

gathering, analysis, and dissemination.<sup>34</sup> Accordingly, neither an environmental impact statement nor environmental assessment is required.

#### VI. Regulatory Flexibility Act Analysis

41. The Regulatory Flexibility Act of 1980 (RFA)<sup>35</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Many of the entities, *i.e.*, reliability coordinators, transmission operators, generation operators, transmission owners and distribution providers identified in the transmission operator's restoration plan, to which the requirements of this rule would apply do not fall within the definition of small entities,<sup>36</sup> but most transmission owners and most distribution providers would be deemed small entities. The proposed Reliability Standards clarify the elements of restoration plans and training requirements and give reliability coordinators a greater role in review and approval of plans, but the proposed Reliability Standards reflect primarily a continuation of existing system restoration requirements currently applicable to reliability coordinators, transmission operators and generation operators.

42. Based on available information regarding NERC's compliance registry, and our best assessment of the application of the proposed Reliability Standards, approximately 1,110 entities will be responsible for compliance with proposed Reliability Standards EOP-005-2 and EOP-006-2, of which approximately 678 are transmission owners and distribution providers not already subject to the existing system restoration Reliability Standards. Of the 678 transmission owners and distribution providers, only that subset whose field switching personnel are identified in the restoration plan as having unique tasks will be subject to a new requirement under the proposed standards, *i.e.*, providing two hours of system restoration training every two calendar years to such personnel. The Commission estimates that this requirement will impose a cost of perhaps \$1,056 per year on transmission owners and distribution providers, and indeed for some entities there will be no

additional cost because field personnel are already being trained in restoration tasks and therefore should not present significant operating costs. Based on the foregoing, the Commission certifies that this proposed Reliability Standard will not have a significant impact on a substantial number of small entities.

43. Based on this understanding, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

#### VII. Comment Procedures

44. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 24, 2011. Comments must refer to Docket No. RM10-16-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

45. Commenters may submit comments, identified by Docket No. RM10-16-000 and in accordance with the requirements posted on the Commission's Web site, <http://www.ferc.gov>. Comments may be submitted by any of the following methods:

- *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at <http://www.ferc.gov/docs-filing/efiling.asp>.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, see, *e.g.*, the "Quick Reference Guide for Paper Submissions," available at <http://www.ferc.gov/docs-filing/efiling.asp> or via phone from FERC Online Support at 202-502-6652 or toll-free at 1-866-208-3676.

46. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### VIII. Document Availability

47. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

48. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

49. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010-29569 Filed 11-23-10; 8:45 am]

**BILLING CODE 6717-01-P**

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA-2007-0101]

RIN 0960-AF69

#### Revised Medical Criteria for Evaluating Mental Disorders

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking; limited reopening of comment period.

**SUMMARY:** We are reopening for a limited purpose the comment period for the notice of proposed rulemaking (NPRM) that we published in the **Federal Register** on August 19, 2010 (75 FR 51336). We are reopening the comment period for 15 days to clarify and to seek additional public comment about an aspect of the proposed definitions of the terms "marked" and "extreme" in sections 12.00 and 112.00 of our Listing of Impairments (listings). We are reopening the comment period to accept comments about that issue

<sup>34</sup> 18 CFR 380.4(a)(5).

<sup>35</sup> 5 U.S.C. 601-12.

<sup>36</sup> The RFA definition of "small entity" refers to the definition provided in the Small Business Act (SBA), which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. See 15 U.S.C. 632. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

only. We will not consider comments on any other aspects of the proposed listings for mental disorders that we receive during this reopened comment period.

**DATES:** To ensure that your comments are considered, we must receive them no later than December 9, 2010.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2007–0101 so that we may associate your comments with the correct regulation.

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

- *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA–2007–0101. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

- *Fax:* Fax comments to (410) 966–2830.

- *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Cheryl A. Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

We are reopening until December 9, 2010 the comment period on one aspect of our proposed rules to revise our mental disorders listings: Definitions we provide for the terms “marked” and “extreme” that refer to standardized testing. In light of the public comments we have received on this aspect of our proposed rules, we have decided to provide more background about these proposals, to clarify our intent, and to request additional public comment on only this clarification. We have received many letters and facsimile messages from members of the public who appear to have misunderstood the background and purpose of these proposals. We believe that it will be helpful to these and other commenters if we provide more information and more time to comment on this issue.

**Background**

In this section and the sections that follow, we will review what our current rules say, the history of those rules and how we developed them, and how they relate to the proposed rules. As we will show, in most instances the proposed rules would not be new, especially for children with mental disorders who claim disability benefits under the supplemental security income (SSI) program. We developed the rules with input from both medical experts and advocates for people who have mental disorders. We do not intend the proposed rules to have the effect of encouraging our adjudicators to purchase testing; rather, they are alternative criteria that we use to help define our terms for assessing severity under the listings. The proposed rules would also not directly affect adults or children who are already receiving disability benefits from us.

Under our current mental disorders listings, each listing (except listings 12.05 and 12.09) consists of a statement describing the disorder(s) addressed by the listing (a “capsule definition”), paragraph A criteria (a set of medical findings), and paragraph B criteria (a set of four impairment-related functional limitations).<sup>1</sup> In general, we will find that an adult is disabled under the current mental disorders listings if he or she has a mental disorder that meets the capsule definition and the paragraph A

<sup>1</sup> There are additional functional criteria, which we refer to as the paragraph C criteria, in current listings 12.02, 12.03, 12.04, and 12.06. We do not discuss those criteria here.

criteria of a listing, and the disorder results in “marked” limitations in two of the four paragraph B criteria. We define the term “marked” for adults in current § 12.00C as follows:

Where we use “marked” as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis.

We also cross-refer to current §§ 404.1520a and 416.920a in our regulations, which indicate that “marked” is more than moderate and less than extreme. We repeat a variation of this definition of “marked” in additional sections under § 12.00C. For example, in § 12.00C1, we state: “We do not define ‘marked’ by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function.” We follow this statement with an example that refers generally to “serious” difficulties in daily activities.

Except for very minor language changes, we have had this definition of “marked” in our adult mental disorders listings since 1985.<sup>2</sup> The 1985 adult mental disorders listings were also the first listings in which we established a standard of listing-level severity based on “marked” limitations in two broad areas of functioning. Since that time, however, we have issued other listings and rules that use a “two-marked standard” or otherwise refer to “marked” limitations.

Over the last 20 years, we have refined and expanded our definition of the term “marked” in response to questions from our adjudicators and the public and based on expert input. We first expanded the definition of “marked” in revised childhood mental disorders listings we published in 1990.<sup>3</sup> Although we have made minor language changes, the definition of “marked” in our childhood disability rules, which we developed with information we received from a panel of experts, has been substantively the same since we first published it. The current childhood rule provides:

Where “marked” is used as a standard for measuring the degree of limitation[,] it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the

<sup>2</sup> 50 FR 35038, 35066 (August 28, 1985).

<sup>3</sup> 55 FR 51208 (December 12, 1990).

degree of limitation is such as to interfere seriously with the ability to function (based upon age-appropriate expectations) independently, appropriately, effectively, and on a sustained basis. When standardized tests are used as the measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.<sup>4</sup>

We incorporated this definition by reference for the policy of functional equivalence when we first established that policy in 1991.<sup>5</sup> In 1997, following the enactment of Public Law 104–193, we published separate definitions of the terms “marked” and “extreme” for the purposes of determining functional equivalence. We also provided several alternative definitions, including a definition that provided that “[w]hen standardized tests are used as the measure of functional abilities, a valid score that is two standard deviations or more below the norm for the test (but less than three standard deviations)” would establish a marked limitation. Our 1997 rules also provided that “[w]hen standardized tests are used as the measure of functional abilities, a valid score that is three standard deviations or more below the norm for the test” would establish an extreme limitation.<sup>6</sup>

When we first published this rule in 1997, we explained that the definitions of “marked” and “extreme” were “not new, but are based on longstanding policy in the regulations and interpretations we have used in our internal instructions and training.”<sup>7</sup>

As in 1991, the rules for SSI children we published in 1997 were interim final rules with a request for public comment. When we published the final rules in 2000,<sup>8</sup> we explained in the preamble that “we asked a number of individual experts for information as we formulated these final rules. The experts included pediatricians, psychologists, and other pediatric specialists, and individual advocates for children with disabilities who have expert knowledge about the SSI program.”<sup>9</sup> The final rules we published in 2000 contained specific definitions of the terms “marked” and “extreme” that are consistent with the rules we proposed in our August 2010 NPRM, including the provisions that:

- We will find that a person has a “marked” limitation when he or she has a valid score that is two standard deviations or more below the mean, but less than three standard deviations, and

- “Marked” limitation is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean.

The current functional equivalence rule is identical to the rule we published in 2000.<sup>10</sup> We also provide a definition of “extreme” with criteria similar to those in the definition of “marked” but at a higher level of severity.

When we published the current definition of “marked” for functional equivalence, we explained in the preamble of the final rules:

In addition to retaining the other definitions of “marked” from the interim final rules, we also added a new one explaining that “marked” is the equivalent of functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean. This includes in our rules a longstanding instruction from the training manual we provided to our adjudicators when the interim final rules were implemented. (Childhood Disability Training, SSA Office of Disability, Pub. No. 64–075, March 1997.)<sup>11</sup>

#### What the Proposed Rules Say

Immediately before we define the terms “marked” and “extreme,” we provide the following general guidance in proposed § 12.00D1:

##### 1. General

a. When we rate your limitations using the paragraph B mental abilities, we consider only limitations you have because of your mental disorder.

b. To do most kinds of work, a person is expected to use his or her mental abilities independently, appropriately, effectively, and on a sustained basis.

c. Marked or extreme limitation of a paragraph B mental ability reflects the overall degree to which your mental disorder interferes with your using that ability independently, appropriately, effectively, and on a sustained basis in a work setting. It does not necessarily reflect a specific type or number of activities, including activities of daily living, that you have difficulty doing. *In addition, no single piece of information (including test scores) can establish whether you have marked or extreme limitation of a paragraph B mental ability.* (See 12.00D4.) [Emphasis added.]

d. Marked or extreme limitation of a paragraph B mental ability also reflects the kind and extent of supports you receive and the characteristics of any

highly structured setting in which you spend your time that enable you to function as you do. The more extensive the supports or the more structured the setting you need to function, the more limited we will find you to be. \* \* \*

The proposed rule defining “marked” limitation for adults says:

##### 2. What We Mean by “Marked” Limitation

a. *Marked limitation* of a paragraph B mental ability means that the symptoms and signs of your mental disorder interfere *seriously* with your using that mental ability independently, appropriately, effectively, and on a sustained basis to function in a work setting. Although we do not require the use of such a scale, marked would be the fourth point on a five-point rating scale consisting of no limitation, slight limitation, moderate limitation, marked limitation, and extreme limitation.

b. *Although we do not require standardized test scores to determine whether you have marked limitations, we will generally find that you have marked limitation of a paragraph B mental ability when you have a valid score that is at least two, but less than three, standard deviations below the mean on an individually administered standardized test designed to measure that ability and the evidence shows that your functioning over time is consistent with the score.* (See also 12.00D4.) [Emphasis added.]

c. Marked limitation is also the equivalent of the level of limitation we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean.<sup>12</sup>

Proposed §§ 12.00D4a and D4c say, as pertinent to this reopened NPRM:

##### 4. How We Consider Your Test Results

a. *We do not rely on any IQ score or other test result alone.* We consider your test scores together with the other information we have about how you use the mental abilities described in the paragraph B criteria in your day-to-day functioning.

\* \* \* \* \*

c. Generally, we will not find that a test result is valid for our purposes when the information we have about your functioning is of the kind typically used by medical professionals to determine that the test results are not the best measure of your day-to-day functioning. If there is a material inconsistency between your test results

<sup>4</sup> Listings, § 112.00C.

<sup>5</sup> See, in general, 56 FR 5534 (February 11, 1991).

<sup>6</sup> 20 CFR 416.926a(c)(3) (1997).

<sup>7</sup> 62 FR 6408, 6414 (February 11, 1997).

<sup>8</sup> 65 FR 54747 (September 11, 2000).

<sup>9</sup> *Ibid.*

<sup>10</sup> 20 CFR 416.926a(e)(2).

<sup>11</sup> 65 FR at 54757.

<sup>12</sup> Propose § 12.00D2, 75 FR at 51356. Again, there is a similar definition of “extreme” in the next paragraph on the same page.

and other information in your case record, we will try to resolve it. \* \* \*

(Emphasis added). We provide similar definitions of the terms “marked” and “extreme” in the listings section for children, with criteria appropriate to childhood.

#### Why are we providing a limited reopening of the public comment period?

In response to the NPRM, we received many public comments that seemed to misunderstand our current policy, what changes we were proposing, and how the proposals might affect adults and children. We believe that much of the confusion was caused by our failure to provide sufficiently detailed information about our current policies and where our proposals came from. We apologize for that omission, which we have corrected in this notice.

Although we received a wide variety of comments, we are reopening the public comment period on a limited basis to specifically address the misunderstanding of our current and proposed policy regarding the use of standardized tests. We are requesting public comment only on this issue in light of the clarification we are providing in this notice.

Many commenters focused on two aspects of our proposed rule: (1) A definition of “marked” based on a standardized test score that is two standard deviations below the mean; and, (2) a separate definition of “marked” based on functioning that would be the equivalent of such a score if there were a standardized test. As discussed above, neither of these proposals represents new policy; both are based on our longstanding rules. However, some commenters said that our proposal would encourage our adjudicators to use standardized tests. Many said that we should drop all reference to standardized tests in the mental illness sections of the proposed rules and that the change would reduce the number of children and adults with serious mental disorders who qualify for disability benefits. Some who are already beneficiaries or who have family members who are beneficiaries were concerned that they would lose their benefits.

We did not intend for, and do not believe that, our proposed rules would do any of these things. The childhood mental disorders listings have contained a provision defining “marked” limitation as a score that is two standard deviations below the mean on a standardized test for 20 years. We developed those rules with information

we received from a group of mental health experts. We did not propose to change that provision or the way we determine disability in children with serious mental disorders. We proposed only to extend the provision to adults since it has worked well in childhood claims.

The proposed rules for adults and children do not state that adjudicators should obtain standardized tests, encourage them to do so, or indicate that there are standardized tests for all serious mental disorders. Rather, our proposed rules state only that *if* a person has a standardized test and the scores are two standard deviations below the mean, the test will show that the person has a “marked” limitation. Consistent with our current childhood rules, the proposed rules also state that adjudicators must not rely on the results of standardized tests alone but must consider all of the evidence in the person’s case record.

Since the beginning of 2001, our functional equivalence regulation has contained an alternative rule defining “marked” limitation for children based on functioning that would be consistent with a score on a standardized test that is two standard deviations below the mean, if there were such a test. As with the provision for actual scores from an actual test, the rule provides that we will find that the child has a marked limitation if the child is functioning at that level. The regulation section, like the proposed rule for the mental disorders listings, also provides other definitions for the term “marked.” We began using this regulation in 1997, 13 years ago. The number of awards of children who apply for SSI has not fallen since that time.<sup>13</sup> Given this experience, we believe that it was appropriate to include the rule in both the adult and child mental disorders listings.

Perhaps most importantly, it appeared that many commenters did not understand that we do not deny a person’s claim merely because his or her impairment(s) does not meet or medically equal the criteria of our listings. As under our current rules, adults with mental disorders who cannot perform their past work or a significant number of jobs in the national economy considering their age, education, and work experience would still be able to qualify under other rules we have for finding persons disabled.

<sup>13</sup> You may look up our award data for children under SSI by year in the *SSI Annual Statistical Report*, available at: [http://www.socialsecurity.gov/policy/docs/statcomps/ssi\\_asr/2009/ssi\\_asr09.pdf](http://www.socialsecurity.gov/policy/docs/statcomps/ssi_asr/2009/ssi_asr09.pdf).

We also want to make clear that we do not reexamine the entitlement of beneficiaries when we revise listings. When we periodically perform continuing disability reviews to determine if beneficiaries are still disabled, we continue to use the same listing section we used to make our most recent favorable decision.<sup>14</sup> Thus, beneficiaries who qualified under a current listing would continue to qualify as long as their impairments continued to meet or medically equal the current listing.

In light of the importance of this issue and the widespread misunderstanding of our proposed rules, we are reopening the comment period for the limited purpose of allowing interested persons to provide any additional comments they may have on our proposed policy regarding the use of standardized tests.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2010–29577 Filed 11–23–10; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[Docket No. DEA–345N]

#### Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I

**AGENCY:** Drug Enforcement Administration (DEA), U.S. Department of Justice.

**ACTION:** Notice of Intent.

**SUMMARY:** The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place five synthetic cannabinoids into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions under 21 U.S.C. 811(h) of the CSA. The substances are 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP–47,497 C8 homologue). This intended action is based on a finding by the DEA Deputy

<sup>14</sup> See 404.1594(c)(3)(i), 416.994(b)(2)(iv)(A), and 416.994a(b)(2).