 U.S.C. 5312. In our judgment, it is reasonable to conclude that an individual earning twice that amount from employment is engaged in substantially gainful employment, thus making further inquiry under the standards of §§ 4.16 and 4.17 unnecessary.

Section 4.17 is currently titled ''Total disability ratings for pension based on unemployability and age of the individual.'' We propose to retitle this section ''Permanent and total disability ratings for pension purposes.'' While this would not be a substantive change, it more accurately reflects the content of the section.

In discussing pension entitlement, § 4.17 currently states ''When the percentage requirements [in current § 4.16(a)] are met, and the disabilities involved are of a permanent nature, a rating of permanent and total disability will be assigned if the veteran is found to be unable to secure and follow substantially gainful employment by reason of such disability.'' This section also provides that if the veteran is unemployable but fails to meet the percentage standards, the claim will be referred to the Adjudication Officer. The requirements for a permanent and total evaluation for pension purposes are further discussed in § 3.321(b)(2), which states that if the veteran ''is found to be unemployable by reason of his or her disability(ies), age, occupational background and other related factors,'' an extra-schedular permanent and total rating can be approved. Neither section specifies the manner in which these various factors will be considered.

We propose to retain the basic provisions of the current § 4.17 but revise the language governing pension determinations to make it clear that the rating activity is authorized to approve a permanent and total disability rating if the veteran has either a single disability rated at 60 percent or more, or a combination of disabilities resulting in a combined rating of 60 percent or more. For the reasons stated above with respect to compensation claims, this would eliminate the difference in current regulations between the threshold requirements in claims based on a single disability and those based on a combination of disabilities. Current regulations require that a permanent and total disability rating will be referred for approval by the Adjudication Officer if the evidence establishes that the veteran is unable to engage in substantially gainful employment, but his or her disabilities do not meet basic percentage requirements necessary for the rating activity to assign a total rating for pension purposes. We propose to retain this requirement, but to designate the Service Center Manager as the approving official. As part of its Business Process Reengineering efforts, the Veterans Benefits Administration has merged the traditional Adjudication and Veterans Services functions within its regional offices and replaced Adjudication Officers with Service Center Managers. This provision incorporates that change in title. We also propose to state in § 4.17 that, in cases before the Board of Veterans' Appeals on appellate review, the authority to authorize extra-schedular ratings extends to BVA. This is consistent with the previously-explained provisions of proposed § 4.16.

In rating the disability levels under § 4.17, we propose to require that all permanent disabilities that are not due to misconduct be considered. We propose to require that if the rating assigned for the veteran's disabilities does not satisfy the requirements for a total schedular rating, the determination of permanent and total disability will be based on evaluation of the veteran's ability to perform the specific employment-related activities outlined in proposed § 4.16. We have previously explained these proposed provisions. Their adoption here will assure that all ratings are based on the same standard.

As discussed above, the current provisions of § 3.321(b)(2) allow a total rating for pension purposes if the veteran is unemployable by reason of disability, age, occupational background, and ''other related factors.'' Because the regulations do not specify how these factors will be considered, we propose to replace the general term ''other related factors'' with the more specific term ''training or education'' in § 4.17(e) and state that we will consider age, occupational background, training and education only to the extent that they limit further training and adaptation in a veteran. In our judgment, this will clarify that the basic requirement for a permanent and total disability rating is that the veteran is unemployable because of disability and will eliminate any implication in the current rule that a permanent and total rating may be assigned where the veteran is unemployable primarily due to age and factors other than disability.

Similarly, we propose to state in § 4.17(f) that in determining whether the veteran is entitled to a permanent and total rating, VA will disregard the state of the economy in the veteran's community and, if applicable, the fact that the veteran's previous employment has been eliminated due to such factors as technological advances or employer relocation. We have previously explained our reasons for disregarding

these factors in § 4.16, and we believe adopting this provision here will properly focus the decision on whether the veteran is prevented from engaging in substantially gainful employment because of disability.

In § 4.17 we propose to define substantially gainful employment as any work generally done for pay or profit that the veteran is able to perform with sufficient regularity and duration to provide a reliable source of income. This definition is consistent with compensation requirements in proposed § 4.16, and our rationale for this definition has already been explained. Again, for consistency with the compensation regulations, we propose to state that if a veteran is employed, earned income greater than an amount equal to twice the MAPR for a veteran with no dependents is conclusive evidence that the veteran's employment is substantially gainful.

Section 4.17a, Misconduct etiology, currently states that a permanent and total disability rating under the provisions of §§ 4.15, 4.16, and 4.17 is not precluded by the existence of a disability that is due to the veteran's own willful misconduct when there is also separate, innocently acquired disability rated as 100 percent disabling, or if there are separate innocently acquired disabilities which themselves cause inability of the individual to engage in substantially gainful employment. The principles pertaining to willful misconduct are contained in VA's regulations at §§ 3.1 Definitions (in paragraphs (m) ''in line of duty'' and (n) ''willful misconduct''); 3.3 Pension; 3.4 Compensation; and 3.301 Line of duty and misconduct. Since these provisions clearly state that direct service connection or pension may be granted only for disability not due to the veteran's own willful misconduct, we propose to delete § 4.17a because its provisions are unnecessary.

Section 4.18, Unemployability, currently states that a veteran may be considered unemployable upon termination of employment which made some accommodation for disability if he or she cannot secure further employment. The proposed regulations would recognize that any time a veteran claims inability to be employed due to disability, an assessment of the veteran's ability to perform activities generally necessary for substantially gainful employment would be the determining factor in assigning a total rating. For this reason, the nature of the prior employment and any employer concessions which enabled the veteran to engage in employment would be irrelevant and we propose to delete that statement.

Section 4.18 also currently states that in the case of traumatic injuries of static character (*i.e.,* amputations, fractures, etc.) an extra-schedular rating will require a finding of continuous unemployability from either the date of the trauma or the date the disability stabilized. Exceptions are allowed if employment is ''occasional, intermittent, tryout or unsuccessful.'' We believe that even when the level of disability has been stable for an extended period, it is possible for unusual individual circumstances to develop at any time that could cause the effect of service-connected disabilities to be more severe than they are in the average person. Accordingly, we propose to delete the requirement for a finding of continuous unemployability from the date of traumatic injury or stabilization of such injury.

The current § 4.18 further states that when inability of the individual to engage in substantially gainful employment for pension purposes has been established based on combined service-connected and non-service-connected disabilities, and the service-connected disability has increased in severity, the rating activity must determine whether the veteran is unemployable under the provisions of § 4.16. 38 CFR 3.103(a) requires VA as a matter of policy ''to render a decision which grants every benefit that can be supported in law.'' Because VA's policy as stated in § 3.103(a) already requires consideration of a total unemployability rating under the circumstances in question, that portion of § 4.18 is unnecessary and we propose to delete it. In light of all these factors, we propose to delete § 4.18 in its entirety.

Section 3.321 is currently titled ''General rating considerations.'' We propose to retitle this section ''General rating principles'' to more accurately reflect the content. The current § 3.321(a), Use of rating schedule, states that the Schedule for Rating Disabilities will be used for evaluating the degree of disability in veterans' claims and repeats provisions of § 4.1 stating that the Rating Schedule will represent the average impairment in earning capacity resulting from disability. We propose to eliminate the redundant language and simply state that in claims for benefits, disabilities will be rated under the Schedule for Rating Disabilities, 38 CFR part 4.

Section 3.321(b), currently titled ''Exceptional cases,'' contains separate paragraphs referring to extra-schedular evaluations for compensation and pension and the effective dates for such evaluations. Much of this material is stated elsewhere in the proposed regulations. (*See* § 4.16 Total disability rating for compensation based on inability of the individual to engage in substantially gainful employment; § 4.17 Permanent and total disability rating for pension purposes; *see also* current § 4.1 and § 3.400 (governing effective dates).)

We propose to rewrite § 3.321 to provide separate paragraphs addressing (1) extra-schedular ratings where the percentage rating provided for a specific disability under the Schedule for Rating Disabilities does not adequately reflect the actual limitation imposed by the service-connected disability or disabilities in an individual case, and (2) extra-schedular ratings based on an individual's inability to engage in substantially gainful employment.

We propose to title § 3.321(b) ''Extra-schedular ratings in unusual cases'' and to state that in unusual cases, if in the judgment of the rating activity, the percentage rating provided for specific disability by the Schedule for Rating Disabilities does not adequately reflect the actual limitations imposed upon that individual by service-connected disabilities, the rating activity will prepare an extra-schedular rating for the approval of the Director of the Compensation and Pension Service. We propose to require that the rating specify the unusual limitations and the percentage rating that in the judgment of the rating activity adequately reflects those limitations in order to clearly establish the reasons and bases for an extra-schedular rating. The current § 3.321(b) reserves approval authority to either the Under Secretary for Benefits or the Director of the Compensation and Pension Service. The Director of the Compensation and Pension Service, who provides technical expertise and advice to the Under Secretary for Benefits on a wide variety of compensation and pension issues, is well qualified to exercise this authority in an objective and impartial manner. Further, there is no need to elevate these determinations to the Under Secretary for Benefits. Therefore, we propose that the Director of the Compensation and Pension Service will have the sole authority to approve extra-schedular ratings in such cases. However, we also propose to state in this paragraph that, in cases under appeal to BVA, the authority to approve an extra-schedular rating extends to BVA. This is consistent with the previously explained provisions of proposed §§ 4.16 and 4.17.

We propose to title § 3.321(c) ''Extra-schedular ratings based on an individual's inability to engage in

substantially gainful employment'' and state that the rating activity will prepare an extra-schedular rating in accordance with the standards and procedures provided in § 4.16 or § 4.17.

The current § 3.321(c), titled ''Advisory opinion,'' states that if the application of the schedule or propriety of an extra-schedular rating is questionable in a particular case, the field station may submit that case to Central Office for advisory opinion. This is a statement of internal agency procedure and does not affect any rights or obligations of claimants. In our opinion, it is inappropriate to include this provision in a regulation and we propose to delete it.

Section 3.340 is currently titled ''Total and permanent total ratings and unemployability.'' We propose to retitle this section ''Miscellaneous provisions pertaining to ratings based on an individual's inability to engage in substantially gainful employment,'' eliminate unnecessary paragraphs, and consolidate into § 3.340 miscellaneous provisions pertaining to inability of the individual to engage in substantially gainful employment currently contained in § 3.341 ''Total disability ratings for compensation purposes.'' We propose to delete §§ 3.341 and 3.342.

The paragraphs we propose to eliminate in § 3.340 are paragraph (a) ''Total disability ratings''; paragraph (a)(1) ''General''; paragraph (a)(2) ''Schedule for rating disabilities''; paragraph (a)(3) ''Ratings of total disability on history''; and paragraph (b) ''Permanent total disability.'' These paragraphs essentially repeat or would be superseded by the provisions outlined in proposed §§ 4.16 and 4.17 pertaining to extra-schedular ratings for compensation and pension claims based on inability of the individual to engage in substantially gainful employment. We propose to retain § 3.340(c) ''Insurance ratings'' without change, except to add an authority citation following it.

We propose to move § 3.341(b) ''Incarcerated veterans,'' and § 3.341(c) ''Program for vocational rehabilitation,'' to § 3.340 and to redesignate those paragraphs as § 3.340(a) and (b), respectively. We also propose to eliminate as redundant § 3.341(a) ''General,'' which addresses extra-schedular total ratings.

We propose to delete § 3.342 in its entirety. The current § 3.342(a) states that permanent and total ratings for pension purposes are authorized for disabling conditions not the result of the veteran's own willful misconduct whether or not they are service-connected, and the current § 3.342(b)(1) states that disability pension will be authorized for congenital, developmental, hereditary or familial conditions. We propose to delete both of these paragraphs as unnecessary since they merely repeat provisions for permanent and total disability ratings contained in proposed § 4.17(e).

The current § 3.342(b)(2) contains separate provisions that relate to substantive determinations of permanence and to the effective dates of determinations of permanence. The current § 3.342(b)(2) states, for example, that permanence will be presumed for active pulmonary tuberculosis after six months' hospitalization without improvement, and may be presumed after six months' hospitalization without improvement for other types of disabilities requiring hospitalization for indefinite periods. It also states that the effective date of a determination of permanence will be the date of hospital admission in certain circumstances, such as when a ''waiting period'' is required to determine if a condition is permanent. We propose to delete the sentences in § 3.342(b)(2) that relate to both of these issues. In our judgment, it is preferable to make decisions regarding permanence of disability using the uniform ''reasonably certain to continue'' standard in proposed § 4.17(a)(3) and to require that the effective dates of all such decisions be governed by the uniform effective date provisions of § 3.400(b)(1).

Section 3.342(b)(3) relates to the question of permanence of disability if a veteran is under the age of 40. We also propose to delete this provision. In our judgment, stating that it must be reasonably certain that the disability will continue throughout the veteran's lifetime is sufficient to assure that determinations of permanence will be based on this uniform standard, making additional specifications relating to the veteran's age unnecessary.

Section 3.342(c) is entitled ''Temporary program of vocational rehabilitation training for certain pension recipients.'' Under 38 U.S.C. 1524, temporary vocational rehabilitation eligibility was provided for veterans who were awarded pension during the program period, or those who applied for vocational training under the provisions of this temporary program. The program period, which began on February 1, 1985, and ended on December 31, 1995, has now expired; therefore, § 3.342(c) is unnecessary and we propose to delete it.

Section 3.400(b)(1)(ii)(B), concerning effective dates in disability pension claims filed on or after October 1, 1984, contains a cross-reference to § 3.342(a). Since we propose to delete paragraph § 3.342 in its entirety, we also propose to delete this cross-reference.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this rule would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

38 CFR Part 4

Disability benefits, Pensions, Individuals with disabilities, Veterans.

Approved: May 25, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 3 and 4 are proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.321 is revised to read as follows:

§ 3.321 General rating principles.

(a) *Use of rating schedule.* In claims for benefits administered by the Department of Veterans Affairs, disabilities must be rated under the Schedule for Rating Disabilities, part 4 of this chapter.

(**AUTHORITY:** 38 U.S.C. 1155)

(b) *Extra-schedular ratings in unusual cases.* If, in the judgment of the rating activity, there are unusual circumstances which cause the percentage rating provided for specific disability by the Schedule for Rating Disabilities to inadequately reflect the actual limitations imposed upon an individual by the service-connected disability or disabilities, the rating activity will prepare an extra-schedular rating for the approval of the Director of the Compensation and Pension Service. The extra-schedular rating must include a full description of the unusual circumstances that warrant an extra-schedular rating and state what rating in the judgment of the rating activity is commensurate with the impairment in earning capacity due exclusively to the service-connected disability or disabilities. In a case under appeal to the Board of Veterans' Appeals, the Board is authorized to assign an extra-schedular rating under this section.

(c) *Extra-schedular ratings based on an individual's inability to engage in substantially gainful employment.* If in the judgment of the rating activity a veteran is unable to engage in substantially gainful employment because of disability but does not meet the requirements for a total rating under the Schedule for Rating Disabilities, the rating activity will prepare a rating assigning an extra-schedular total rating in accordance with the standards and procedures provided in § 4.16 or § 4.17 of this chapter. The extra-schedular rating must include a full description of the unusual circumstances that warrant an extra-schedular rating and the factors that in the judgment of the rating activity prevent the veteran from engaging in substantially gainful employment.

(**AUTHORITY:** 38 U.S.C. 501(a), 512(a), 1110, 1131, 1521(a))

Cross-references: Total disability ratings for compensation based on an individual's inability to engage in substantially gainful employment. See § 4.16. Permanent and total disability ratings for pension purposes. See § 4.17.

3. Section 3.340 is amended by:

a. Revising the section heading.

b. Removing paragraphs (a) and (b).

c. Adding an authority citation at the end of the section.

The revision and addition read as follows:

§ 3.340 Miscellaneous provisions pertaining to ratings based on an individual's inability to engage in substantially gainful employment.

* * * * *

(**AUTHORITY:** 38 U.S.C. 501(a), 1110, 1131, 1502(a))

§ 3.341 [Amended]

4. In § 3.341, paragraphs (b) and (c) and their authority citations are redesignated as paragraphs (a) and (b), respectively, of § 3.340; and newly redesignated paragraph (b) is amended by removing ''an evaluation'' and adding, in its place, ''a rating'.

§ 3.341 [Removed]

5. Section 3.341 is removed.

§ 3.342 [Removed]

6. Section 3.342 is removed.

7. Section 3.343 is amended by:

a. In paragraph (c)(1), in the first sentence, removing ''In'' and adding, in its place, ''Unless the rating is replaced by a total schedular rating, in''.

b. Revising the authority citation at the end of paragraph (c)(1).

The revision reads as follows:

§ 3.343 Continuance of total disability ratings.

* * * * *

(c) * * *

(1) * * *

(**AUTHORITY:** 38 U.S.C. 1155, 1718(f), 5104, 5112)

* * * * *

§ 3.400 [Amended]

8. Section 3.400(b)(1)(ii)(B) is amended by removing the last sentence.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart A—General Policy in Rating

9. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

10. Section 4.15 is revised to read as follows:

§ 4.15 Total disability ratings.

Although ratings under this part are based on the average impairment in earning capacity resulting from disease or injury, it is the policy of the Department of Veterans Affairs to assign a total rating in any case where physical or mental disability renders an individual veteran unable to engage in substantially gainful employment. For purposes of compensation, the inability to engage in substantially gainful employment must be solely due to service-connected disability. For purposes of pension, the inability to engage in substantially gainful employment must be due to permanent disability.

(**AUTHORITY:** 38 U.S.C. 1155, 1502)

Cross-references: § 4.16 Total disability rating for compensation based on an individual's inability to engage in substantially gainful employment; § 4.17 Permanent and total disability rating for pension purposes; and § 3.321 General rating principles.

11. Section 4.16 is revised to read as follows:

§ 4.16 Total disability rating for compensation based on an individual's inability to engage in substantially gainful employment.

(a) If a veteran's service-connected disabilities do not meet the requirements for a total rating under the provisions of this part, VA will nevertheless assign a total rating based on these disabilities, provided that the veteran is unable to engage in substantially gainful employment solely because of the service-connected disabilities. A subsequent total schedular rating based on service-connected disabilities cancels an existing rating based on inability to engage in substantially gainful employment.

(b) A total rating based on inability to engage in substantially gainful employment encompasses all service-connected disabilities in existence at the time the rating is assigned. A total schedular rating for any service-connected disability or any combination of service-connected disabilities precludes the assignment of a total rating based on individual unemployability due to service-connected disabilities.

(c) If the veteran is employed, regardless of the nature, duration and regularity of employment activity, VA will consider income from employment that is more than twice the Maximum Annual Pension Rate for a veteran with no dependents under 38 U.S.C. 1521(b) (as increased under 38 U.S.C. 5312(a)) to

be conclusive evidence that the veteran is engaged in substantially gainful employment.

(d) VA will base a determination as to whether a veteran is unable to engage in substantially gainful employment due to service-connected disability or disabilities upon the veteran's ability to perform the activities normally required for substantially gainful employment and the veteran's ability to engage in such activities with the regularity and for the duration normally required for substantially gainful employment. In making such a determination, VA will require:

(1) Medical evidence which describes the nature, frequency, severity and duration of symptoms of the service-connected disabilities and the extent to which the veteran's ability to perform activities normally required for substantially gainful employment is limited solely due to service-connected disabilities; and

(2) Evidence of unusual limitations imposed by service-connected disabilities, such as the nature and unusual frequency of hospitalizations or other required treatment, unusual effects of required medication, etc.

(e) In determining whether a veteran is entitled to a total rating for service-connected disability or disabilities based on inability to engage in substantially gainful employment, VA will disregard:

(1) Non-service-connected disabilities;

(2) Age;

(3) The veteran's training or lack thereof, unless the evidence establishes that the service-connected disability or disabilities would impede further training;

(4) The state of the economy in the veteran's community; and

(5) If applicable, the fact that the veteran's previous employment has been eliminated due to such factors as technological advances or employer relocation.

(f) Authority to assign ratings under this section is assigned as follows:

(1) If a veteran has a service-connected disability rated at 60 percent or more or two or more service-connected disabilities resulting in a combined rating of 60 percent or more, the rating activity will assign a total rating under this section if the veteran is unable to engage in substantially gainful employment due to service-connected disability.

(2) If a veteran's disabilities do not meet the percentages set out in paragraph (f)(1) of this section but, in the judgment of the rating activity, the veteran is unable to engage in substantially gainful employment due to service-connected disability, the rating activity will prepare a total rating under this section and submit it for the approval of the Director of the Compensation and Pension Service.

(3) In a case under appeal to the Board of Veterans' Appeals, the Board is authorized to assign a total rating under this section.

(g) *Definitions.* For purposes of this section:

(1) The term *substantially gainful employment* means any work generally done for pay or profit that the veteran is able to perform with sufficient regularity and duration to provide a reliable source of income.

(2) The term *activities normally required for substantially gainful employment* means both:

(i) *Exertional activities,* including, but not limited to, the ability to sit, stand, walk, push, pull, use hands, reach, lift and carry; and

(ii) *Non-exertional activities,* including, but not limited to, the ability to communicate, remember, follow instructions, use judgment, adapt to changes and deal with people, including supervisors, co-workers, and the public.

(**AUTHORITY:** 38 U.S.C. 1155)

12. Section 4.17 is revised to read as follows:

§ 4.17 Permanent and total disability rating for pension purposes.

(a) For pension purposes, the rating activity will assign a permanent and total disability rating under this section provided that:

(1) The veteran has either a disability rated at 60 percent or more or two or more disabilities resulting in a combined rating of 60 percent or more;

(2) The disability or disabilities are not due to the veteran's own willful misconduct;

(3) The disability or disabilities are reasonably certain to continue throughout the veteran's lifetime; and

(4) The veteran is unable to engage in substantially gainful employment because of such disability or disabilities.

(b) If the veteran's disabilities do not meet the percentage requirements in paragraph (a)(1) of this section but, in the judgment of the rating activity, the evidence establishes that the disabilities nonetheless prevent the veteran from engaging in substantially gainful employment, the rating activity will prepare a permanent and total disability rating under this section and submit it for the approval of the Adjudication Officer or Service Center Manager. In a case under appeal to the Board of Veterans' Appeals, the Board is authorized to assign a permanent and total disability rating under this section.

(c) For purposes of this section, *substantially gainful employment* means any work generally done for pay or profit that the veteran is able to perform with sufficient regularity and duration to provide a reliable source of income.

(d) However, if the veteran is employed, regardless of the nature, duration and regularity of the employment activity, VA will consider income from employment that is more than twice the Maximum Annual Pension Rate for a veteran with no dependents under 38 U.S.C. 1521(b) (as increased under 38 U.S.C. 5312(a)) to be conclusive evidence that the veteran is engaged in substantially gainful employment.

(e) VA will base a determination as to whether a veteran is unable to engage in substantially gainful employment due to disability upon the veteran's ability to perform the activities normally required for substantially gainful employment as defined in § 4.16(g)(2) and on the veteran's ability to engage in such activities with the regularity and for the duration normally required for substantially gainful employment. In making such a determination:

(1) VA will require medical evidence which describes the nature, frequency, severity and duration of symptoms of the veteran's disabilities and the extent to which the veteran's ability to perform the activities normally required for substantially gainful employment listed in § 4.16(g)(2) is limited by the disabilities.

(2) VA will also consider:

(i) All permanent disabilities, whether service connected or non-service connected, developmental, congenital, hereditary or familial, that are not due to the veteran's own willful misconduct;

(ii) Any evidence that factors such as the veteran's age, occupational background, training or education limit the veteran's ability to learn and adapt to training necessary for employment or necessary to perform the activities normally required for substantially gainful employment listed in § 4.16(g)(2); and

(iii) Any evidence of unusual limitations imposed by the veteran's disabilities, such as the nature and unusual frequency of hospitalizations or other required treatment, unusual effects of required medication, etc.

(f) However, in determining whether a veteran is entitled to a permanent and total rating for pension purposes, VA will disregard:

(1) The state of the economy in the veteran's community; and

(2) If applicable, the fact that the veteran's previous employment has been eliminated due to such factors as

technological advances or employer relocation.

(**AUTHORITY:** 38 U.S.C. 1155, 1502)

Cross References: Pension. See § 3.3. Period of war. See § 3.2.

§ 4.17a [Removed]

13. Section 4.17a is removed.

§ 4.18 [Removed]

14. Section 4.18 is removed.

[FR Doc. 01–24272 Filed 9–28–01; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–70665]

Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: We are proposing to amend the current provisions in the standards of performance for industrial-commercial-institutional steam generating units which permit owners and operators of new steam generating units located at chemical manufacturing plants and petroleum refineries burning high-nitrogen byproduct/wastes to petition the Administrator for a site specific nitrogen oxides emission limit. The amendment extends the provisions to owners and operators of new steam generating units located at pulp and paper mills.

In the Rules and Regulations section of this **Federal Register**, we are making this amendment in a direct final rule, without prior proposal, because we view this revision as noncontroversial, and we anticipate no significant adverse comments. We have explained our reasons for this amendment in the preamble to the direct final rule.

If we receive no significant adverse comments, we will take no further action on the rule. If an adverse comment applies to an amendment, paragraph, or section of the rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn.

DATES: *Comments.* Submit comments on or before October 31, 2001.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by October 22, 2001, we will hold a public hearing on October 31, 2001. Persons interested in attending the hearing should call Mrs. Kelly Hayes at (919) 541–5578 to verify that a hearing will be held.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2001–18, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2001–18, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at 10:00 a.m. in our Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–2001–18 contains supporting information used in developing the standards and guidelines. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5251; facsimile number (919) 541–5450; electronic mail address *porter.fred@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–2001–18. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit propriety information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such propriety information directly to the following address, and not to the public docket, to ensure that propriety information is not inadvertently placed in the docket: Attention: Mr. Fred Porter, U.S. EPA, c/o OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740, Durham NC 27701. We will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of information compiled in developing this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A–2001–18, which contains supporting information used in developing the standards and guidelines. An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at *http://www.epa.gov/airprogm/oar/docket/faxlist.html.*

World Wide Web. In addition to being available in the docket, an electronic copy of this action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page *http://www/epa/gov/ttn/caaa.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following: