E. Within 30 days after the effective date of this amendment, incorporate the 0.50 inch brake wear limit into the FAA-approved maintenance inspection program for all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4, –6, and –10.

F. Within 180 days after the effective date of this amendment, modify and replace all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4, –6, and –10, or any brake modified in accordance with AD 88–16–02R1, Amendment 39–6034, paragraphs C.2. or D.2., with new extra-long piston sleeves and dust seal boots, and reidentify them as –4R, –6R, and –10R brake assemblies, respectively, in accordance with Douglas Aircraft Company DC–10 Service Bulletin Number 32–218, dated March 17, 1989. For Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4R, –6R, and –10R, the maximum wear limit is 0.90 inch.

G. When the modifications required by paragraph F., above, are accomplished, incorporate the 0.90 inch brake wear limit in the FAA-approved maintenance inspection program.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Moutain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P. O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73–30. These documents may be examined at the FAA, Northwest Moutain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supesedes Amendment 39–6034, AD 88–16–02R1.

This amendment becomes effective January 31, 1990.

Issued in Seattle, Washington, on December 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–29963 Filed 12–26–89; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release Nos. 33–6849; 34–27532; 35–24995; 39–2233; IC–17262; IA–1212]

Equal Access to Justice Act Rules

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rules.

SUMMARY: The Securities and Exchange Commission is adopting revised procedural rules implementing the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504, as amended by Public Law No. 99–80 (1985). The Act, in relevant part, provides for the award of attorney fees and other expenses to certain parties who prevail against the federal government in adversary adjudications before agencies. In connection with its implementation of the EAJA, the Commission is also amending its delegation of authority to its Chief Administrative Law Judge.

EFFECTIVE DATE: December 27, 1989.[1]

FOR FURTHER INFORMATION CONTACT: David C. Mahaffey, Assistant General Counsel, or Kerry F. Hemond, Attorney, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; (202) 272–2428.

SUPPLEMENTARY INFORMATION: On May 6, 1986, the Administrative Conference of the United States ("ACUS") issued model regulations for federal agency implementation of the EAJA, as amended in 1985 by Public Law No. 99–80 (1985). See 51 FR 16659 (May 6, 1986). The EAJA allows eligible litigants who prevail against the federal government in civil actions and administrative proceedings to recover attorney fees and other expenses, unless the government can show that its position was substantially justified or that special circumstances exist that would make an award unjust. Among other things, the 1985 amendments removed "sunset" provisions from the EAJA as originally enacted in 1980, broadened the class of litigants financially eligible to seek EAJA awards, and clarified several interpretive points.

On March 23, 1989, the Commission published for comment proposed revised rules implementing the EAJA, 17 CFR 201.31 *et seq.*, to conform with the 1985 statute. For the most part, the rules which the Commission now intends to adopt depart from the 1986 Model Rules only where the Commission's existing EAJA rules already differed from the 1981 Model Rules [2] or where the 1986 Model Rule revisions were not applicable to Commission proceedings or were otherwise unnecessary. In addition, the Commission proposed two new provisions not in the Model Rules: first, one that would delegate authority to the Chief Administrative Law Judge to assign EAJA applications to particular administrative law judges; and second, one that would add a sentence to the EAJA rule on settlements making it explicit that settlements may include a waiver of all EAJA fees. The Commission's release proposing the revised rules included a section-by-section analysis, explaining, among other matters, the principal differences between the 1986 Model Rules and the Commission's EAJA rules.

The comment period for the proposed revised rules closed on April 24, 1989. No comment letters were received. Accordingly, the Commission finds it appropriate and in the public interest to adopt the rules as proposed. Moreover, the Commission finds good cause under 5 U.S.C. 553(d)(3) for the action to become effective immediately upon publication in the **Federal Register**, since implementing the rule changes will affect the provisions of the EAJA, as amended. Accordingly, the foregoing action becomes effective immediately upon publication in the **Federal Register**.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

Text of Amendments

Chapter II, title 17 of the Code of Federal Regulations, is hereby amended as follows:

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[1] Although the Commission provided a notice of proposed rule-making and sought public comment on the proposed rule revisions, 54 FR 11961 (March 23, 1989), it regards the proposed revisions as affecting rules of agency practice and therefore not required by 5 U.S.C. 553 to be proposed for public comment. For the same reason, it did not regard the proposed revised rules as subject to the Regulatory Flexibility Act, 5 U.S.C. 603, 604, although the Chairman of the Commission has executed a certification conforming to that Act.

[2] *See* Securities Act Release No. 6368 (Dec. 18, 1981), 47 FR 609 (1982).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

2. By amending § 200.30–10 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 200.30–10 Delegation of authority to Chief Administrative Law Judge.

* * * * *

(b) With respect to proceedings under the Equal Access to Justice Act, 5 U.S.C. 504, to make assignments as provided in § 201.37(b) of this chapter, respecting applications made pursuant to that Act.

* * * * *

PART 201—RULES OF PRACTICE

3. The authority citation for part 201, subpart B, continues to read as follows:

Authority: Sec. 19, Securities Act of 1933, 15 U.S.C. 77r; secs. 23 and 24, Securities Exchange Act of 1934, 15 U.S.C. 78w and 78x; sec. 20, Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; sec. 319, Trust Indenture Act of 1939, 15 U.S.C. 77sss; sec. 38, Investment Company Act of 1940, 15 U.S.C. 80a–37; sec. 211, Investment Advisers Act of 1940, 15 U.S.C. 80b–11; and sec. 203(a)(1), Equal Access to Justice Act, 5 U.S.C. 504(c)(1).

4. By revising § 201.31 to read as follows:

§ 201.31 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart B), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use in ruling on those applications.

5. By revising § 201.32 to read as follows:

§ 201.32 When the Act applies.

The Act applies to adversary adjudications described in § 201.33 pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in these rules, has been filed with the Commission within 30 days after August 5, 1985. Proceedings which have been substantially concluded are not deemed pending under these rules although officially pending for purposes such as concluding remedial actions found in Commission orders or private undertakings.

6. By amending § 201.33 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 201.33 Proceedings covered.

* * * * *

(b) The fact that the Commission has not identified a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

* * * * *

7. By amending § 201.34 by revising paragraph (b) to read as follows:

§ 201.34 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a new worth of not more than $7 million and not more than 500 employees.

* * * * *

8. By amending § 201.35 by revising paragraph (a) to read as follows:

§ 201.35 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the Office or Division over which the applicant has prevailed was substantially justified. The position of the Office or Division includes, in addition to the position taken by the Office or Division in the adversary adjudication, the action or failure to act by the Office or Division upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on counsel for an Office or Division of the Commission, which must show that its position was reasonable in law and fact.

* * * * *

9. By amending § 201.36 by revising paragraph (b) to read as follows:

§ 201.36 Allowable fees and expenses.

* * * * *

(b) No award of the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the reasonable rate at which the Commission pays witnesses with similar expertise. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

* * * * *

10. By revising § 201.37 to read as follows:

§ 201.37 Delegations of authority.

(a) The Commission may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases.

(b) Unless the Commission shall order otherwise, applications for awards of fees and expenses made pursuant to this subject shall be assigned by the Chief Administrative Law Judge to an administrative law judge for determination.

11. By amending § 201.41 by revising paragraph (b) to read as follows:

§ 201.41 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

* * * * *

12. By amending § 201.44 by removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 201.44 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

* * * * *

13. By revising § 201.54 to read as follows:

§ 201.54 Settlement.

The applicant and counsel for the Office or Division of the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure. See 17 CFR 201.8. If a prevailing party and counsel for the Office or Division of the Commission agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a proposed settlement provides that each side shall bear its own expenses, and the settlement is accepted, no application may be filed.

14. By amending § 201.55 by revising paragraph (a) to read as follows:

§ 201.55 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Office or Division of the Commission, or on his or her own initiative, the administrative law judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses) an evidentiary hearing. The administrative law judge may order all proceedings that are otherwise available under Rule 8(d) of the Commission's Rules of Practice. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the Commission's position was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

15. By revising § 201.59 to read as follows:

§ 201.59 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller of the Commission a copy of the Commission's final decision granting the award, accompanied by a sworn statement that the applicant will not seek review of the decision in the United States courts. The Commission will pay the amount awarded to the applicant as authorized by law, unless judicial review of the award has been sought by the applicant.

By the Commission.

Dated: December 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29937 Filed 12-26-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Polysulfated Glycosaminoglycan

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Luitpold Pharmaceuticals, Inc. The NADA provides for the intramuscular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967, has submitted NADA 140-901 for Adequan® i.m. (polysulfated glycosaminoglycan). The NADA provides for the intramuscular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of carpal joint. The application is approved and the regulations are amended by revising 21 CFR 522.1850 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1850 is revised to read as follows:

§ 522.1850 Polysulfated glycosaminoglycan.

(a) *Specifications.* Each 1-milliliter ampule of sterile aqueous solution contains 250 milligrams of polysulfated glycosaminoglycan; each 5-milliliter ampule or vial contains 500 milligrams.

(b) *Sponsor.* See No. 010797 in § 510.600(c) of this chapter.

(c) *Conditions of use—horses.* (1) *Indications for use.* Polysulfated glycosaminoglycan is for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint in horses.

(2) *Amount* (i) *Intra-articular use:* 250 milligrams once a week for 5 weeks. The joint area must be shaved, cleaned, and sterilized as in a surgical procedure prior to injection. If the joint reacts with excessive inflammation, after intra-articular treatment, cease therapy.

(ii) *Intramuscular use:* 500 milligrams every 4 days for 28 days. Injection site must be thoroughly cleansed prior to injection.

(3) *Limitations.* Not for use in horses intended for food. Safe use in breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 19, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-30015 Filed 12-26-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 55 and 178

[T.D. ATF-290]

Commerce in Explosives and Commerce in Firearms and Ammunition (89-200F)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR parts 55 and 178 to change the authority to issue Federal firearms and explosives licenses and permits from the regional director (compliance) to the Chief, Firearms and Explosives Licensing Center to take advantage of a more efficient technology in processing firearms and explosives materials industry applications. Authority to deny and revoke such licenses and permits will remain with the regional director (compliance).

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 789-3026.

SUPPLEMENTARY INFORMATION: Since passage of the Gun Control Act of 1968 and the Organized Crime Control Act of 1970, licenses and permits have been issued from Bureau of Alcohol, Tobacco and Firearms (ATF) regional offices. ATF now believes it will be more efficient and less costly to issue licenses and permits from one location. The changes made by this Treasury decision will administratively consolidate this function into one office, the Chief, Firearms and Explosives Licensing Center, thereby allowing ATF to take advantage of technology. The regional offices will continue to provide assistance to the affected public in all matters. The change being made does not affect the authority of the regional director (compliance) to deny or revoke licenses or permits.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or foreign markets.

Administrative Procedures Act

Because this Treasury decision relates to agency management, is procedural in nature and, among other minor changes, merely transfers the authority to issue firearms and explosives licenses and permits from regional directors (compliance) to the Chief, Firearms and Explosives Licensing Center, notice and public procedure are inapplicable pursuant to (a)(2), (6)(A) and (6)(B), 5 U.S.C. and a delayed effective date is not required pursuant to 5 U.S.C. 553 (a)(2) and (d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply because no additional requirement to collect information is proposed. There is no collection of information burden hours associated with this final rule.

Drafting Information

The principal author of this Treasury decision is J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR part 55—Commerce in Explosives and 27 CFR part 178—Commerce in Firearms and Ammunition, are amended as follows:

PART 55—[AMENDED]

Par. 1. The authority citation for part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 55.11 [Amended]

Par. 2. Section 55.11 is amended by adding the following definition:

* * * * *

Business premises. * * *

Chief, Firearms and Explosives Licensing Center. The AFT official