[3410-07-M]

SUBCHAPTER N—OTHER LOAN PROGRAMS

[FmHA Instruction 1980-A]

PART 1980—GUARANTEED LOAN PROGRAMS

Subpart A—General

AMENDMENTS

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to revise the full faith and credit provisions of the guarantee. The effect of these changes is to make clear that the guarantee issued under the FmHA regulations is "unconditional." This change is required to make the guarantee unconditional.

EFFECTIVE DATE: November 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Darryl H. Evans, Loan Specialist, telephone 202-447-4150.

SUPPLEMENTARY INFORMATION: § 1980.11 and Appendix B of Subpart A of Part 1980 of Chapter XVIII, Title 7, Code of Federal Regulations are amended. These amendments clarify the full faith and credit provisions of the Guarantee by defining the phrases "use of loan funds for unauthorized purposes, and "unauthorized purpose."

The Comptroller of the Currency advised FmHA that the full faith and credit provisions of the Loan Note Guarantee did not meet the requirements of 12 U.S.C. § 84 (10) which exempts loans that are guaranteed unconditionally by the Federal Government from the lending limit requirements imposed on national banks. According to the Comptroller under the above cited regulations prior to these revisions, the guarantee was conditional. It is the opinion of the Comptroller General that enactment of these revisions to the full faith and credit sections of the regulations will clearly make the new guarantees and previously issued guarantees which are subject to Subpart A "unconditional," as that word is used in 12 U.S.C. § 84 (10).

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since they make clear that the loan guarantee is unconditional, thereby benefitting the lending institutions which participate in the FmHA guaranteed loan programs. Therefore, public participation is unnecessary.

Accordingly, § 1980.11 and Appendix B of Subpart A of Part 1980 of Chapter XVIII, Title 7, Code of Federal Regulations are amended as follows:

1. Section 1980.11 is amended by adding a sentence to the end of the section as follows:

§ 1980.11 Full faith and credit.

* * * As used in this paragraph and in any Loan Note Guarantee (including those now outstanding) in which the phrase appears, "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the lender in the completed application as approved by FmHA.

* * * * *

3. Paragraph II under the Parties Agree of Appendix B, Form FmHA 449-35, Lender's Agreement, is amended to add a sentence to the end of the paragraph as follows:

APPENDIX B—FORM FMHA 449-35, LENDER'S AGREEMENT

* * * * *

THE PARTIES AGREE

* * * * *

II. Full Faith and Credit. * * *

As used herein, the phrase "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the lender in the completed application as approved by FmHA.

* * * * *

(7 U.S.C. 1989; 5 U.S.C. 301; Sec. 10, Pub. L. 93-357, 88 Stat. 392 delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Dated: October 11, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-33223 Filed 11-27-78; 8:45 am]

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 35—HUMAN USES OF BYPRODUCT MATERIAL

Radiation Surveys of Therapy Patients

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Final rule.

SUMMARY: Certain NRC licensees are authorized to treat patients with temporary implants incorporating radioactive material. NRC will require such licensees to confirm the removal of the implants at the end of the treatment by (1) a source count and (2) a radiation survey of the patient. Failure to account for all implants at the conclusion of patient treatment has resulted in some instances of unnecessary radiation exposure to patients and members of the general public.

EFFECTIVE DATE: The amendment becomes effective on December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Edward Podolak, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone: 301-443-5966).

SUPPLEMENTARY INFORMATION: NRC regulations in § 35.14(b)(5)(vii) require Group VI licensees [1] to assure that patients treated with cobalt-60, cesium-137 or iridium-192 temporary implants remain hospitalized until the implants have been removed. The primary method for confirming that all sources have been removed is to count the sources implanted and count the sources removed. The source counting has not always been performed accurately, or on a timely basis.

Some patients have been discharged from the hospital with radioactive sources still implanted. (It is particu-

[1] The most common types of NRC specific licenses for the medical use of byproduct material are the *Group* medical licenses under § 35.14 that apply to those radioactive materials listed in § 35.100. The radioactive materials listed in § 35.100 are divided into six groups, each group having similar requirements for user training and experience, facilities and equipment, and radiation safety procedures. Groups I, II, and III are lists of radiopharmaceuticals for diagnostic procedures; Groups IV and V are lists of radiopharmaceuticals for therapeutic procedures; and Group VI is a list of radioactive medical devices for both diagnostic and therapeutic procedures.

larly difficult to count iridium-192 seeds, which sometimes become dislodged from their encasement in nylon ribbon). Because a backup radiation survey of the patient could have prevented these incidents, on June 28, 1978 NRC published a proposed rule in the FEDERAL REGISTER adding a requirement for source counting and patient radiation surveys to the existing § 35.14(b)(5)(vii) which prohibits Group VI licensees from discharging patients until all sources are removed. The comment period ended August 14, 1978.

Twenty-one comments were received. Eleven favored the proposal without qualification. Three commenters suggested that bulky afterloaded devices that protrude from the body be exempted from the radiation survey. One commenter suggested that an x-ray be permitted as an alternative to the radiation survey. One commenter asked what was meant by "the end of the treatment" and one commenter, while favoring the proposal, suggested that the radiation survey should be performed within one hour of source removal. Four commenters objected to the proposal because they believe that regulations that define what is already good medical practice are useless. One commenter objected to the proposal because he believes that there are some cases where it would be impossible to survey the patient before discharge.

The wording of the final rule is the same as the proposed and requires a radiation survey of the patient before discharge. The radiation survey is the most positive (active) method of verifying source removal. The x-ray is a passive method. Although good practice would suggest a radiation survey soon after source removal, the regulation has to recognize the realities of the clinical setting where other tasks may have higher priority. Placing a tight time limit on this essentially quality control function may interfere with patient care. However, it is extremely unlikely that the licensee will experience difficulty performing the survey between source removal and discharge of the patient.

The suggestion to exempt afterloaded devices is well made. The devices are bulky relative to the actual source size and it is difficult to imagine that patients would be discharged with these devices in-place. However, NRC inspectors, who are familiar with incidents of overexposure from implants remaining in patients, say that this is an area where the "impossible" happens in spite of great care and precautions. Also, NRC inspectors have investigated an incident where a patient was discharged with an afterloaded device in-place with the sources loaded. The radiation survey is simple and inexpensive and it will also detect any sources lost in the bedclothes or room where the survey is performed. Therefore, the afterloaded devices will not be exempted from the requirements for a radiation survey.

Finally, regulations that define what is generally considered good practice may seem useless or may even dismay conscientious licensees. However, this is insufficient reason to forgo these regulations when there is evidence that the good practices are not universal.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and sections 552 and 553 of title 5 of the United States Code, notice is hereby given that the following amendment to 10 CFR Part 35 is published as a document subject to codification.

In 10 CFR Part 35, § 35.14(b)(5)(vii) is amended to read as follows:

§ 35.14 Specific licenses for certain groups of medical uses of byproduct material.

* * * * *

(b) Any licensee who is authorized to use byproduct material pursuant to one or more groups in §§ 35.14(a) and 35.100 is subject to the following conditions:

* * * * *

(5) For Group VI any licensee who possesses and uses sources or devices containing byproduct material shall:

* * * * *

(vii) Assure that patients treated with cobalt-60, cesium-137 or iridium-192 implants remain hospitalized until a source count and a radiation survey of the patient confirm that all implants have been removed.

* * * * *

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 5841).)

Dated at Bethesda, Maryland this 14th day of November 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-33229 Filed 11-27-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9042]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Coventry Builders, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Shaker Heights, Ohio home improvements firm to cease, in connection with the extension of credit, failing to provide consumers with those materials and disclosures required by Federal Reserve System regulations.

DATES: Complaint issued July 15, 1975. Decision issued October 23, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Paul R. Peterson, Regional Director, 4R, Cleveland Regional Office, Federal Trade Commission, Suite 500, Mall Bldg., 118 St. Clair Ave., Cleveland, Ohio 44114. 216-522-4207.

SUPPLEMENTARY INFORMATION: On Wednesday, August 16, 1978, there was published in the FEDERAL REGISTER, 43 FR 36281, a proposed consent agreement with analysis In the Matter of Coventry Builders, Inc., a corporation, and Louis Galiano, Sr., inidividually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Advertising Falsely or Misleadingly: § 13.73 Formal regulatory and statutory requirements; 13.73-92 Truth in Lending Act; § 13.155 Prices; 13.155-95 Terms and conditions; 13.155-95(a) Truth in Lending Act.

[1] Copies of the Decision and Order filed with the original document.

Subpart-Misrepresenting Oneself and Goods—Goods: § 13.1623 Formal regulatory and statutory requirements; 13.1623-95 Truth in Lending Act.—Prices: § 13.1823 Terms and conditions; 13.1823-20 Truth in Lending Act. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; 13.1852-75 Truth in Lending Act; § 13.1905 Terms and conditions; 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; (15 U.S.C. 45, 1601, *et seq.*).)

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-33271 Filed 11-27-78; 8:45 am]

[6750-01-M]

[Docket No. C-2933]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Moore & Associates, Inc., et al., Trading as Uni-Check, et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, will require a Honolulu, Hawaii firm engaged in providing various businesses with consumer credit information and other services, to cease furnishing reports containing obsolete, inaccurate, or disputed information; providing such reports for improper purposes; or otherwise failing to comply with statutory requirements.

DATES: Complaint and order issued October 24, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

William A. Arbitman, Regional Director, 9R, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: On Friday, August 18, 1978, there was published in the FEDERAL REGISTER, 43 FR 36642, a proposed consent agreement with analysis In the Matter of Moore & Associates, Inc., a corporation doing business as Uni-Check, and Rentcheck, and R. Donald Moore, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibitive trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382-1 Confidentiality, accuracy, relevancy, and proper utilization; § 13.382-5 Formal regulatory and/or statutory requirements; 13.382-5(a) Fair Credit Reporting Act. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-37 Formal regulatory and/or statutory requirements.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 84 Stat. 1127-36 (15 U.S.C. 1601, *et seq.*).)

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-33272 Filed 11-27-78; 8:45 am]

[6351-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 11—RULES RELATING TO INVESTIGATIONS

Delegation of Authority To Reassign Duties From Persons Named in a Commission Order of Investigation to Other Staff Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rule.

SUMMARY: The Commission has delegated to the Director of the Division of Enforcement the authority to grant to other members of the Commission staff the authority of persons named in a Commission Order of Investigation.

EFFECTIVE DATE: November 28, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Field, III, Director, Division of Enforcement, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, 202-254-9501.

SUPPLEMENTARY INFORMATION: The Commission has amended § 11.2 of its regulations under the Commodity Exchange Act to include a new paragraph (b) which authorizes the Director of the Division of Enforcement to grant to any Commission employee under his direction, all or part of the authority which the Commission, by order, has authorized specific employees to perform in connection with a Commission investigation conducted by the Division of Enforcement. With the approval of the Executive Director, the Director of the Division of Enforcement may grant similar authority to any Commission employee under the direction of the Executive Director. This delegation will enable the Director to appoint additional (or substitute) staff persons to issue subpoenas and take testimony without having to obtain an amended order from the Commission.

The Commission finds that the amendment of § 11.2 relates solely to agency practice and procedure and that the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking and other opportunity for public participation are not required.

In consideration of the foregoing, 17 CFR 11.2 is amended by designating the present section as paragraph (a) and by adding a new paragraph (b) as follows:

§ 11.2 Authority to conduct investigations.

* * * * *

(b) The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Enforcement the authority to grant to any Commission employee under his direction all or a portion of the authority which the Commission, by order, has authorized specified employees of the Commission to perform in connection with a Commission investigation conducted by the Division of Enforcement. With the approval of the Executive Director, the Director of the Division of Enforcement may also grant such authority to any Commission employee under the direction of the Executive Director.

(Secs. 2a(11) and 6(b) of the Act, 7 U.S.C. 4a(j) and 15 (1976), as amended by the Futures Trading Act of 1978, Pub. L. 95-405, sec. 13, 92 Stat. 871 (1978)).

[1] Copies of the Complaint and the Decision and Order filed with the original document.

Issued in Washington, D.C. on November 21, 1978, by the Commission.

READ P. DUNN, Jr.,
Commissioner.

[FR Doc. 78-33227 Filed 11-27-78; 8:45 am]

[4110-07-M]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION; DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulations No. 4, 16]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered

AGENCY: Social Security Administration, HEW.

ACTION: Final rules.

SUMMARY: The amendments will expand existing regulations to include additional detailed criteria for the evaluation of those cases involving claims based on disability under titles II and XVI of the Social Security Act in which the determination as to disability cannot be made on medical severity alone or on the ability to do past work. In those instances the individual's impairment will be considered in conjunction with the individual's age, education and work experience to determine his or her ability to engage in substantial gainful activity. In publishing the amendments, the Social Security Administration intends to consolidate and elaborate upon longstanding medical-vocational evaluation policies for adjudicating disability claims in which an individual's age, education, and work experience must be considered in addition to the medical condition.

DATES: These amendments shall be effective February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

William J. Ziegler, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: On March 7, 1978, there was published in the FEDERAL REGISTER (43 FR 9284) a Notice of Proposed Rule Making with proposed amendments providing rules for adjudicating disability claims in which vocational factors must be considered in addition to impairment severity. Interested persons, organizations, and groups were invited to submit data, views, or arguments pertaining to the proposed amendments within a period of 60 days from the date of publication of the notice. The comment period was extended an additional 30 days to allow members of the public more time to submit their comments (43 FR 19238). After careful consideration of all the comments submitted, the proposed amendments are being adopted and shall become effective 90 days after this publication. Many issues identified in the comments received from the public were previously addressed in the NPRM. All issues which were not discussed there are addressed later in this preamble.

The amendments will expand existing regulations to include additional detailed criteria for the evaluation of those cases involving claims based on disability under title II and title XVI of the Social Security Act in which the determination as to disability cannot be made on medical severity alone or on the ability to do past work. In those instances, the individual's impairment will be considered in conjunction with the individual's age, education, and work experience to determine his or her ability to engage in substantial gainful activity. The rules in Appendix 2 consider only impairments which result in exertional limitations. They do not apply where the impairment(s) causes only nonexertional limitations; e.g., certain mental, sensory or skin impairments. The regulations text, however, provides the framework in which to evaluate impairments resulting in nonexertional limitations. In any case where a numbered rule in Appendix 2 does not apply, full consideration must be given to all the facts of the case in accordance with the definitions and discussions of each factor in the regulations.

These amendments do not apply to individuals who are blind as defined under title II or title XVI of the Social Security Act, nor in determining disability for children under age 18 under title XVI or applicants for disabled widow' or widowers' benefits under title II.

In publishing the amendments, the Department intends to consolidate and elaborate upon long standing medical-vocational evaluation policies for adjudicating disability claims in which an individual's age, education, and work experience must be considered in addition to the medical condition. These policies have in the past been reflected in adjudicative guides but have not been available in the same format at all levels of adjudication. While the majority of disability cases are resolved on the basis of medical considerations alone or the ability to do past work, those cases that require the full consideration of an individual's age, education, and work experience are the most difficult to resolve at all levels of adjudication. And, they are more difficult for the general public to understand. Consolidating these policies and incorporating them into the regulations will serve to make clearer to claimants and their representatives how disability is determined where vocational factors must be considered. In addition, it will serve to better assure the soundness and consistency of disability determinations in all claims that are filed regardless of the level at which adjudicated; and finally, it should promote better understanding and acceptance by the public and the courts of disability determinations that are made.

BACKGROUND

Congress first amended the Social Security Act in 1954 to preserve the insurance rights of individuals who have periods of total disability before reaching retirement age. The 1954 provision defined disability, in pertinent part, as:

"inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration * * * (Section 106(d), Pub. L. 761, 83rd Cong., 2d Sess., September 1, 1954, C. 1206, 68 Stat. 1080).

The law, on its face, did not initially mandate consideration of any vocational factors. However, the Congress envisaged that the determination in every case be an individual one. Accordingly, since the inception of the social security disability program in 1954, in the application of the statutory test, consideration has been given to the individual's vocational capacity, where pertinent, in determining whether the individual is disabled. However, because of the clearly limited statutory definition, those factors which relate primarily not to disability but to an individual's ability to obtain employment have been excluded from consideration.

The Social Security Administration's first effort in developing rules for disability determinations was in February 1955 when the Commissioner of Social Security appointed a Medical Advisory Committee to provide technical advice on administrative guides and standards designed to provide equal consideration to all individuals in the evaluation of their disabilities under the 1954 law. This committee suggested that age, education, training, experi-

ence, and other individual factors would need consideration in any case requiring evaluation of facts beyond the medical report and work record even though the law did not specifically require consideration of such factors.

In 1956, the law was further amended to provide for payment of disability insurance benefits to insured individuals who were disabled; the above-quoted statutory definition of disability was adopted for this purpose (Social Security Act as amended by § 103(a) of Pub. L. 84-880, approved August 1, 1956, (C. 836, 70 Stat. 815)). Regulations promulgated in 1957 to implement the statute also provided for the consideration of vocational factors. Section 404.1501 of Regulations No. 4, provided in pertinent part:

(b) In determining whether an individual's impairment makes him unable to engage in such activity [substantial gainful activity] primary consideration is given to the severity of his impairment. *Consideration is also given to such other factors as the individual's education, training and work experience.*

(c) It must be established by medical evidence, and where necessary by appropriate medical tests, that the applicant's impairment results in such a lack of ability to perform significant functions—such as moving about, handling, objects, hearing or speaking, or, in a case of mental impairment, reasoning or understanding—*that he cannot, with his training, education and work experience, engage in any kind of substantial gainful activity.* (Emphasis added.)

The initial years of operation of the disability program were reviewed by the Subcommittee on the Administration of the Social Security Laws of the Committee on Ways and Means. This Subcommittee's Preliminary Report, issued on March 11, 1960, stated, in commenting on "nonmedical standards" in the disability program, that:

"The subcommittee believes it is essential that there be a clear distinction between this program and one concerned with unemployment. It also believes it is desirable that disability determinations be carried out in as realistic a manner as possible, and that theoretical capacity in a severely impaired individual can be somewhat meaningless if it cannot be translated into an ability to compete in the open labor market."

In August 1960 the regulations were further amended. Among other things, the amended regulations continued to provide for the consideration of vocational factors including age, education, training, and work experience in determining disability, and specifically stated:

"The physical or mental impairments must be the primary reason for the individual's inability to engage in substantial gainful activity. Where for instance, an individual remains unemployed for a reason or reasons not due to his physical or mental impairment but because of the hiring practices of certain employers, technological changes in the industry in which he has worked, or local or cyclical conditions, such individual may not be considered under a disability * * *"

Reflecting concern about the disability insurance benefit program and the way the definition was being interpreted by the courts, the 1967 amendments to the law clarified the definition of disability. This legislation emphasized the role of medical standards in determining disability by stating that an individual is not to be considered under a disability unless the individual's impairment is of such severity that he or she is not only unable to do his or her previous work but cannot (considering his or her age, education, and work experience) engage in any other kind of substantial gainful work which exists in the national economy.

Specifically, the statutory definition of disability in section 223 of the Act was amended by the 1967 amendments to read, in pertinent part, as follows:

"(d)(1) the term 'disability' means—

"(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

"(B) [Blindness].

"(2) For purposes of paragraph (1)(A)—

"(A) An individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f)) shall be determined to be under a disability *only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any kind of substantial gainful work which exists in the national economy,* regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country. (Emphasis added.)

* * * * *

"(3) For purposes of this subsection, a 'physical or mental impairment' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

* * * * *

"(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require." (Section 158(b), Pub. L. 90-248, January 2, 1968, 81 Stat. 821.)

The legislative history of this amendment indicates that the Congress clearly intended that medical factors be given predominant importance in making disability determinations. The House Report (H.R. Rep. No. 544, 90th Cong., 1st sess. (1967)) states, at page 30:

"* * * In most cases the decision that an individual is disabled can be made solely on the basis that his impairment or impairments are of a level of severity (as determined by the Secretary) to be sufficient so that, in the absence of an actual demonstration of ability to engage in substantial gainful activity, it may be presumed that he is unable to so engage *because* of the impairment or impairments." (Emphasis in original.)

Further, for the first time, Congress specifically alluded to vocational factors in the statutory language (223(d)(2)(A)) and provided guidance as to their applicability. In discussing the factors which must be applied to individuals whose medical impairments are not of a sufficient level of severity so that the presumption of disability would apply, the House Report went on to state, at page 30:

"* * * that such an individual would be disabled only if it is shown that he has a severe medically determinable physical or mental impairment or impairments; that if, despite his impairment or impairments, an individual still can do his previous work, he is not under a disability; and that if, considering the severity of his impairment together with his age, education, and experience, he has the ability to engage in some other type of substantial gainful work that exists in the national economy even though he can no longer do his previous work, he also is not under a disability regardless of whether or not such work exists in the general area in which he lives or whether he would be hired to do such work. It is not intended, however, that a type of job which exists only in very limited numbers or in relatively few geographic locations would be considered as existing in the national economy. While such factors as whether the work he could do exists in his local area, or whether there are job openings, or whether he would or would not actually be hired may be pertinent in relation to other forms of protection, they may not be used as a basis for finding an individual to be disabled under this definition. It is, and has been, the intent of the statute to provide a definition of disability which can be applied with uniformity and consistency throughout the nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences or to the state of the local or national economy."

Except for the existing appendix to the regulations listing specific medical impairments which are presumptive of disability due to the severity involved, the existing regulations have provided general guidance in the determination of disability. They have been supported by a wide array of specific administrative materials which have been used primarily at the initial and reconsideration levels in the making of each decision. Such materials (provided primarily from surveys of industry by the Department of Labor, the Bureau of

the Census and State employment services) include a variety of specific, published documentations of jobs existing in the local and national economy and specific physical, mental and skill requirements of such jobs (e.g., the *County Business Patterns*, published by the Bureau of the Census, which show distribution of employment in the United States by locality and by industry; the *Census Reports*, published by the Bureau of the Census, which give detailed characteristics of the working population on a national, regional, and local level; occupational analyses of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies; the *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics, which shows the nature of work, the training and other qualifications needed and working conditions and employment outlook for certain occupations; and the third edition of the *Dictionary of Occupational Titles*, published by the Department of Labor, which provides job definitions, requirements, worker traits, industry designations and indicators of skills). Thus, the relationship between the physical abilities of specific individuals and the physical, mental, and skill requirements of specific jobs available in the national economy has been administratively determined. The administrative notice which is taken of the mentioned reference materials is based on the fact that they are generally recognized in business, industry, and government as representing authoritative sources on jobs throughout the national economy. As later editions are published, e.g., the fourth edition of the *Dictionary of Occupational Titles* now being prepared by the Department of Labor, they will be used in the same manner.

Consistent with the definition of disability prescribed by the law and regulations, and the relationship between the physical abilities of specific individuals and the physical, mental, and skill requirements of specific jobs available in the national economy, detailed guides for determining whether disability exists have been developed by the Social Security Administration and have been provided in the form of administrative issuances at the initial and reconsideration levels for use in the adjudication of each case. Hundreds of thousands of such cases are adjudicated each year under these evaluation guides. These guides are now being incorporated into the regulations as rules. Their publication in this form will facilitate a sound determination of disability in those cases where the vocational impact of age, education, and work experience must be assessed in conjunction with the severity of an individual's medical impairment(s), better assure consistency of determinations, and better serve to advise the public, adjudicatory personnel within the Social Security Administration, and the courts, of the specific rules followed by the Social Security Administration.

This need for publication of additional, more definitive medical vocational rules has been further heightened by the advent of the recent title XVI (Supplemental Security Income) legislation, which introduced into general adjudicative consideration for the first time, a factor not normally present in the title II disability program—the vocational impact upon adult individuals who have no relevant work experience.

Under title II, the "insured status" requirement, which applies to most disability claimants, requires that the claimant have a significant and recent work history covered under the title II program. Under title XVI, the same test of disability is used as under title II, but the collateral requirements are directed to financial need rather than participation in a work-related contributory system. Therefore, needy disabled individuals may qualify under title XVI even if they have no work history.

Amendments Expanding the Regulations

General

For consistency with the statutory definition of disability, the regulations contain a technical clarification of the language in Regulations No. 4 and Regulations No. 16 to reflect that an impairment that is "not severe" would support a finding that an individual is not disabled.

The regulations specifically define the adjudicative weight to be given to impairment severity, age, education, and work experience. They emphasize that the adjudicative judgment is to be based on consideration of the interaction of all of the individual factors. They also add a new Appendix 2 which is composed of rules that reflect the major functional and vocational patterns that are encountered in cases where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. The rules in Appendix 2 also reflect the analysis of the various vocational factors in combination with the individual's residual functional capacity in evaluating the individual's ability to engage in substantial gainful activity in other than vocationally relevant past work.

These rules are not presumptive, but are conclusive where the necessary findings with regard to each individual establish that a particular rule is met. That is, where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, these individual findings of fact are subject to rebuttal and the individual may present evidence to refute the findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion.

Because the rules consider only impairments which result in exertional limitations, they are not applicable where an individual's impairment(s) causes only non-exertional limitations, e.g., certain mental, sensory, or skin impairments. Further, the rules may not apply where a combination of impairments significantly limits the range of work an individual can perform at a given exertional level; nor do the rules apply where a finding of fact concerning age, education, or work experience differs from the vocational characteristics covered by a rule. The rules, however, are useful as adjudicative guides in considering borderline cases and cases involving combinations of impairments. In any case where a rule does not apply, full consideration must be given to all the facts of the case in accordance with the definitions and discussions of each factor in the regulations.

The criteria are considered in appropriate sequence in the context of the overall disability sequential evaluation process. This sequence, conforming to existing social security regulations, and left substantially unchanged by the amendments, is applied in the following manner.

1. *Determinations based on an individual engaging in substantial gainful activity.*

Where an individual is actually engaging in substantial gainful activity, a finding will be made that the individual is not under a disability without consideration of either medical or vocational factors.

2. *Determinations based solely on the medical severity of impairments.*

a. Medical considerations alone can justify a finding that the individual is not under a disability where the medically determinable physical or mental impairment(s) is not severe, e.g., does not significantly limit the individual's physical or mental capacity to perform basic work-related functions.

b. On the other hand, medical consideration alone would justify a finding of disability where:

(i) The impairment meets the duration requirement (i.e., is expected to

last at least 12 months or result in death);

(ii) The impairment meets or equals the severity of a listed impairment published in the Appendix (now designated "Appendix") of the disability regulations; and

(iii) Other evidence does not rebut a finding of disability, e.g., the individual is not actually engaging in substantial gainful activity.

3. *Determinations based on vocational as well as medical considerations.*

a. Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor, is not working and is no longer able to perform such labor because of a significant impairment or impairments, the individual may be found to be under a disability.

b. Where a finding of disability (or its absence) is not made under any of the foregoing steps, the individual's impairment(s) is evaluated in terms of physical and mental demands of the individual's past relevant work. If the impairment(s) does not prevent the performance of past relevant work, disability will be found not to exist.

c. If an individual cannot perform his or her past relevant work but the individual's physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed in the past, it will be determined that the individual is not under a disability. However, if the individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that the individual is under a disability.

The amendments and the addition of Appendix 2 primarily concern the last two steps of the process (3 b and c above) and principally the last step (3c above). They provide a logical sequence for evaluating disability within the last step the step where it is necessary to evaluate the impact of the individual's severe impairment(s) in conjunction with his or her vocational profile (i.e., age, education, and work experience). These rules apply only after a determination has been made that the individual's impairment(s), although severe, does not meet or equal the listing of impairments in Appendix 1 and the individual is unable to perform past relevant work. Moreover, the rules apply only after the impairments have been translated into the individual's physical and mental ability to perform functions necessary for the performance of work.

In the determination of the individual's impairments and ability to function, all medical evidence is evaluated. The individual has the burden of proving his or her case by furnishing evidence of disability, but all evidence adduced in the case from any source is fully considered. If, however, nothing in the evidence raises a question regarding a particular impairment or function, such as seeing or hearing, the individual is considered to be able, in that respect, to perform work activities.

The amendments focus on the vocational factors of age, education, and work experience. They are premised on the necessity to adjudicate each case individually to determine what work a specific individual is able to do. This includes a specific consideration of the individual's vocational profile. In making determinations of disability, administrative notice is taken of authoritative publications and studies which identify the kinds and numbers of jobs that exist in the national economy and their skill and exertional requirements.

Most sources not connected with the Social Security Administration which deal with the vocational implications of limitations resulting from impairments, age, education, and work experience do so from the standpoint of job placement rather than the social security concept of disability, which is concerned with the physical and mental ability to engage in jobs that exist. Such sources entail consideration of elements such as employer hiring practices which the law excludes from consideration in social security disability adjudication. Thus, most of their findings are not directly applicable. Such data do, however, provide an overview of the realities of the labor market and some specific reference points that can be utilized. The extensive experience of the Social Security Administration is also used as a basis for consideration of vocational factors.

Recognizing the primary importance of the individual's impairment(s) and any limitations resulting therefrom, the amendments require first that sound professional judgments be made as to an individual's residual functional capacity. Then, a reliable basis is needed to relate the individual's resiual, functional capacity to what he or she could be expected to do in terms of work at various exertional levels. The individual has the burden of proving that he or she is disabled and where no issue is raised by his or her allegations or the evidence adduced as to specific physical or mental capacities, findings as to such capacities are not required.

In order to consider the individual's residual functional capacity in terms of the level of work his or her exertional capabilities would represent, the definitions of sedentary, light, medium, heavy and very heavy work are use as those terms are defined in the third edition of the *Dictionary of Occupational Titles* published by the Department of Labor. This provides a "bridge" between assessment of residual functional capacity and the identification of ranges of work and types of jobs that remain within the individual's functional capabilities. The rules attach vocational significance to the functional capability for various ranges of work in terms of the relative numbers of jobs represented by the various capabilities.

The functional ability to perform heavy work, which includes the functional capability for work at all of the lesser functional levels as well, indicates the functional capability for almost all work that is listed in the third edition of the *Dictionary of Occupational Titles.* The functional ability to perform very heavy work includes the functional capability for all work that is listed in the third edition of the *Dictionary of Occupational Titles.*

The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work and indicates a substantial work capability. Approximately 2,500 separate unskilled sedentary, light and medium occupations are identified in the *Selected Characteristics of Occupations,* a supplement to the third edition of the *Dictionary of Occupational Titles.* Each occupation represents numerous jobs found throughout the national economy.

The functional ability to perform a full or wide range of light work represents substantial work capability in diverse jobs and industries at all skill levels. Approximately 1,600 separate unskilled light and sedentary occupations can be identified in the *Supplement to the Dictionary of Occupational Titles* (third edition), each occupation representing numerous jobs found throughout the national economy.

Most sedentary occupations are skilled or semi-skilled, and fall within the professional, administrative, technical, clerical, machine trade, and benchwork classifications. There are also approximately 200 separate unskilled sedentary occupations which can be identified in the *Supplement to the Dictionary of Occupational Titles* (third edition), each occupation representing numerous jobs found throughout the national economy. While sed-

entary work represents a significantly restricted range of work, this range itself is not so restricted as to negate work capability for substantial gainful activity. As with the other factors, the functional level of work which an individual can perform is not, in itself, determinative of disability but must be considered in conjunction with the individual's age, education and work experience.

Appendix 2 considers the functional level of work which an individual can perform in relation to the individual's age, education, and work experience. Various combinations of these functions are arranged to direct a conclusion as to whether the individual is disabled. Where findings of fact as to the individual's remaining functional capacity, age, education and work experience coincide with the criteria of a specific rule, the indicated conclusion obtains. Where any one of the individual findings of fact does not coincide with a criterion specified in a particular rule, the rule does not apply in that particular case and, therefore, does not direct a conclusion of disabled or not disabled. In those instances the Appendix 2 rules will provide a guide for decisionmaking along with the discussions of each factor in the body of the regulations.

If it is found that an individual does not have the physical-mental capacity to perform work even at a sedentary level—the level requiring the least exertion—disability will be determined to exist, absent specific evidence to the contrary (e.g., the individual is working in substantial gainful activity). (In such a situation, the individual should ordinarily have been determined to be disabled based solely on consideration of the medical severity of impairment under Step 2b in the sequential process described above.) If, on the other hand it is found that the individual, although severely impaired, does have the physical-mental capacity to perform work at some exertional level (i.e., sedentary through heavy), consideration then must be given, as provided in the law, to whether "jobs exist in the national economy" that are within the individual's capability, considering his or her residual functional capacity in the light of his or her age, education, and work experience.

As previously set out, the law provides that "jobs exist in the national economy" when they exist in significant numbers either in the region where an individual lives or in several regions of the country. Further, in defining what constitutes disability, under sections 223(d) and 1614(a)(3) of the Social Security Act, the Congressional intent is that where an individual's physical or mental impairment(s) and his or her age, education, and past work experience are compatible with the performance of substantial gainful activity, the individual cannot be considered under a disability because he or she is unsuccessful in obtaining work he or she can do; or because work he or she could do does not exist in his or her local area; or because of the hiring practices of employers, technological changes in the industry in which the individual has worked, or cyclical economic conditions; or because there are no job openings for the individual or the individual would not actually be hired to do work he or she could otherwise perform. On the other hand, an individual may be determined to be under a disability if the individual's physical or mental impairments are of such severity that the individual is not only unable to do his or her previous work but cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

In view of the provisions of the law and data which show that significant numbers of unskilled jobs do exist in the "national economy" at each of the levels of required exertion from sedentary through heavy and very heavy, an individual would not meet the requirements for disability if the individual has the residual functional capacity to do work at any of these levels and the individual's vocational capabilities, considering his or her age, education, and work experience, are not so adverse as to preclude his or her ability to engage in such work. Thus, for example, an individual who retains the physical ability to do a wide range of light work, who is not of advanced age, and is able to communicate, read, and write on an elementary level, would generally be considered to still be in the competitive labor market for light, unskilled work, despite the absence of special experience or skills. This is a longstanding guide used by social security disability program adjudicators and has been available in administrative issuances.

Within the context of the preceding discussion concerning the overall impact of vocational considerations in assessing disability, the expanded regulations also provide specific rules for assessing each of the vocational factors of age, education, and work experience. The bases for these rules are discussed below:

AGE

Reference sources and materials dealing with chronological age in terms of vocational relationship deal principally with employment and rehabilitation activities, basing their conclusions mainly on the rate of participation in the labor force, the unemployment rate, duration of unemployment, and the proportion of hires to applicants. It appears from such materials that the "older worker" is usually considered as an individual 45 years of age and older. See, for example *"Services to Older Workers"* by the Public Employment Service (May 1957), page 9; *Training and Employment of the Older Worker, Recent Findings and Recommendations Based on Older Worker Experimental and Demonstration Projects* by Sarah F. Leiter (February 1968), page 1 and 2; *The Productive Years Age 45-65* (undated) published by the National Association of Manufacturers; *Meeting the Manpower Challenge of the Sixties with 40-plus Workers,* a November 1960 Department of Labor publication, page 12.

It is further noted in publications that age 55 represents a critical point in the attempts of "older workers" to obtain employment. See, for example, *A Survey of the Employment of Older Workers* (1965) by the State of California, Department of Employment and Citizens' Advisory Committee on Aging, page 96; *The Vocational Adjustment of the Older Disabled Worker, A Selective Review of the Recent Literature,* by Herbert Rusalen, Ed. D (a study for the Vocational Rehabilitation Administration), pages 9, 10, and 12; *Services to Older Workers* by the Public Employment Service (May 1957).

In viewing the overall implications of the data in the sources cited, it must be recognized that there is a direct relationship between age and the likelihood of employment. However, the statutory definition of disability provides specifically that vocational factors must be viewed in terms of their effect on the ability to perform jobs rather than the ability to obtain jobs—in essence, in terms of how the progressive deteriorative changes which occur as individuals get older affect their vocational capacities to perform jobs. Since no data or sources are available which relate varing specific chronological ages to specific vocational limitations for performing jobs, it has been necessary to analyze and interpret the available age—employment data to ascertain a point where it would be realistic to ascribe vocational limitations based on chronological age.

Prior experience of the Social Security Administration in determining when age makes a difference in disability determinations has also been considered, e.g., as shown in the *Social Security Disability Applicant Statistics/1970* published by the U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, September 1974, as well as the Veter-

ans Administration Schedul› for rating disabilities (38 CFR 4.17).

In this respect, while the data reflect employment problems as developing at age 45, they recognize that this problem becomes significantly intensified at age 55. It is at this point, age 55, where it can reasonably be anticipated, therefore, that the deteriorative changes which occur in older persons which affect vocational capacities would most likely occur. Further, the vocational adversity of age 55 was recognized in *Report of the 1971 Advisory Council on Social Security* published by the U.S. Government Printing Office, April 5, 1971; and age 55 has already gained Congressional recognition in legislation establishing special provisions for disability because of blindness (see section 223(d)(1)(B) of the Social Security Act).

Thus, from the standpoint of chronological age, the proposed amendments reflect age 55 and over as advanced age representing the point when age could be expected to be an adverse consideration in determining an individual's vocational adaptability to work differing from that of his or her past experience. This designation of age is an expectancy only and not an arbitrary limit and may not be crucial in a particular case. Indeed, whatever disadvantage "advanced age" may have generally may be offset in a specific case by an advantage such as skills or training. Further, no general application or inferences are intended regarding employer hiring practices with respect to age. (The Age Discrimination in Employment Act of 1967 prohibits discrimination in hiring practices because of age.) As noted earlier, employer hiring practices, regardless of their legality, are excluded from consideration in social security disability adjudication. The ultimate finding of whether an individual of advanced age can or cannot reasonably be expected to adjust to work other than that which the individual has performed in the past, is dependent upon an evaluation of the extent of the individual's limitations resulting from medically determinable impairments in interaction with his or her age, education, training, past work experience (or lack of work experience), and skills.

In addition, these amendments take cognizance of the fact that the vocational impact of age does not abruptly change from a favorable to an adverse vocational consideration precisely at the point of attaining age 55. Therefore, the proposed amendments provide for consideration of a lesser, but nevertheless significant, degree of vocational adversity as advanced age is approached. The chronological ages shown in the Appendix 2 Rules (45, 50, 55, 60) as representative of the increasing adversity of age within the scope of consideration of this factor in social security disability adjudication are intended as specific indicators, but are not intended to be applied mechanically in borderline situations.

EDUCATION

Formal education is given adjudicative weight to the extent that it relates to an individual's ability to meet reasoning abilities, language, and arithmetical requirements of jobs. Reasoning ability would affect the individual's ability to follow instructions and make judgments in a work situation. Language competence relates to ability to read, write, and speak. The inability to meet the language requirements at an elementary level would restrict even the number of unskilled jobs a person would be able to do. Similarly, the inability to perform simple calculations in addition and subtraction would represent vocational restrictions in performing some unskilled jobs. On the other hand, the *Dictionary of Occupational Titles*, third edition, and particularly the supplement thereto, *Selected Characteristics of Occupations* published by the Department of Labor, reflects that individuals with basic competences in speaking, reading, writing, and making simple calculations do have the educational capabilities for performing unskilled work. The *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics (page 778, 1970–1971 edition and page 764, 1974–1975 edition), also reflects that people who have less than a high school education and no previous experience often can qualify for unskilled jobs. Other materials indicate similar correlations and reflect that employability tends to increase with education. See, for example, in the *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics (1974–1975 edition), the section within each occupational listing entitled "Training, Other Qualifications, and Advancement," for example, see page 764; *The Long Term Unemployed, Educational Attainment* (October 1964) published by the Manpower Administration of the Department of Labor in cooperation with the Oklahoma Employment Security Commissioner (pages vi, and 18); *Monthly Labor Review* of January 1974, an article entitled "Educational Attainment of Workers, March 1973" (pages 58–61); Automation Manpower Services Program Report by the New Jersey State Employment Service entitled *"The 'Mack' Worker, The Impact of His Job Loss 2½ Years Later* (December 1965) (pages 14 and 15); *A Survey of the Employment of Older Workers* (1965) by the State of California Department of Employment and Citizens' Advisory Committee on Aging; *The Impact of Technological Change in the Meatpacking Industry*, published by the Division of Employment, Department of Labor in March 1966 (page 16). Illiteracy as an adverse factor has also been discussed in certain sources (e.g., *Rehabilitation of the Aging* prepared by Portland State College under auspices of Vocational Rehabilitation; *Monthly Labor Review*, September 1972, an article titled "How Employers Screen Disadvantaged Job Applicants").

An education of high school level or above may serve as a partial substitute for loss of physical capacity, i.e., better educated individuals are more likely to be engaged in sedentary and professional jobs. Thus, they are not as likely to apply for benefits or to be classified as disabled. In support of this, the data do not show the better educated to be heavily represented among the disabled; see, for example, Social Security Disability Applicant Statistics/1970, DHEW Pub. No. (SSA) 75–11911, pages 45, 46, 47, tables 18, 19, and 20.

In viewing the overall implications of the data in the sources cited, it must be recognized that there is a direct relationship between the level of education attained and the likelihood of employment. These sources indicate that young people who have less than a high school education and no previous work experience often can only qualify for employment in unskilled jobs such as kitchen workers, dishwashers, or construction laborers. Also, it is noted that individuals with the least schooling tend to have the most unemployment. In the blue collar classification, skilled workers tend to have a higher educational attainment than semi-skilled workers. In the white collar classification, most employees are high school graduates. Additionally, upon becoming unemployed or laid off, individuals with at least a high school education have better success in finding new employment. As a corollary, the chronically unemployed tend to be functional illiterates since most employers require that prospective employees at least be able to read and write. This is true even in the case of some unskilled work.

Thus, it can be seen that employability tends to increase and unemployment tends to decrease as the level of education increases. Increasing adaptability to changing working conditions and acquisition of more readily transferable skills occurs with increased education. Further, individuals who lack an adequate education, especially if they are illiterate, may be excluded from consideration for jobs which require a specified minimal educational background, even though these individuals might meet all other job quali-

fications. In considering the impact of education in social security disability adjudication, judgments must be made beyond the mere use of the number of grades of formal schooling an individual has achieved. In applying the Rules in Appendix 2, the factor of education must represent the individual's demonstrated competences in addition to or instead of a particular number of years of formal schooling or a lack of formal schooling.

WORK EXPERIENCE

An individual's past work experience is considered as demonstrating most persuasively the kinds of work and skill level at which an individual is qualified to perform. In the regulations, previous experience, particularly if it resulted in work skills that are transferable to other jobs, is treated as a substantial vocational asset in accordance with sources which reflect that workers with skills tend to have fewer and shorter periods of unemployment, and that skilled workers are often in demand even at age levels when some workers without acquired skills are experiencing difficulty in the labor market. Some of these sources are: *Counseling and Placement Services for Older Workers* (September 1956) published by the Department of Labor, Page 4, Section C.2.c; page 12, No. 14; page 15, No. 8, page 77, Section H.1; *A Survey of the Employment of Older Workers 1964,* published by the State of California, Department of Employment and Citizens' Committee on Aging, Page 9, Section B.1; Page 10, under the heading "Experience"; Page 49, Section A.; Page 70, Section 2.a.; and *Services to Older Workers* by the Public Employment Service (May 1957), published by the U.S. Department of Labor; Page 7, Section C. However, to be under a disability an individual must not only be unable to do his or her customary work but also must be unable to do any other kind of work that exists in significant numbers in the national economy. Although past work experience provides an individual with familiarity with certain work environments, as previously noted the third edition of the *Dictionary of Occupational Titles,* and other sources identify many unskilled jobs in the national economy at all levels of exertion which do not require skills or previous work experience, and even individuals without past work experience may vocationally qualify for such jobs. Notwithstanding this fact, the expanded regulations do recognize that where the applicant has had no prior work experience (a significant number of applicants for Supplemental Security Income benefits fall in this category) this is an adverse vocational factor which must be taken into consideration, particularly for individuals of advanced age.

PUBLIC COMMENTS

Over 2,800 comments have been received on these amendments following their publication as a notice of proposed rulemaking (NPRM) in the FEDERAL REGISTER, Volume 43, No. 45 on March 7, 1978, beginning at page 9284. Some of those who had comments were supportive of the regulations. Others feared that the substance of the amendments is new and intended primarily to deny benefits to disabled individuals in order to save trust fund moneys. The majority of commenters were concerned that the amendments represented new policies which were intended to pay many persons who would not now qualify for disability benefits, thereby adversely affecting program financing.

The policies, definitions and rules set out in the regulations reflect existing policies. We believe that the regulations will not have any significant effect on the current allowance-denial rates. Rather than abridge claimants' rights, the regulations will provide information about the applicable rules, and will promote more equitable, consistent and understandable decisions.

Many of the comments raised issues which were answered in the preamble to the NPRM published on March 7 (43 FR 9284). Since the issues in these comments were addressed in the NPRM and changes were made in response to the ones that were accepted, the repetitive comments are included in this preamble only where helpful in responding to new comments, or where there are significant variations. We regret, however, that some of the repeated comments reflect some misconceptions that have persisted despite frank discussions. Some additional changes have been made in the amendments as a result of the comments currently received. However, these are mostly of a clarifying nature and do not change the substance of the regulations. For example, several cross references to related disability regulations (including those concerning "substantial gainful activity") have been added and certain complex sections subdivided to make them more readily understood.

Because of the volume of comments, we have not provided individual responses. The following discussion sorts the comments into broad categories and responds to the issues raised.

I. *Public Perceptions of the Nature and Effect of the Regulations*

Issues

Several commenters requested that the regulations be withdrawn or extensively modified on the basis that "everyone has expressed opposition to their publication." Some continued to suggest that the Social Security Administration (SSA) was introducing at least a "limited" average man concept. Fears were also expressed that the regulations will cause a crisis in hearings, appeals and judicial review, leading to delays of decisions for claimants, and that administrative law judges (ALJ's) and other decisionmakers will make preconceived decisions. It was further suggested that additional instructional material will be needed for Federal and State adjudicators, new pamphlets for the public and more detailed notices of findings of not disabled at the initial and reconsideration levels.

Several said that it will become necessary for claimants to be represented by attorneys, while others believed that the regulations will encourage fraud, discourage people from self-improvement, and result in more findings of disabled for minority groups. Another writer asked what part of SSA's disability caseload will be affected by the regulations.

Response

The bulk of the public comments on the regulations have been from two distinct sources: (1) A coordinated response form claimant advocacy groups who fear that the regulations are intended to "deliberalize" the disability program at the expense of disabled persons in order to save trust fund moneys; and (2) a large response (over 2,500) generated by a syndicated newspaper column and related articles which pictured the regulations as a "liberalization" intended to pay benefits to nondisabled persons and thus cause the trust funds to go broke.

The two main groups of commenters, while both objecting to the proposed regulations, are on opposite sides regarding the direction they believe the disability program will and should take. Actually, the regulations as reflective of longstanding policies are neither intended nor expected to make the disability program more or less liberal. They are in accordance with the Social Security Act and legislative history, and intended only for the purposes set out in the NPRM.

Contrary to many of the commenters' concerns about "liberalization" of the program, the requirement of the law that a severe medically determinable impairment must be present for any finding of disability has not been changed. In fact, the regulations reemphasize the primary importance of the individual's impairment. These concerns arose mainly from newspaper articles which indicated that an inability to add and subtract, advanced age, inability to adjust to new work or inability to communicate

in English would replace consideration of a severe impairment to qualify persons for disability benefits. Since this information (upon which over 2,500 commenters relied) was faulty, this preamble does not include discussion of each of the items erroneously described as replacing a severe impairment as the basic requirement for disability benefits. However, these comments were not ignored. We individually considered and acknowledged all of the comments received, sent copies of the NPRM to those who requested them, and provided additional information in response to mail and telephone inquiries. It is hoped that these efforts have helped achieve a better understanding of the regulations.

Regarding "deliberalization" of the program, some of the continued fears about an "average man" approach in place of individualized adjudication appear to result from an emphasis on the tables in Appendix 2 to the exclusion of the rest of the regulations. These tables cannot be applied, and should not be read, out of context. The explanatory material, definitions and guides in the regulations must also be considered, and adjudication must proceed in a sequential manner as set out in the regulations. In following this sequence and considering all appropriate factors, individualized adjudication is assured as in the past.

ALJ's and other decision makers are aware that a person's impairments can worsen or improve with the passage of time and that thorough individual consideration of all applicable factors is necessary in each claim. Decision makers are expected to use the regulations as they are published, which will improve decision making rather than lead to pre-conceived decisions, or the disregarding of evidence or other misuse of the tables in Appendix 2.

As in the past when such major regulations as those on medical criteria and substantial gainful activity were issued, SSA will hold training sessions and publish instructions for personnel in the disability program, as well as issue any appropriate pamphlets or other materials for the general public and revise notices as appropriate.

These regulations do not address the basic medical aspects of disability evaluation, the nature and sufficiency of signs, symptoms and laboratory findings reported; these are at least as complex as vocational factors and are the basis of the assessment of the claimant's residual functional capacity which, in turn, provides the setting for evaluation of age, education and work experience. This is the same as before. However, the regulation set out and defined in a single source the longstanding guides for evaluating the vocational factors in context with the individual's residual functional capacity, making this material more readily available in detail to everyone.

Therefore, we do not agree that a person could not prosecute his or her own disability claim or would be likely, because of these regulations, to need attorney representation more than in the past. Further, the denial notice at each adjudicative level clearly informs the claimant of appeal rights and, if a claimant expresses interest in having representation, he or she is told about the right to be represented; how to appoint a representative; what a representative may do; and fee regulations.

While in the short run delays in claim processing could result if the courts decide to make wholesale remands, this would have to be dealt with at the appropriate time and the inconvenience to claimants minimized. Such possibilities are not unique to these regulations and do not obviate their need. Further, the regulations have a 90-day delayed effective date to help prepare for their implementation.

Previous publications of regulations setting out disability criteria, such as the medical listings and the substantial gainful activity (SGA) criteria, did not result in an increase in fraudulent statements by claimants or their representatives, and it is not anticipated that these regulations will either. Any significant increase in misstatements would result in a review of documentation policies. With respect to the possibility that the regulations will nurture of lack of motivation for a person to become better educated or skilled, it is emphasized that the presence of adverse vocational factors without a severe physical or mental impairment does not warrant a finding of disabled.

The longstanding policies for the adjudicative consideration of age, education and work experience apply equally in consideration of all individuals who are severely impaired. These policies, which reflect an individualized adjudicative approach, apply regardless of where a severely impaired person may live. Otherwise the disability program, which is national in scope, would not treat impaired persons living in different areas, or persons who might move to other areas, in the same manner. Each claimant will receive a determination that reflects the facts in his or her case. However, the regulation will help to assure consistent results for claimants with similiar factual situations.

We are aware that there have often been greater concentrations of individuals in particular areas or groups who may be more poorly educated, unable to communicate in English or less skilled, and that such individuals who are severely impaired may be more likely to be found disabled. However, they will not be paid disability benefits on the basis of their residence or cultural background, but on the basis of a severe impairment and the existence of adverse vocational factors. As stated in existing policies and as reflected in these regulations, *disabled individuals* are paid benefits regardless of where they live, from where they may have come, or how many other disabled individuals may have a similar background or residence. Examples of some areas in which greater numbers of persons with adverse nonmedical factors have been found in the past include Puerto Rico, some Indian reservations, parts of Alaska, Appalachia, cities where disadvantaged or newly arrived groups have congregated, and other urban and rural areas. The fact that SSA's policies have recognized these realities in the past would indicate no expected overall change in allowance/denial rates.

Figures were distributed at the public meetings which SSA held in Baltimore (41 FR 51471), Dallas, and San Francisco (42 FR 8223), about title II cases processed in Fiscal Year 1976 which show that, on the initial level, of 948,180 worker claims processed that year 91,969 individuals were found not disabled because they could do other work; while 116,088 were found disabled because they could not do other work. This is the type of case covered in these regulations. The remainder of the cases were decided on purely medical and other bases. Approximately the same distribution exists for other years.

II. *Procedures Used in Promulgating the Regulations*

Issues

Two writers stated that additional public meetings should be held to discuss the NPRM responses to the issues raised in public comments. Others asked for an additional extension of the public comment period. One commenter suggested that lower-ranking officials have been remiss in not presenting the views opposed to the regulations to the Commissioner of Social Security and the Under Secretary of HEW, and requested a meeting with them. Another writer noted that all questions and comments resulting from the public meetings and responded to in the NPRM were from individuals and groups who feared the regulations were more restrictive than past policies, and inquired if any attempt had been made to obtain comments from persons with the opposite view—that the regulations are more liberal and will, therefore, result in benefits being paid to more people than before.

Response

We have tried to obtain as much public imput over as broad a spectrum

as possible through publicizing the regulations and inviting comments. To this purpose, the public meetings held in Baltimore, Dallas, and San Francisco were announced in the FEDERAL REGISTER and in press releases, inviting everyone to attend and to provide comments. In addition, public comment periods were provided following the meetings. Since most of the persons who attended the meetings represented claimant advocacy groups, the comments addressed in the NPRM were largely in response to their concerns.

Publication of the NPRM with attendant publicity represented an additional effort to expose the proposed regulations to as much public scrutiny as possible, and to encourage everyone to submit any comments they might wish to make. The extension of the NPRM comment period for an additional 30 days to allow more time for public comments was also announced in the FEDERAL REGISTER (43 FR 19238) and in press releases. Further, representatives of groups opposed to the regulations have had access to SSA documents, and have met with the immediate staffs of both the Commissioner and Under Secretary. All views expressed during these meetings have been presented fully and accurately to top SSA and HEW staff.

Several changes were made in the NPRM as a result of views expressed in the public meeting and the written comments which were received thereafter. In light of more than ordinary efforts to seek and accommodate public participation, and since there have been no significant changes in the regulations on SSA's own motion after the public meetings, there is no present need for additional publicity, meetings or extensions of public comment period. We believe that full opportunity to comment has been offered, and that the full range of comments on these regulations has now been received and carefully considered.

III. *SAA's Experience, Data and Studies Used to Support the Regulations*

Issues

One commenter stated that SSA has misled the public about the regulations being merely an elaboration of longstanding policy, and that a new NPRM should be issued with deletions of any such references. Another commenter stated that the regulations have not been used in the past in any form which is entitled to any weight in rulemaking. Some writers suggested that SSA used references to experience as a substitute for data, evidence and careful study; and one requested an opportunity to cross-examine social security employees having knowledge of SSA's adjudicative experience and data relied upon in the proposed regulations.

In related questions, writers asked how quality control results were used in testing the regulations, and what data support the use of the 15 year period for consideration of an individual's past work. Also, some commenters repeated statements that scientific pretesting of the regulations should have been done.

Response

In promulgating these regulations, the Secretary is exercising statutory rulemaking authority to put into the regulations a construction that has existed for many years. While extensive background and experience is not required for such publications, SSA does, in fact, have considerable agency expertise developed over many years. Organizations and professions commonly recognize the value of experience even though it may not always be presented in statistical form.

Experience with the adjudicative policies set out and elaborated upon in the regulations is commonly held knowledge by thousands of past and present State and Federal employees who have worked in the social security disability program. Further, inspection of SSA files under the Freedom of Information Act showed the policy system reflected in the regulations to not be of recent origin. Accordingly, we do not believe that cross-examination of present SSA personnel as to experience or other subjects is either necessary or appropriate.

The data used in the evolution of the policies over the years are largely in the public domain. While data and reference materials have been used as appropriate, it must be borne in mind that SSA has had to create policy in several areas of the disability program that is different, by law, from other Governmental and private disability programs.

As stated in the NPRM, the 15-year period established as a limitation for considering past work is designated essentially as a safeguard in the interest of the disability claimant. While the law speaks only of "previous work," there is obviously some doubt that a claimant should be denied disability benefits on the basis that he or she could still functionally engage in some particular job held many years in the past, or because of skills he or she acquired at that time which have not been used since. The 15-year guide is a longstanding policy which was adopted many years ago during the evolution of the disability policy system, and has been followed since.

Continued suggestions that the regulations be pretested apparently resulted from beliefs that the regulations reflect new policies. While, as noted in the NPRM, we do not consider pretesting necessary because of expectations based on long experience, we plan to monitor the disability program to make sure there are no unforeseen effects. Quality control findings, which were noted during the evolution of the policy system will be a part of the monitoring effort.

One organization commissioned a study of the proposed regulations and submitted the study report as supporting their comments, including the major criticisms of the regulations which they and others have advanced. A thorough study by qualified SSA professionals revealed that the organization relied to some extent on faulty premises in making their comments. Thus most of the commissioned study conclusions were not applicable. The commissioning organization was provided directly with SSA's detailed analysis and discussion of the conclusions of the study. While the lengthy professional evaluation could not be readily included in this preamble, it is available upon request.

IV. *Definition of Impairments as "Not Severe"*

Issues

Several commenters questioned the use of the term "not severe." One suggested that the term indicates a change in the definition of disability, while another believed it could be seen as a device to limit entitlement. A writer stated that, instead of the negative wording, "A medically determinable impairment is not severe if it does not significantly limit an individual's physical or mental capacity to perform basic work-related functions," the definition should be given in the positive terms, "A severe impairment is one that significantly limits an individual's physical or mental capacity to perform basic work-related functions." Another commenter believed that it would be simpler to say that an individual can be found not disabled on medical considerations alone when the impairment does not prevent heavy work.

Still another writer, not questioning the concept itself, pointed out that in regulations sections 404.1502(a)/416.902(a), the phrase "absent evidence to the contrary" at the end of the sentence is misplaced and implies that, where medical considerations alone justify a finding of no disability, something other than medical evidence can justify a finding that an individual is under a disability.

Response

The definition, "A medically determinable impairment is not severe if it does not significantly limit an individual's physical or mental capacity to

perform basic work-related functions" is a clarification of the previous regulations terms "a slight neurosis, slight impairment of sight or hearing, or other slight abnormality or a combination of slight abnormalities." Both have a negative sense and are related to the requirement of the law that, for impairments to be disabling, they must be "of such severity" as to prevent the claimant from doing previous work and, considering age, education and work experience, prevent the individual from engaging in *any* kind of substantial gainful work which exists in the national economy. The discussion on pages 9296 and 9297 of the NPRM shows that there is no intention to alter the levels of severity for a finding of disabled or not disabled on the basis of medical considerations alone, or on the basis of medical and vocational considerations. Negative phrasing of this concept is more useful in evaluating disability than affirmative terms would be. With respect to the suggestion that a "not severe" impairment be defined as one that does not prevent heavy work, it cannot be adopted because such a definition would not pertain to loss of mental function and all other nonexertional impairments.

We are appreciative of the writer's calling our attention to the possible misconstruction that could occur of the wording in §§ 404.1502(a)/416.902(a), which has been changed to, "Medical evidence (i.e., signs, symptoms, and laboratory findings) alone can justify a finding that an individual is not under a disability, or absent evidence to the contrary, that an individual is under a disability."

V. *Consideration of Medical Factors before Consideration Is Given to Vocational Factors*

Issues

Several commenters stated that there should be no "gray areas" of disability decisions, that people are either disabled or not disabled, and that this can be determined on a medical basis alone, without considering age, education, and work experience. One commenter wished to have a definition of "erratic or irregular" as used in the preamble response on page 9299 of the NPRM. Another writer stated that pain should be considered a nonexertional impairment along with mental, sensory and skin impairments. Somewhat in the same vein, one commenter observed that, under case law, SSA must consider the claimant's subjective evidence not only of pain but also of his or her exertional abilities.

One writer was concerned that "evidence of record" as used in regulations sections 404.1505(a)/416.905(a) not be construed as preventing the testimony of witnessess at a hearing. Several commenters stated that the regulations are vague about the extent, if any, of their application to nonexertional impairments. One questioned whether the definitions of functional levels take any notice of particular functions that may be critical to one range of work but not another. Others questioned whether Appendix 2 rules are intended to apply if there are additional limitations such as in pushing, pulling, gripping, bending, stooping, etc.

Some commenters suggested that the regulations result in shifting the burden of proof from the Secretary to the claimant where the claimant has nonexertional impairments. Two writers believed that since, under title XVI, the Government will pay for medical evidence of record as well as for tests and consultative examinations, regulations sections 416.902 and 416.905 should be cross-referenced and expanded to include a detailed discussion of medical evidence.

Response

Under provisions of the law, medical considerations alone are the bases for determining whether disability exists for the statutorily blind; widows; widowers; surviving divorced wives; and children below age 18 under the supplemental security income program. For other disability applicants and beneficiaries, the law provides that age, education and work experience be considered. Thus, where a decision cannot be made on medical factors alone these regulations set forth the guides and rules to be used to arrive at a finding of disabled or not disabled considering age, education and work experience in conjuction with the person's residual physical and mental capacities.

The phrase "the capacity for such functions only on an erratic or irregular basis," on page 9299 of the NPRM, relates to the heading, "Residual functional capacity, maximum sustained work capability," of Tables No. 1, 2, and 3 in Appendix 2. An erratic or irregular basis refers to a person's *inability to sustain* work-related activities in terms of an ordinary work day on a continuous day-to-day basis.

In regulations §§ 404.1501(c)/416.901(c) which are not being amended at this time a physical or mental impairment is defined as "an impairment that results from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. Statements of the applicant, including his own description of his impairment (symptoms) are, alone, insufficient to establish the presence of a physical or mental impairment." Signs and laboratory findings must be considered together with symptoms in determining the nature and extent of an impairment, as explained in previous regulations §§ 404.1506/416.906, now renumbered §§ 404.1517/416.917. Symptoms such as pain, fatigue and shortness of breath enter into evaluation under the Listing of Impairments in Appendix 1 and are also considered when determining a claimant's residual functional capacity for use in a medical-vocational decision. Thus, pain and other symptoms are constituents of an impairment, not impairments by themselves, and are given recognition in Tables No. 1, 2 and 3 in Appendix 2, as elements of residual functional capacity when the impairment with which they are associated is one that limits exertional capability to sedentary, light or medium work. Guidelines are also provided for considering limitations within ranges of work, including any additional limitations imposed by nonexertional impairments.

"Evidence of record" as used in regulations §§ 404.1505(a)/416.905(a) is not meant to prevent the testimony of witnesses at a hearing, whether the subject is the claimant's symptoms or any other matter. Such a construction of intent is precluded by the regulations on hearings, particularly §§ 404.927/416.1441, 404.928/416.1442, 404.929/416.1443 and 404.934/416.1446.

Many commenters did not appear to have a clear understanding of SSA's use of the term "nonexertional impairment." Nonexertional limitations involve mental, sensory or skin impairments. Emvironmental restrictions such as the need to avoid moving machinery and unprotected elevations, avoid breathing certain fumes or dust, avoid contact with certain substances, or avoid extremes of heat or cold, significant temperature changes, high humidity, noise or vibration are also considered, as well as restrictions in postural or manipulative abilities. All limitations which result from medically determinable impairments are considered in assessing residual functional capacity as illustrated by the examples in § 201.00(h) of Appendix 2.

Where a person has nonexertional (or additional exertional) limitations, the ranges of work he or she can perform (sedentary to very heavy) are diminished by exclusion of the particular occupations or kinds of work within those ranges that entail use of the abilities which the person has lost. In some cases, the exclusion will have a negligible effect, still leaving a wide range of work capability within the functional level; while in others the range of possible work may become so narrowed that the claimant does not have a meaningful employment opportunity. Different types of functional loss may be more critical to some exertional levels than to others; e.g., loss

of fine dexterity would narrow the range of sedentary work much more than it would for light, medium or heavy work. In the absence of such other limiting factors, it is presumed that an individual can also do all lesser ranges of work.

Nonexertional limitations are discussed in §§ 404.1505(c),(d)/416.905(c), (d) and 404.1511(b)/416.911(b) of the regulations as well as §§ 200.00(d), (e), (1), (2) and 201.00(h) of Appendix 2. This particular area does not lend itself to a great degree of specificity, and judgments are required as in the past. For example, a claimant who would otherwise fully meet Rule 201.29 in Table No. 1 is also allergic to petroleum derivatives. He or she would be found not disabled on the basis of being able to do sedentary occupations except for those relatively few ones which require contact with or other hazardous exposure to petroleum derivatives. However, assuming the existence of several medically determinable nonexertional and environmental impairments, or even one critical to the performance of unskilled sedentary occupations in general, or a large number of specific occupations of that type, the same claimant may be found disabled.

A person with nonexertional impairments has no different burden of proving his or her claim than does another person with only exertional impairments. The burden of proof remains as established in case law and observed by SSA. Where the medical evidence establishes the claimant's inability to do vocationally relevant past work, the Secretary will continue to consider all the claimant's work-related physical and mental limitations, including those of a nonexertional nature, in determining what the claimant can do functionally and what occupational opportunities in the national economy—if any—there are for a person who can do only what the claimant can do.

We agree with the writers who suggested that regulations §§ 416.902 and 416.905 should be cross-referred to each other, as both relate to medical evidence and the Secretary's assistance in securing and paying for it. We have done this, as well as referencing them to §§ 416.924 and 416.927, which also relate to medical evidence under title XVI. However, expansion and elaboration upon medical evidentiary standards is not within the scope of these regulations.

VI. *Age as an Adjudicative Consideration*

Issues

Several commenters expressed the belief that the age criteria of 45, 50, 55, and 60 are arbitrary and rigid break-off points which will cause dramatic shifts in adjudicative results due to the passage of a few days or months. Having the same view, a writer stated that, when age has been critical to the decision of denial, the applicant should be notified to reapply for benefits upon reaching the critical age. Another commenter wrote that the use of these age criteria is unjust to some minority groups because the life spans of members of some minorities are shorter than the national average and, thus, these persons would not have an opportunity to qualify for disability benefits. In contrast, several writers believe that age 55 is too young to be defined as "advanced age," since most persons continue to work after age 55, and there is recent legislation raising the mandatory retirement age to 70.

Response

The discussion of age on page 9289 of the NPRM refers to the publications relied upon when policy was being formulated. As stated there, the "older worker" is usually considered as an individual 45 years of age and older, while age 55 represents a critical point in the attempts of "older workers" to obtain employment. At age 65, of course, the "older worker" can qualify for unreduced social security retirement benefits. Between these 10-year increments, the regulations include ages 50 and 60 resulting in a 5-year gradation of age distinctions which better recognizes progressive difficulties.

We acknowledge that there are no conclusive data which relate varying specific chronologial ages to specific physiologially-based vocational limitations for performing jobs; this was a pioneering effort by SSA due to the unique nature of its disability program. Although ages 45, 50, 55 and 60 may be considered by some as too sharply defined as points in a progression of increasing difficulties, the concept of adversity of the aging process for severely impaired persons approaching advanced or retirement age is not arbitrary. On the one hand, age may not be crucial in a particular case; on the other hand, where age is critical to a decision, recognition is taken of increasing physiological deterioration in the senses, joints, eye-hand coordination, reflexes, thinking processes, etc., which diminish a severely impaired person's aptitude for new learning and adaptation to new jobs.

With respect to the possibility of rigidity and dramatic shifts in adjudicative results due to the passage of a few days or months, we state on page 9289 of the NPRM that ages 45, 50, 55 and 60 are intended as specific indicators but are not intended to be applied mechanically in borderline situations; this was repeated on page 9300. SSA practice over the years, in fact, has been in agreement with the commenter that the passage of a few days or months before the attainment of a certain age should not preclude a favorable disability decision. In response to comments that the caution in the preamble should be included in the regulations, we have modified sections 404.1506/416.906 accordingly.

False expectations of entitlement to disability benefits could be raised if SSA were to notify denied applicants that they should routinely reapply upon nearing or attaining ages 45, 50, 55 and 60. It must be considered that future circumstances cannot be exactly forecast. While someone will now have a severe impairment and a vocational background that, combined with future attainment of a certain age would qualify him or her as disabled, the person may recover medically, may acquire new education or work skills, or may actually be engaging in substantial gainful activity by the time of attainment of the specified age. Notices sent to denied applicants would have to take these factors into account and, as in the past, advise the persons that they *may* be found disabled if they reapply.

We realize that life spans of some individuals—including members of some minority groups—are shorter than the national average. However, unlike retirement programs where benefits depend upon an individual's living to a particular age, the social security disability program is based on the severity of an individual's impairment—at any age. In fact, age is not considered at all in the bulk of initial allowances of disability benefits. These cases are decided on the severity of the impairment alone. Where it is necessary to consider age, it is one of three additional factors for consideration and is never, in itself, determinative of disability. The severity of an individual's impairment remains as the primary consideration, and must be the primary reason for the applicant to be unable to work.

While most persons continue to work after age 55 and some work until age 70 or beyond, these persons are usually unimpaired or not severely impaired. Contrary to some writers' fears, the regulations do not indicate that persons "fall apart" or are unable to work at age 55; neither do they suggest age 55 as a retirement age in conflict with the recent legislation on mandatory retirement. As discussed in the NPRM the use of age 55 relates only to the social security disability program and is not intended for use by other programs or for retirement plans.

VII. *Education as an Adjudicative Consideration*

Issues

Some commenters wrote that the regulations on education are defective in that they do not more clearly articulate the need for the adjudicator to closely examine asserted grade levels, and because they believe that persons with a high school diploma are treated as the equivalent of persons with university degrees. They are particularly concerned that an education received in a school with high academic standards and excellent resources will not be the equivalent of one obtained in a marginal school with inadequate resources; and that grade placement may not be a true indicator of grade-level achievement. The same commenters believe that data show only a straight-line progression between education and an ability to obtain and perform work; therefore, they suggest that the educational categories in the regulations are arbitrary, unreasonable, and dramatic critical demarcations.

Another writer was concerned that an overstated educational background, possibly due to a claimant's embarrassment at his or her actual educational level, could result in that person's being erroneously denied disability benefits. Two other commenters asked how many months or years could elapse between completion of a claimant's education and the date of adjudication for the education to be considered as "recently acquired."

Response

We do not believe that the educational categories are arbitrary or unreasonable. As previously explained on page 9290 of the NPRM, the cited published materials show that increasing adaptability to changing work conditions and acquisition or more readily transferable skills occur with increased education. It is important to observe that Tables No. 1, 2, and 3 in Appendix 2 do not contain specific grade levels but have terms ranging upward from illiterate to high school graduate or more. Explanatory material in §§ 404.1507/416.907 states that what is meant by a sixth grade level or less ("marginal education") is an education qualifying a person for no more than simple, unskilled types of jobs. A seventh through eleventh grade level ("limited education") is qualifying for some semi-skilled and skilled jobs; while high school education and above refers to such a level of competence in reasoning, arithmetic and language skills that the person can generally be expected to work at a semi-skilled through skilled level of job complexity. There is a correlation between these levels and the general educational development level figures used in the Dictionary of Occupational Titles (DOT) as one of the criteria in classifying occupational complexity.

SSA policy is and has been that asserted grade level is determinative only in the absence of evidence to the contrary. Demonstrated competences in work and daily living rather than a particular number of years of formal schooling (or no schooling) are the better adjudicative measure. Accordingly, where a claimant's file shows that he or she did not work or function at the asserted educational level, the adjudicator continues to be directed to determine the effective level of education, which may actually be higher or lower than stated. While regulations §§ 404.1507(a)/416.907(a) did refer to the kinds of responsibilities assumed when working, daily activities, hobbies, the results of testing and what the individual has done with his or education in a work context, we have acted on the commenter's suggestion to expand the regulations explanation of how to evaluate educational levels.

It was previously explained on page 9290 of the NPRM that, on the one hand, the chronically unemployed tend to be functional illiterates; and, on the other hand, upon becoming unemployed or laid off, individuals with at least a high school education have better success in finding new employment. We also observed that better-educated persons are more likely to be engaged in sedentary and professional jobs, are not as likely to apply for benefits or to be classified as disabled and, in fact, are not heavily represented among the disabled. A corollary is that, while functional illiterates are unlikely to have transferable work skills, better-educated persons would tend to have such skills, and decisions on their disability claims would often depend more on past work and acquired skills than on the level of education. In these respects, therefore, a high school graduate and a university graduate ordinarily have a similar advantage in being able to learn and do a new unskilled job, although the university graduate may have more transferable skills to assist in his or her change to a job which is compatible with lessened functional capacity.

Judgments must be made in some areas of disability evaluation, medical as well as vocational, as they always have. Because assessments are made of each appropriate factor for each claimant, the individual circumstances cannot always be anticipated with precision, and specific guides set. "Recently completed education," as discussed in § 201.00(d) of Appendix 2, refers to the *rare* situation where a claimant of advanced age has recently completed education which provides a basis for direct entry into skilled sedentary work (this circumstance is taken into account in Tables No. 2 and 3, as well as in Table No. 1). Here, there is a requirement of skilled educational content qualifying a person immediately to begin a specific skilled job, as opposed to the competences in reasoning, communicating and calculating referred to in regulations §§ 404.1507/416.907. The immediacy of the person's ability to enter a job establishes that his or her education has current application. Where such education is footnoted in the tables, and a decision depends on the factor, there should be very little time lapse.

VIII. *Work Experience and Job Existence as Adjudicative Considerations*

Issues

Many commenters expressed their beliefs that only persons with work experience who have contributed tax payments for social security should receive benefits from the trust funds. One writer cited the financial and physical inability of many persons to move and secure jobs in the continental United States, and suggested that the "national economy test" should not apply to such noncontiguous areas as Alaska, Hawaii, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific, and the Virgin Islands.

Two commenters were concerned about the intention of the words "majority of jobs within a particular range of work" on page 9300 of the NPRM. They observed that Rule 203.00 in Appendix 2 states that approximately 2,500 separate unskilled sedentary, light and medium occupations can be identified as existing in the national economy. They suggested that this could mean that the Secretary would need to show that a not disabled claimant with the exertional capacity for medium work could do 1,251 occupations, the majority of 2,500. Another person wrote that by not identifying the 2,5000 occupations of which administrative notice is taken, and other occupations, SSA prevents a necessary assessment of transferability of skills from taking place.

Some commenters stated that the regulations are already dated in that they rely to a large extent on the 1966 (third) edition of the Dictionary of Occupational Titles rather than the recently published fourth edition. They requested a detailed analysis of the new DOT before issuance of the regulations and notice to interested parties of the results of the evaluation, particularly if changes in the DOT warrant restructuring of the regulations. Another individual wrote that the regulations should consider the realities of the changing economy which provide an increasingly better chance for imparied persons to earn a livelihood as opportunities in the service indus-

try increase and work is made physically easier through automation.

One writer questioned whether administrative notice of job existence in the national economy precludes rebuttal of decisions based on specific rules in Appendix 2. Several commenters questioned the basis for and use of the guides for determining transferability of work skills. They requested the meaning of the term "occupationally significant work functions," asked what other factors are involved, and wanted to know how an adjudicator would decide whether there is a transferability of skills from a dishwasher to a chemist in view of the fact that both handle glassware in their work. Other writers stated that the regulations do not clarify the degree to which Administrative Law Judges (ALJs) are to determine whether a claimant's past work was unskilled, semiskilled, or skilled, whether skills can be transferred, and to which occupations the skills can be transferred.

Response

Benefit payments from the disability trust fund are made only where workers have had sufficient work credits to insure them for disability protection. In the event that a person has insufficient or no work credits, and he or she applies for and receives disability benefits under the supplemental security income program (title XVI), payments are made from general revenues.

One of the considerations in the definition of disability in sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act is a claimant's ability (or inability) to do work "which exists in the national economy." Congress intended to have a definition of disability which could be uniformly and consistently applied throughout the Nation without regard to the place of an individual's residence. Legislative intent has also been to have a clear distinction between inability to *do* a job—the disability programs—and inability to *get* a job—the unemployment programs. The law does not permit exemptions from the "national economy test" for areas within the continental United States or for noncontiguous areas. Where occupations are named that a claimant can do, the citations are meant to show that the individual has a meaningful vocational opportunity despite the limiting effects of his or her impairment(s), not that job vacancies exist or that the claimant would be hired if he or she applied for those jobs.

On page 9300 of the preamble to the NPRM, perhaps the better word would have been *most* or *bulk* since no mathematical distinction was intended by the use of the word "majority." The point being made was that *within* a range of work (sedentary, light, medium, heavy or very heavy) unless the individual possesses physical capacities equal to the strength requirements for *most* of the jobs in that range, he or she cannot be classified as able to do the pertinent range of work. This has no relationship to the discussion in § 203.00 of Appendix 2, or to the numbers of citations of potential occupations necessary to sustain a denial of disability benefits.

It is not necessary and would be far too cumbersome to provide in these regulations lists of the thousands of different occupations at all skill levels which exist in the national economy. This information is available in public libraries, local employment agencies, etc. The 2,500 sedentary, light and medium occupations whose existence is being administratively noticed (identifiable in "Selected Characteristics of Occupations (Physical Demands, Working Conditions, Training Time), A Supplement to the Dictionary of Occupational Titles, Third Edition") are all *unskilled* occupations; since no work skills are attributable to unskilled occupations, no skills can be transferred to or from these occupations. Where transferability of skills is an issue, past and potential occupations other than these relatively simple ones will be involved. While understanding of skills and the basis of transferability can be obtained from Volume II of the DOT and the lists of occupations in "Selected Characteristics of Occupations By Worker Traits and Physical Strength, Supplement 2 to the Dictionary of Occupation Titles, Third Edition", this remains a judgmental area.

The third edition of the Dictionary of Occupational Titles will remain the only one which bears directly on the SSA disability program until the time that the fourth edition becomes available in its entirety. At present, only the first volume of the fourth edition has been issued, with a second volume and a supplement to be published, as in the past, with the cooperation of SSA. Because the latest first volume is different in content and substance, we cannot do a detailed analysis of the fourth edition in the immediate future, and we have not delayed publication of the vocational factors regulations on that account. While we do not anticipate any major changes of job incidence or other occupational data, if later analyses indicate that any rules should be restructured, the public will be notified. If, as the commenter suggested, impaired persons may benefit because of increased opportunities in the service industry and physically easier jobs through automation, we would need firm evidence of this. Further, only a significantly increased number of unskilled jobs could affect the tables in Appendix 2 in the manner suggested by the commenter.

As to whether administrative notice of job existence in the national economy precludes rebuttal of decisions based on specific rules in Appendix 2, it must be noted that the regulations do not take administrative notice of jobs above the unskilled level. Hence, the rules pertaining to denial on the basis of transferable skills would be subject to rebuttal on that issue. Also rebuttable, of course, is the accuracy of the assessment of the claimant's residual functional capacity, age education, and work experience. As indicated on page 9301 of the NPRM, the distinction should be made between adjudicative facts, which can be rebutted, and the adjudicatory rule to be applied to these facts, which is conclusive. Where any one of the findings of adjudicative fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that paticular case and, accordingly, does not direct a conclusion of disabled or not disabled.

The use of the word "largely" in regulations §§ 404.1511(e)/416.911(e) caused several commenters to ask what factors other than occupationally significant work functions are involved in the transferability of skills, and why they cannot be articulated. The work *functions* are those involving action or activity: (1) the same or lesser degree of skills; (2) the same or similar tools and machines; and (3) the same or similar raw materials, products, processes or services. In addition to work functions, the *industry* and *work environment* may sometimes be of importance, since if a person's skill is so specialized or acquired in such an isolated vocational setting that it is not readily usable in other industries, jobs and work environments, the person's vocational outlook may be as limited as if he or she had no skill. The regulations have been expanded to include an additional sentence to cover this. An adjudicator should immediately be aware that there is no transferable skill connection between such entirely different types of workers as professional persons engaged in scientific analysis or research and hotel or restaurant employees primarily using their hands or machines to clean kitchen and dining room utensils. A dishwasher is unskilled, a chemist is highly skilled, and by those facts alone the jobs cannot be compared to each other in terms of transferable skills.

Where called for in individual cases, Administrative Law Judges will be expected to make the ultimate determinations as to the skill levels of a claimant's vocationally relevant past jobs and the relationship of those skills to potential occupations. However, these

regulations do not pertain to the conduct of title II or title XVI hearings, which is covered in 20 CFR 404.917 through 404.940, particularly 404.927; and 20 CFR 416.1425 through 416.1458, particularly 416.1441. The use of a vocational expert is at the discretion of the Administrative Law Judge, and it is anticipated that some issues on hearing may continue to require the services of vocational experts.

Summation

In essence, the regulations and Appendix 2 identify and define the individual medical-vocational factors which Congress intended to be considered in appropriate cases and illustrate the relative weights to be ascribed to each factor in conjunction with all of the other variables in determining an individual's ability or inability to perform substantial gainful activity. Appendix 2 sets forth these interactions in the form of individual profiles demonstrating the changing adjudicative weights to be accorded each factor in relation to the others. The conclusion of disabled or not disabled shown in a rule reflects whether or not a severely impaired individual with that particular combination of individual characteristics is able to engage in substantial gainful activity. The conclusion in the individual case is based on a medical-vocational determination of capacity for the performance of ranges of work, rather than singular or isolated occupations and, therefore, inherently considers the performance of a significant number of jobs that exist in the national economy.

The publication of Appendix 2 is not intended to direct the adjudication of social security disability claims on the basis of an "average man" approach. Rather, the rules make the process of determining the ability to engage in subtantial gainful activity (work) more uniform and definitive while preserving the individuality of the determination. The standards for evaluation included in Appendix 2 are rules whereby each case is evaluated. They do not detract from the requirement that the determination of facts in every case be on an individual basis. To the contrary, the rules require that individualized findings of fact be made with respect to each individual's age, education, work experience, and physical and mental limitations, and that all factors resulting from those findings of fact coincide with the criteria of a particular rule in order for that rule to direct a conclusion of disabled or not disabled in the individual case. Thus, the rules require that each individual's age, education, work experience, and physical and mental limitations personal to him or her, be taken thorough account of before the rules are applied to the facts in the case. The rules need to be as definitive as possible so that the claims of all individuals similarly situated are handled in a fair and consistent manner and to assure that determinations made by one set of adjudicators on the basis of the same facts will be handled the same way by another group of adjudicators, wherever in the country they are located. The necessity for each determination to be an individual one does not eliminate the need for consistency and uniformity in determinations. The way that is achieved administratively is by the regulations and the Appendices (1 and 2).

With respect to those claims not covered within the specific parameters of a rule in Appendix 1 or 2, a determination will have to be made on the basis of the discussions and definitions in the main body of the regulations, taking appropriate account of the rules in Appendix 2.

The rules stated herein represent a consolidation and elaboration of longstanding medical-vocational evaluation policies, which heretofore have been reflected in fragmented guides not readily available in the same format at all levels of adjudication. The regulations and Appendix 2 take appropriate account of the Social Security Administration's extensive experience to date in administering disability programs. Appendix 2 will help insure individual consideration of all appropriate factors in each case, while providing meaningful rules for soundness, consistency and equity of disability adjudications.

The amendments will become effective February 26, 1979.

(Secs. 205, 223, 1102, 1614, and 1631, of the Social Security Act, as amended; 53 Stat. 1368, as amended; 70 stat. 815, as amended; 49 Stat. 647, as amended, 86 Stat. 1471, 86 Stat. 1475; 42 U.S.C. 405, 423, 1302, 1382c, 1383.)

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

Dated: September 25, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 11, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 404 and Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

1. Section 404.1502 is revised to read as follows:

§ 404.1502 Evaluation of disability in general.

The provisions of §§ 404.1502 through 404.1513 apply to cases involving disability insurance benefits (except statutory blindness) under section 223 of the Act, child's insurance benefits based on disability under section 202(d) of the Act, and a period of disability under section 216(i)(1)(A) of the Act. In general, the individual has the burden of proving that he or she is disabled and of raising every issue with respect to his or her alleged disability. Whether an impairment in a particular case constitutes a disability is determined from all the pertinent facts of that case. The determination of disability may be based on medical considerations alone, or on medical considerations and vocational factors as follows:

(a) *Disability determinations on the basis of medical considerations alone.* Medical evidence (i.e., signs, symptoms and laboratory findings) alone can justify a finding that an individual is not under a disability, or absent evidence to the contrary that an individual is under a disability.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* In those cases where a finding of disabled or not disabled cannot be made based on medical evidence alone, other evidence is required. This other evidence may include information about:

(1) The individual's residual functional capacity;

(2) The individual's age, education, and work experience; and

(3) The kinds of substantial gainful activity (work) which exist in significant numbers in the national economy for someone who can do only what the individual can do.

(c) *Disability determinations in which vocational factors are extremely adverse.* Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments, such an individual may be found to be under a disability.

§§ 404.1503 through 404.1507 [Redesignated as § 404.1514 through 404.1518]

2. Sections 404.1503 through 404.1507 are redesignated as §§ 404.1514 through 404.1518 respectively.

3. New §§ 404.1503 through 404.1513 are added to read as follows:

§ 404.1503 Considerations in the sequential evaluation of disability.

(a) *General.* In the determination of whether or not an impairment in a particular case constitutes a disability as defined in § 404.1501, consideration is given to all the pertinent facts of that case. If the individual is engaging in substantial gainful activity, a determination that he or she is not disabled shall be made. In all other cases, primary consideration is given to the physical or mental impairment(s), which must be severe. The impairment(s) must also meet the duration requirement before disability can be found to exist. However, in determining whether an individual is disabled, a sequential evaluation process shall be followed, whereby current work activity, severity of the impairment(s), and vocational factors are assessed in that order. The following evaluation steps shall be followed in the sequence shown, but when a determination that an individual is or is not disabled can be made at any step, evaluation under a subsequent step shall be unnecessary.

(b) *Is the individual currently engaging in substantial gainful activity?* Where an individual is actually engaging in substantial gainful activity, a finding shall be made that the individual is not under a disability without consideration of either medical or vocational factors. (See §§ 404.1532, 404.1533, 404.1534)

(c) *Does the individual have any severe impairment?* Where an individual does not have any impairment(s) which significantly limits his or her physical or mental capacity to perform basic work-related functions, a finding shall be made that he or she does not have a severe impairment and therefore is not under a disability without consideration of the vocational factors.

(d) *Does the individual have any impairment(s) which meets or equals those listed in Appendix 1?* Where an individual's impairment(s) meets the duration requirement and is either listed in Appendix 1 or is determined to be medically the equivalent of a listed impairment, a finding of disability shall be made without consideration of the vocational factors.

(e) *Does the individual have any impairment(s) which prevents past relevant work?* Where a finding of disability or no disability cannot be made based on current work activity or on medical considerations alone, and the individual has a severe impairment(s), his or her residual functional capacity and the physical and mental demands of his or her past relevant work shall be evaluated. If the impairment(s) does not prevent the individual from meeting the physical and mental demands of past relevant work, including arduous unskilled physical labor, disability shall be found not to exist.

(f) *Does the individual's impairment(s) prevent other work?* If an individual cannot perform any past relevant work because of a severe impairment(s), but the individual's remaining physical and mental capacities are consistent with his or her meeting the physical and mental demands of a significant number of jobs (in one or more occupations) in the national economy, and the individual has the vocational capabilities (considering age, education, and past work experience) to make an adjustment to work different from that which he or she has performed in the past, it shall be determined that the individual is not under a disability. However, if an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering age, education, and past work experience) do not permit the individual to adjust to work different from that which he or she has performed in the past, it shall be determined that the individual is under a disability.

§ 404.1504 Determining whether disability exists—medical and other considerations.

(a) *Medical considerations*—(1) *Finding individual not disabled.* Medical considerations alone can justify a finding that an individual is not under a disability where the medically determinable impairment is not severe. A medically determinable impairment is not severe if it does not significantly limit an individual's physical or mental capacity to perform basic work-related functions.

(2) *Finding individual disabled.* Medical considerations alone (including the physiological and psychological manifestations of aging) can justify a finding that an individual is under a disability, absent evidence to the contrary. Medical considerations which justify a finding that an individual is under a disability are those that bring an individual's impairment(s) under the listing in Appendix 1 of this subpart or which justify a determination by the Secretary that the impairment(s) is the medical equivalent of an impairment listed in Appendix 1 of this subpart.

(b) *Relevant work.* Any medically determinable impairment(s) may justify a finding that an individual is under a disability if the impairment(s) is severe and prevents an individual from engaging in substantial gainful activity. In determining whether impairment(s) not listed in Appendix 1 of this subpart (nor found to be the equivalent of an impairment listed in Appendix 1) meet this test, additional considerations are evaluated. These include determining whether an individual can qualify because he or she has only performed arduous unskilled work for a long period of time or, if not, whether he or she can perform vocationally relevant past work.

(c) *Vocational Factors.* In those cases in which an individual is found unable to perform vocationally relevant past work, age, education, and work experience must then be considered in addition to the functional limitations imposed by the individual's physical or mental impairment(s).

§ 404.1505 Residual functional capacity.

(a) *General.* Physical or mental impairment(s) may impose functional limitations on an individual's ability to engage in substantial gainful activity. The kind and severity of the impairment(s) determine the individual's work limitations and residual functional capacity. The manner in which the impairment(s) affects the individual's ability to perform work-related physical and mental activities, and the kind and extent of function the individual retains, are assessed in determining the individual's residual functional capacity. Where multiple impairments are involved, the assessment of residual functional capacity reflects the totality of restrictions resulting from all impairments. Assessments of residual functional capacity may be based solely on medical evidence where such evidence includes sufficient findings (e.g. signs, symptoms and laboratory findings) to permit and support the necessary judgments where relevant, with respect to the individual's physical, mental, and sensory capabilities. Where all reasonably obtainable relevant medical findings alone are not sufficient for an adequate assessment of residual functional capacity, additional factors may be considered. Such additional factors as the individual's description of the impairment, recorded observations of the individual, and any other evidence of record may be considered in conjunction with the medical findings.

(b) *Physical capacities.* Assessment of physical capacities (e.g., strength and exertional capabilities) includes an evaluation of the individual and indicates the individual's maximal residual functional capacity for sustained activity on a regular basis. The assessment also includes the evaluation of the individual's ability to perform significant physical functions such as walking, standing, lifting, carrying, pushing or pulling. The assessment includes the evaluation of other physical traits and sensory characteristics such as reaching, handling, seeing, hearing, and speaking, insofar as limited capacity to perform these functions may also affect the individual's capacity for

work for which the individual would otherwise be qualified.

(c) *Mental impairments.* The assessment of impairments because of mental disorders includes a consideration of such factors as the capacity to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and customary work pressures in a routine work setting.

(d) *Non-exertional limitations.* Any medically determinable impairment(s) resulting in non-exertional limitations (such as certain mental, sensory, or skin impairments) must be considered in terms of the limitations resulting from the impairment. When an individual has a non-exertional impairment in addition to an exertional impairment(s), the residual functional capacity must be assessed in terms of the degree of any additional narrowing of the individual's work-related capabilities.

(e) *When assessment is required.* An assessment of residual functional capacity is required only with respect to those specific physical or mental capacities that are in doubt by reason of the individual's allegations or the evidence adduced. Where such doubt does not exist with respect to particular physical or mental capacities, the individual is considered to have no restrictions with respect to those capacities.

(f) *Relationship of residual functional capacity to ability to do work.* Where the residual functional capacity so determined is sufficient to enable the individual to do his or her previous work (i.e., usual work or other vocationally relevant past work), a determination is made that the individual is not under a disability. Where the residual functional capacity so determined is not sufficient to enable the individual to do his or her previous work, it must be determined what work, if any, the individual can do, taking into consideration the individual's residual functional capacity, age, education, and work experience and whether work that the individual can do exists in significant numbers in the national economy.

§ 404.1506 Age as a vocational factor.

(a) *General.* The term "age" refers to chronological age and the extent to which it affects the individual's capability to engage in work in competition with others. However, the factor of age in itself is not determinative of disability; the residual functional capacity and the education and work experience of the individual must also be considered. An individual who is unemployed because of age cannot be found incapable of engaging in substantial gainful activity when the individual's impairment and other vocational considerations, e.g., education and work experience, would enable the individual to perform a significant number of jobs which exist in the national economy. The considerations given to age are appropriately reflected in Appendix 2, but are not to be applied mechanically in borderline situations.

(b) *Younger individual.* In the case of a younger individual (under age 50), age in itself is ordinarily not considered to affect significantly the individual's ability to adapt to a new work situation.

(c) *Individual approaching advanced age.* For the individual not of advanced age but who is closely approaching advanced age (age 50–54), the factor of age, in combination with a severe impairment and limited vocational background may substantially affect the individual's adaptability to a significant number of jobs in a competitive work environment.

(d) *Individual of advanced age.* "Advanced" age (age 55 or over) represents the point where age significantly affects the ability to engage in substantial work. Where a severely impaired individual is of advanced age, such ability may be adversely affected except where the individual has skills that are readily transferable to jobs which exist in significant numbers in the national economy. Those individuals of advanced age who are aged 60–64 are further described as closely approaching retirement age.

§ 404.1507 Education as a vocational factor.

(a) *General.* The term "education" is primarily used in the sense of formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability. Lack of formal schooling is not necessarily proof that the individual is uneducated or lacks such capacities. For individuals with past work experience, the kinds of responsibilities assumed when working may indicate the existence of such intellectual capacities although their formal education is limited. Other evidence of such capacities, for individuals with or without past work experience, may consist of daily activities, hobbies, or the results of testing. The significance of an individual's educational background may be materially affected by the time lapse between the completion of the individual's formal education and the onset of physical or mental impairment(s) and by what the individual has done with his or her education in a work context. Formal education that was completed many years prior to onset of impairment or unused skills and knowledge that were a part of such formal education may no longer be useful or meaningful in terms of the individual's ability to work. Thus, the numerical grade level of educational attainment may not be representative of an individual's present educational competences which could be higher or lower. However, in the absence of evidence to the contrary, the numerical grade level will be used. The term "education" also indicates whether an individual has the ability to communicate in English, since that ability is often acquired or enhanced through educational exposure. In evaluating the educational level of an individual, the following classifications are used:

(b) *Illiteracy.* Illiteracy refers to the inability to read or write. An individual who is able to sign his or her name, but cannot read or write a simple communication (e.g., instructions, inventory lists), is considered illiterate. Generally, an illiterate individual has had little or no formal schooling.

(c) *Marginal education.* Marginal education refers to competence in reasoning, arithmetic, and language skills which are required for the performance of simple, unskilled types of jobs. Absent evidence to the contrary, formal schooling at a grade level of sixth grade or less is considered a marginal education.

(d) *Limited education.* Limited education refers to competence in reasoning, arithmetic, and language skills which, although more than that which is generally required to carry out the duties of unskilled work, does not provide the individual with the educational qualifications necessary to perform the majority of more complex job duties involved in semi-skilled or skilled jobs. Absent evidence to the contrary, a seventh grade through the eleventh grade level of formal education is considered a limited education.

(e) *High school education and above.* High school education and above refers to competence in reasoning, arithmetic, and language skills acquired through formal schooling at a level of grade twelve or above. Absent evidence to the contrary, these educational capacities qualify an individual for work at a semi-skilled through a skilled level of job complexity.

(f) *Inability to communicate in English.* Ability to communicate in English is often acquired or enhanced through educational exposure, and this may be considered an educational factor. Where there is inability to communicate in English, the dominant language of the national economy, this may be considered a vocational handicap because it often narrows an individual's vocational scope. For example, the inability to communicate in English may preclude an individual from performing jobs which require conversing with peers and supervisors

in English, or reading instructions, signs, forms, etc., which are printed in English. However, the inability to communicate in English in no sense implies that an individual lacks formal schooling or intelligence. A person unable to communicate in English may have a vocational handicap which must be considered in assessing what work, if any, the individual can do. The particular non-English language in which an individual may be fluent is generally immaterial.

§ 404.1508 Work experience as a vocational factor.

The term "work experience" means skills and abilities acquired through work previously performed by the individual which indicates the type of work the individual may be expected to perform. Work for which the individual has demonstrated a capability is the best indicator of the kind of work that the individual can be expected to do. Such work experience has current vocational relevance where the recency of the work and the skills acquired demonstrate the individual's ability to perform work which exists in the national economy. Work performed 15 years or more prior to the point at which the claim is being considered for adjudication (or when the earnings requirement was last met) is ordinarily not considered vocationally relevant. In our economic system, a gradual transition occurs in the job functions of most jobs so that by the time 15 years have elapsed, it is no longer realistic to assume that skills and abilities acquired in a job performed more than 15 years ago continue to be relevant. The 15-year guide is essentially intended to insure that current vocational relevance is not imputed to remote work experience which could not reasonably be expected to enhance an individual's vocational prospect as of the point of adjudication. An individual who has no prior work experience or has worked only sporadically or for brief periods of time during the 15-year period may be considered to have no relevant work experience. Any skills acquired through work experience are vocational assets unless they are not transferable to other skilled or semi-skilled work within the individual's current capacities. When acquired skills are not transferable, the individual is considered capable of only unskilled work. However, an individual need not have work experience to qualify for unskilled work which requires little or no judgment in the performance of simple duties which can be learned in a short period of time.

§ 404.1509 Work which exists in the national economy.

(a) *General.* Work is considered to exist in the national economy when it exists in significant numbers either in the region where the individual lives or in several other regions of the country, regardless of whether such work exists in the immediate area in which the individual lives, or whether a specific job vacancy exists for the individual, or whether the individual would be hired if the individual applied for work. A finding that work exists in the national economy is made when there is a significant number of jobs (in one or more occupations) having typical requirements which do not exceed the individual's physical or mental capacities and vocational qualifications. Isolated jobs of a type that exist only in very limited number or in relatively few geographic locations outside of the region where the individual resides are not considered to be "work which exists in the national economy" for purposes of determining whether an individual is under a disability; an individual is not denied benefits on the basis of the existence of such jobs. If work that the individual can do does not exist in the national economy, disability shall be determined to exist. If such work does exist in the national economy, disability shall be determined not to exist.

(b) *Inability of individual to obtain work.* If an individual's residual functional capacity and vocational capabilities are consistent with the performance of work which exists in the national economy but the individual remains unemployed because the individual is unsuccessful in obtaining such work or because such work does not exist in the individual's local area; or because of the hiring practices of employers, technological changes in the industry in which the individual has worked, or cyclical economic conditions; or because there are no job openings for the individual or the individual would not actually be hired to do work the individual could otherwise perform, the individual is considered not to be under a disability as defined in § 404.1501.

(c) *Administrative notice of job data.* In the determination of whether jobs, as classified by their exertional and skill requirements, exist in significant numbers either in the region or the national economy, administrative notice shall be taken of reliable job information available from various governmental and other publications; e.g., "Dictionary of Occupational Titles," published by the Department of Labor; "County Business Patterns", published by the Bureau of the Census; "Census Reports", also published by the Bureau of the Census; occupational analyses prepared for the Social Security Administration by various State employment agencies; and the "Occupational Outlook Handbook", published by the Bureau of Labor Statistics.

§ 404.1510 Exertional requirements.

(a) *General.* For the purpose of determining exertional requirements of work in the national economy, jobs are classified as "sedentary," "light," "medium," "heavy," and "very heavy." Such terms have the same meaning as they have in the "Dictionary of Occupational Titles", published by the Department of Labor, and when used in making disability determinations under this subpart are defined as follows:

(b) *Sedentary work.* Sedentary work entails lifting 10 pounds maximum and occasionally lifting or carrying such articles as dockets (e.g., files), ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(c) *Light work.* Light work entails lifting 20 pounds maximum with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree, or when it involves sitting most of the time with a degree of pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, an individual must be capable of performing substantially all of the foregoing activities. The functional capacity to perform light work includes the functional capacity to perform sedentary work.

(d) *Medium work.* Medium work entails lifting 50 pounds maximum with frequent lifting or carrying of objects weighing up to 25 pounds. The functional capacity to perform medium work includes the functional capacity to perform sedentary work and light work as well.

(e) *Heavy work.* Heavy work entails lifting 100 pounds maximum with frequent lifting or carrying of objects weighing up to 50 pounds. The functional capacity to perform heavy work includes the functional capacity to perform work at all of the lesser functional levels.

(f) *Very heavy work.* Very heavy work entails lifting objects in excess of 100 pounds with frequent lifting or carrying of objects weighing 50 pounds or more. The functional capacity to perform very heavy work includes the

functional capacity to perform work at all of the lesser functional levels.

§ 404.1511 Skill requirements.

(a) *General.* For purposes of assessing the skills reflected by an individual's work experience, and of determining the existence in the national economy of work the individual is competent to do, occupations are classified as unskilled, semi-skilled, and skilled. When used in making disability determinations under this subpart, these terms are used in the following sense:

(b) *Unskilled work.* Unskilled work denotes work which requires little or no judgment in the performance of simple duties that can be learned on the job in a short period of time. Considerable strength may or may not be required. As an example, where the primary work function of occupations consists of handling, feeding and offbearing (i.e., placing or removing materials from machines which are automatic or operated by others), or machine tending, and average successful job performance can ordinarily be achieved within 30 days, such occupations are considered unskilled. Other types of jobs requiring little specific vocational preparation and little judgment are likewise unskilled. No acquired work skills can be attributed to individuals who have performed only unskilled work.

(c) *Semi-skilled work.* Semi-skilled work denotes work in which some skills are involved but the more complex work functions are not required. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise detecting irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities involving work functions of similar complexity. A job may be classified as semi-skilled where coordination and dexterity are necessary as in the use of the hands or feet for the rapid performance of repetitive tasks.

(d) *Skilled work.* Skilled work requires qualifications in which the independent judgment of the individual determines the machine and manual operations to be performed in obtaining the proper form, quality, or quantity of material to be produced. The individual may be required to lay out work, to estimate quality, suitability and needed quantities of materials, to make precise measurements, to read blueprints or other specifications, or to make necessary computations or mechanical adjustments to control or regulate processes. Other skilled jobs may require dealing with personnel, data, or abstract ideas at a high level of complexity.

(e) *Transferable work skills.* An individual is considered to have transferable skills when the skilled or semi-skilled work functions which he or she has demonstrated in his or her past work can be applied to meet the requirements of skilled or semi-skilled work functions of other jobs or kinds of work. Transferability depends largely on the similarity of occupationally significant work functions among jobs. Transferability is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; and the same or similar tools and machines are used; and the same are similar raw materials, products, processes, or services are involved. There are degrees of transferability ranging from a close approximation of work functions involving all three factors to only remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary to warrant the inference of transferability. Where an individual's work skills are so specialized or have been acquired in such a limited vocational setting that they are not readily usable in other industries, jobs and work environments, they are not transferable and the individual may be considered as if he or she is unskilled. (Also, see Appendix 2, § 201.00(e), (f), and § 202.00(e), (f).)

§ 404.1512 Effect of performance of arduous unskilled physical labor.

Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments and, considering his or her age, education, and vocational background is unable to engage in lighter work, such individual may be found to be under a disability. On the other hand, a different conclusion may be reached where it is found that such individual is working or has worked despite his or her impairment or impairments (except where such work is sporadic or is medically contraindicated) depending upon all the facts in the case. In addition, an individual who was doing heavy physical work at the time he or she suffered such impairment might not be considered unable to engage in any substantial gainful activity if the evidence shows that he or she has the training or past work experience which qualifies him or her for substantial gainful work in another occupation consistent with his or her impairment, either on a full-time or a reasonable regular part-time basis.

Example. B, a 60-year old miner, with a fourth grade education, after a life-long history of arduous physical labor alleged that he was under a disability because of arthritis of the spine, hips, and knees and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not disclose either through performance or by similarly persuasive evidence that he has skills or capabilities needed to do lighter work which would be readily transferrable to another work environment. Under these circumstances, B may be found to be under a disability.

§ 404.1513 Listing of medical-vocational guidelines in Appendix 2.

In light of information that is available about jobs (classified by their exertional and skill requirements) that exist in the national economy, Appendix 2 sets forth rules reflecting the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of § 404.1504(a) and (b) or § 404.1512, where an individual is not engaging in substantial gainful activity and is prevented by a medically determinable impairment from performing his or her vocationally relevant past work. The Appendix 2 rules do not encompass all possible variations of factors and, as explained in § 200.00 of Appendix 2, are not applicable in any case where any one of the findings of fact made with respect to the individual's vocational factors and residual functional capacity does not coincide with the corresponding criterion of a rule. In such instances, full consideration must be given to all relevant facts in accordance with the definitions and discussions of each factor in §§ 404.1505–404.1511. However, when the findings of fact made as to all factors coincide with the criteria of a rule, that rule directs a factual conclusion of disabled or not disabled.

Appendix (Listing of Impairments) [Redesignated as Appendix 1]

4. Subpart P of part 404 is further amended by designating the Appendix (Listing of Impairments), appearing at the end, as Appendix 1, and by adding a new Appendix 2, to read as follows:

APPENDIX 2—MEDICAL—VOCATIONAL GUIDELINES

Sec.

severe medically determinable impairment(s).

204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of § 404.1504 (a) and (b) or § 404.1512, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in §§ 404.1505–404.1511.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles of §§ 404.1505–404.1511, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in §§ 404.1505–404.1511, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work as defined in § 404.1510(b) may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50–54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45–49, age is a less positive factor than for those who are age 18–44. Accordingly, for such individuals; (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44 even if they are illiterate or unable to communicate in English.

TABLE NO. 1.—*Residual functional capacity: Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled.
201.02	do	do	Skilled or semiskilled—skills not transferable [1].	Do.
201.03	do	do	Skilled or semiskilled—skills transferable [1].	Not disabled.
201.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
201.05	do	High school graduate or more—provides for direct entry into skilled work [2].	Unskilled or none	Not disabled.
201.06	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Disabled.
201.07	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills transferable [1].	Not disabled.
201.08	do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Do.
201.09	Closely approaching advanced age.	Limited or less	Unskilled or none	Disabled.
201.10	do	do	Skilled or semiskilled—skills not transferable.	Do.
201.11	do	do	Skilled or semiskilled—skills transferable.	Not disabled.
201.12	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Unskilled or none	Disabled.
201.13	do	High school graduate or more—provides for direct entry into skilled work [3].	do	Not disabled.
201.14	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable.	Disabled.
201.15	do	do	Skilled or semiskilled—skills transferable.	Not disabled.
201.16	do	High school graduate or more—provides for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable.	Do.
201.17	Younger individual age 45–49.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
201.18	do	Limited or less—at least literate and able to communicate in English.	do	Not disabled.
201.19	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
201.20	do	do	Skilled or semiskilled—skills transferable.	Do.
201.21	do	High school graduate or more.	Skilled or semiskilled—skills not transferable.	Do.
201.22	do	do	Skilled or semiskilled—skills transferable.	Do.
201.23	Younger individual age 18–44.	Illiterate or unable to communicate in English.	Unskilled or none	Do. [4]
201.24	do	Limited or less—at least literate and able to communicate in English.	do	Do. [4]
201.25	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do. [4]
201.26	do	do	Skilled or semiskilled—skills transferable.	Do. [4]
201.27	do	High school graduate or more.	Unskilled or none	Do. [4]
201.28	do	do	Skilled or semiskilled—skills not transferable.	Do. [4]
201.29	do	do	Skilled or semiskilled—skills transferable.	Do. [4]

[1] See 201.00(f).
[2] See 201.00(d).
[3] See 201.00(g).
[4] See 201.00(h).

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work as defined in § 404.1510(c) includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60–64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49) even if illiterate or unable to communicate in English.

TABLE No. 2.—*Residual functional capacity: Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age	Limited or less	Unskilled or none	Disabled.
202.02	do	do	Skilled or semiskilled—skills not transferable.	Do.
202.03	do	do	Skilled or semiskilled—skills transferable [1].	Not disabled.
202.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
202.05	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
202.06	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable.	Disabled.
202.07	do	do	Skilled or semiskilled—skills transferable [1].	Not disabled.
202.08	do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable.	Do.
202.09	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
202.10	do	Limited or less—At least literate and able to communicate in English.	do	Not disabled.
202.11	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.12	do	do	Skilled or semiskilled—skills transferable.	Do.
202.13	do	High school graduate or more.	Unskilled or none	Do.
202.14	do	do	Skilled or semiskilled—skills not transferable.	Do.
202.15	do	do	Skilled or semiskilled—skills transferable.	Do.
202.16	Younger individual.	Illiterate or unable to communicate in English.	Unskilled or none	Do.
202.17	do	Limited or less—At least literate and able to communicate in English.	do	Do.
202.18	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.19	do	do	Skilled or semiskilled—skills transferable.	Do.
202.20	do	High school graduate or more.	Unskilled or none	Do.
202.21	do	do	Skilled or semiskilled—skills not transferable.	Do.
202.22	do	do	Skilled or semiskilled—skills transferable.	Do.

[1] See 202.00(f).
[2] See 202.00(c).

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work as defined in § 404.1510(d) includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. (Note that the provisions of § 404.1512 must have been given prior consideration.)

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60–64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

TABLE No. 3.—*Residual functional capacity: Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age.	Marginal or none	Unskilled or none	Disabled.
203.02	...do	Limited or less	None	Do.
203.03	...do	Limited	Unskilled	Not disabled.
203.04	...do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
203.05	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.06	...do	High school graduate or more.	Unskilled or none	Do.
203.07	...do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.08	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.09	...do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	...do	...do	Unskilled	Not disabled.
203.12	...do	...do	Skilled or semiskilled—skills not transferable.	Do.
203.13	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.14	...do	High school graduate or more.	Unskilled or none	Do.
203.15	...do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.16	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.17	...do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.18	Closely approaching advanced age.	Limited or less	Unskilled or none	Do.
203.19	...do	...do	Skilled or semiskilled—skills not transferable.	Do.
203.20	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.21	...do	High school graduate or more.	Unskilled or none	Do.
203.22	...do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.23	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.24	...do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.25	Younger individual.	Limited or less	Unskilled or none	Do.
203.26	...do	...do	Skilled or semiskilled—skills not transferable.	Do.
203.27	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.28	...do	High school graduate or more.	Unskilled or none	Do.
203.29	...do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.30	...do	...do	Skilled or semiskilled—skills transferable.	Do.
203.31	...do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work as defined in §404.1510(e), or very heavy work as defined in §404.1510(f), includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

5. Section 416.902 is revised to read as follows:

§ 416.902 Evaluation of disability in general.

The provisions of §§ 416.902 through 416.913 apply to cases involving supplemental security income benefits based on disability under § 1614 of the Act (except for statutory blindness and children under age 18). In general, the individual has the burden of proving that he or she is disabled and of raising every issue with respect to his or her alleged disability. (See §§ 416.905, 416.924, 416.927.) Whether an impairment in a particular case constitutes a disability is determined from all the pertinent facts of that case. The determination of disability may be based on medical considerations alone, or on medical considerations and vocational factors as follows:

(a) *Disability determinations on the basis of medical considerations alone.* Medical evidence (i.e., signs, symptoms and laboratory findings) alone can justify a finding that an individual is not under a disability, or absent evidence to the contrary, that an individual is under a disability.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* In those cases where a finding of disabled or not disabled cannot be made based on medical evidence alone, other evidence is required. This other evidence may include information about:

(1) The individual's residual functional capacity;

(2) The individual's age, education, and work experience; and

(3) The kinds of substantial gainful activity (work) which exist in significant numbers in the national economy for someone who can do only what the individual can do.

(c) *Disability determinations in which vocational factors are extremely adverse.* Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments, such an individual may be found to be under a disability.

§ 416.903 through 416.907 [Redesignated §§ 416.914 through 416.918]

6. Sections 416.903 through 416.907 are redesignated as sections 416.914 through 416.918 respectively.

7. New §§416.903 through 416.913 are added to read as follows:

§ 416.903 Considerations in the sequential evaluation of disability.

(a) *General.* In the determination of whether or not an impairment in a particular case constitutes a disability as defined in § 416.901, consideration is given to all the pertinent facts of that case. If the individual is engaging in substantial gainful activity, a determination that he or she is not disabled shall be made. In all other cases, primary consideration is given to the physical or mental impairment(s), which must be severe. The impairment(s) must also meet the duration requirement before disability can be found to exist. However, in determining whether an individual is disabled, a sequential evaluation process shall be followed, whereby current work activity, severity of the impairment(s), and vocational factors are assessed in that order. The following evaluation steps shall be followed in the sequence shown, but when a determination that an individual is or is not disabled can be made at any step, evaluation under a subsequent step shall be unnecessary.

(b) *Is the individual currently engaging in substantial gainful activity?* Where an individual is actually engaging in substantial gainful activity, a finding shall be made that the individual is not under a disability without consideration of either medical or vocational factors. (See §§ 416.932, 416.933, 416.934.)

(c) *Does the individual have any severe impairments?* Where an individual does not have any impairment(s) which significantly limits his or her physical or mental capacity to perform basic work-related functions, a finding shall be made that he or she does not have a severe impairment and therefore is not under a disability without consideration of the vocational factors.

(d) *Does the individual have any impairment(s) which meets or equals those listed in Part A of Appendix 1?* Where an individual's impairment(s) meets the duration requirement and is either listed in Part A of Appendix 1 or is determined to be medically the equivalent of a listed impairment, a finding of disability shall be made without consideration of the vocational factors.

(e) *Does the individual have any impairment(s) which prevents past relevant work?* Where a finding of disability or no disability cannot be made based on current work activity or on medical considerations alone, and the individual has a severe impairment(s), his or her residual functional capacity and the physical and mental demands of his or her past relevant work shall be evaluated. If the impairment(s) does not prevent the individual from meeting the physical and mental demands of past relevant work, including arduous unskilled physical labor, disability shall be found not to exist.

(f) *Does the individual's impairment(s) prevent other work?* If an individual cannot perform any past relevant work because of a severe impairment(s), but the individual's remaining physical and mental capacities are consistent with his or her meeting the physical and mental demands of a significant number of jobs (in one or more occupations) in the national economy, and the individual has the vocational capabilities (considering age, education, and past work experience) to make an adjustment to work different from that which he or she has performed in the past, it shall be determined that the individual is not under a disability. However, if an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering age, education, and past work experience) do not permit the individual to adjust to work different from that which he or she has performed in the past, it shall be determined that the individual is under a disability.

§ 416.904 Determining whether disability exists—medical and other considerations.

(a) *Medical considerations.*—(1) *Finding individual not disabled.* Medical considerations alone can justify a finding that an individual is not under a disability where the medically determinable impairment is not severe. A medically determinable impairment is not severe if it does not significantly limit an individual's physical or mental capacity to perform basic work-related functions.

(2) *Finding individual disabled.* Medical considerations alone (including the physiological and psychological manifestations of aging) can justify a finding that an individual is under a disability, absent evidence to the contrary. Medical considerations which justify a finding that an individual is under a disability are those that bring an individual's impairment(s) under the listing in Part A of Appendix 1 of this subpart or which justify a determintion by the Secretary that the impairment(s) is the medical equivalent of an impairment listed in Part A of Appendix 1 of this subpart.

(b) *Relevant work.* Any medically determinable impairment(s) may justify a finding that an individual is under a disability if the impairment(s) is severe and prevents an individual from engaging in substantial gainful activity. In determining whether impairment(s) not listed in Part A of Appendix 1 of this subpart (nor found to be the equivalent of an impairment listed in Part A of Appendix 1) meet this test, additional considerations are

evaluated. These include determining whether an individual can qualify because he or she has only performed arduous unskilled work for a long period of time or, if not, whether he or she can perform vocationally relevant work.

(c) *Vocational Factors.* In those cases in which an individual is found unable to perform vocationally relevant past work, age, education, and work experience must then be considered in addition to the functional limitations imposed by the individual's physical or mental impairment(s).

§ 416.905 Residual functional capacity.

(a) *General.* Physical or mental impairment(s) may impose functional limitations on an individual's ability to engage in substantial gainful activity. The kind and severity of the impairment(s) determine the individual's work limitations and residual functional capacity. The manner in which the impairment(s) affects the individual's ability to perform work-related physical and mental activities, and the kind and extent of function the individual retains, are assessed in determining the individual's residual functional capacity. Where multiple impairments are involved, the assessment of residual functional capacity reflects the totality of restrictions resulting from all impairments. Assessments of residual functional capacity may be based solely on medical evidence where such evidence includes sufficient findings (e.g., signs, symptoms, and laboratory findings) to permit and support the necessary judgments where relevant, with respect to the individual's physical, mental, and sensory capabilities. In establishing disability for purposes of title XVI, the Secretary will assist the individual in meeting that burden by securing and paying for medical evidence needed for a sound determination. (See §§ 416.902, 416.924, 416.927.) Where all reasonably obtainable relevant medical findings alone are not sufficient for an adequate assessment of residual functional capacity, additional factors may be considered. Such additional factors as the individual's description of the impairment, recorded observations of the individual, and any other evidence of record may be considered in conjunction with the medical findings.

(b) *Physical capacities.* Assessment of physical capacities (e.g., strength and exertional capabilities) includes an evaluation of the individual and indicates the individual's maximal residual functional capacity for sustained activity on a regular basis. The assessment also includes the evaluation of the individual's ability to perform significant physical functions such as walking, standing, lifting, carrying, pushing or pulling. The assessment includes the evaluation of other physical traits and sensory characteristics such as reaching, handling, seeing, hearing, and speaking, insofar as limited capacity to perform these functions may also affect the individual's capacity for work for which the individual would otherwise be qualified.

(c) *Mental impairments.* The assessment of impairments because of mental disorders includes a consideration of such factors as the capacity to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and customary work pressures in a routine work setting.

(d) *Non-exertional limitations.* Any medically determinable impairment(s) resulting in non-exertional limitations (such as certain mental, sensory, or skin impairments) must be considered in terms of the limitations resulting from the impairment. When an individual has a non-exertional impairment in addition to an exertional impairment(s), the residual functional capacity must be assessed in terms of the degree of any additional narrowing of the individual's work-related capabilities.

(e) *When assessment is required.* An assessment of residual functional capacity is required only with respect to those specific physical or mental capacities that are in doubt by reason of the individual's allegations or the evidence adduced. Where such doubt does not exist with respect to particular physical or mental capacities, the individual is considered to have no restrictions with respect to those capacities.

(f) *Relationship of residual functional capacity to ability to do work.* Where the residual functional capacity so determined is sufficient to enable the individual to do his or her previous work (i.e., usual work or other vocationally relevant past work), a determination is made that the individual is not under a disability. Where the residual functional capacity so determined is not sufficient to enable the individual to do his or her previous work, it must be determined what work, if any, the individual can do, taking into consideration the individual's residual functional capacity, age, education, and work experience and whether work that the individual can do exists in significant numbers in the national economy.

§ 416.906 Age as a vocational factor.

(a) *General.* The term "age" refers to chronological age and the extent to which it affects the individual's capability to engage in work in competition with others. However, the factor of age in itself is not determinative of disability; the residual functional capacity and the education and work experience of the individual must also be considered. An individual who is unemployed because of age cannot be found incapable of engaging in substantial gainful activity when the individual's impairment and other vocational considerations, e.g., education and work experience, would enable the individual to perform a significant number of jobs which exist in the national economy. The considerations given to age are appropriately reflected in Appendix 2, but are not to be applied mechanically in borderline situations.

(b) *Younger individual.* In the case of a younger individual (under age 50), age in itself is ordinarily not considered to affect significantly the individual's ability to adapt to a new work situation.

(c) *Individual approaching advanced age.* For the individual not of advanced age but who is closely approaching avanced age (age 50–54), the factor of age, in combination with a severe impairment and limited vocational background, may substantially affect the individual's adaptability to a significant number of jobs in a competitive work environment.

(d) *Individual of advanced age.* "Advanced" age (age 55 or over) represents the point where age significantly affects the ability to engage in substantial work. Where a severely impaired individual is of advanced age, such ability may be adversely affected except where the individual has skills that are readily transferable to jobs which exist in significant numbers in the national economy. Those individuals of advanced age who are age 60–64 are further described as closely approaching retirement age.

§ 416.907 Education as a vocational factor.

(a) *General.* The term "education" is primarily used in the sense of formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability. Lack of formal schooling is not necessarily proof that the individual is uneducated or lacks such capacities. For individuals with past work experience, the kinds of responsibilities assumed when working may indicate the existence of such intellectual capacities although their formal education is limited. Other evidence of such capacities, for individuals with or without past work experience, may consist of daily activities, hobbies, or the results of testing. The significance of an individual's educational background may be materially affected by the time lapse between the completion of the individual's formal education and the onset of physical or mental impairment(s)

and by what the individual has done with his or her education in a work context. Formal education that was completed many years prior to onset of impairment or unused skills and knowledge that were a part of such formal education may no longer be useful or meaningful in terms of the individual's ability to work. Thus, the numerical grade level of educational attainment may not be representative of an individual's present educational competences which could be higher or lower. However, in the absence of evidence to the contrary, the numerical grade level will be used. The term "education" also indicates whether an individual has the ability to communicate in English, since that ability is often acquired or enhanced through educational exposure. In evaluating the educational level of an individual, the following classifications are used:

(b) *Illiteracy.* Illiteracy refers to the inability to read or write. An individual who is able to sign his or her name, but cannot read or write a simple communication (e.g., instructions, inventory lists), is considered illiterate. Generally, an illiterate individual has had little or no formal schooling.

(c) *Marginal education.* Marginal education refers to competence in reasoning, arithmetic, and language skills which are required for the performance of simple, unskilled types of jobs. Absent evidence to the contrary, formal schooling at a grade level of sixth grade or less is considered a marginal education.

(d) *Limited education.* Limited education refers to competence in reasoning, arithmetic, and language skills which, although more than that which is generally required to carry out the duties of unskilled work, does not provide the individual with the educational qualifications necessary to perform the majority of more complex job duties involved in semi-skilled or skilled jobs. Absent evidence to the contrary, a seventh grade through the eleventh grade level of formal education is considered a limited education.

(e) *High school education and above.* High school education and above refers to competence in reasoning, arithmetic, and language skills acquired through formal schooling at a level of grade twelve or above. Absent evidence to the contrary, these educational capacities qualify an individual for work at a semi-skilled through a skilled level of job complexity.

(f) *Inability to communicate in English.* Ability to communicate in English is often acquired or enhanced through educational exposure, and this may be considered an educational factor. Where there is inability to communicate in English, the dominant language of the national economy, this may be considered a vocational handicap because it often narrows an individual's vocational scope. For example, the inability to communicate in English may preclude an individual from performing jobs which require conversing with peers and supervisors in English, or reading instructions, signs, forms, etc., which are printed in English. However, the inability to communicate in English in no sense implies that an individual lacks formal schooling or intelligence. A person unable to communicate in English may have a vocational handicap which must be considered in assessing what work, if any, the individual can do. The particular non-English language in which an individual may be fluent is generally immaterial.

§ 416.908 Work experience as a vocational factor.

The term "work experience" means skills and abilities acquired through work previously performed by the individual which indicates the type of work the individual may be expected to perform. Work for which the individual has demonstrated a capability is the best indicator of the kind of work that the individual can be expected to do. Such work experience has current vocational relevance where the recency of the work and the skills acquired demonstrate the individual's ability to perform work which exists in the national economy. Work performed 15 years or more prior to the point at which the claim is being considered for adjudication (or when the earnings requirement was last met) is ordinarily not considered vocationally relevant. In our economic system, a gradual transition occurs in the job functions of most jobs so that by the time 15 years have elapsed, it is no longer realistic to assume that skills and abilities acquired in a job performed more than 15 years ago continue to be relevant. The 15-year guide is essentially intended to insure that current vocational relevance is not imputed to remote work experience which could not reasonably be expected to enhance an individual's vocational prospect as of the point of adjudication. An individual who has no prior work experience or has worked only sporadically or for brief periods of time during the 15-year period may be considered to have no relevant work experience. Any skills acquired through work experience are vocational assets unless they are not transferable to other skilled or semi-skilled work within the individual's current capacities. When acquired skills are not transferable, the indivdual is considered capable of only unskilled work. However, an individual need not have work experience to qualify for unskilled work which requires little or no judgment in the performance of simple duties which can be learned in a short period of time.

§ 416.909 Work which exists in the national economy.

(a) *General.* Work is considered to exist in the national economy when it exists in significant numbers either in the region where the individual lives or in several other regions of the country, regardless of whether such work exists in the immediate area in which the individual lives, or whether a specific job vacancy exists for the individual, or whether the individual would be hired if the individual applied for work. A finding that work exists in the national economy is made when there is a significant number of jobs (in one or more occupations) having typical requirements which do not exceed the individual's physical or mental capacities and vocational qualifications. Isolated jobs of a type that exist only in very limited number or in relatively few geographic locations outside of the region where the individual resides are not considered to be "work which exists in the national economy" for purposes of determining whether an individual is under a disability; an individual is not denied benefits on the basis of the existence of such jobs. If work that the individual can do does not exist in the national economy, disability shall be determined to exist. If such work does exist in the national economy, disability shall be determined not to exist.

(b) *Inability of individual to obtain work.* If an individual's residual functional capacity and vocational capabilities are consistent with the performance of work which exists in the national economy but the individual remains unemployed because the individual is unsuccessful in obtaining such work or because such work does not exist in the individual's local area; or because of the hiring practices of employers, technological changes in the industry in which the individual has worked, or cyclical economic conditions; or because there are no job openings for the individual or the individual would not actually be hired to do work the individual could otherwise perform, the individual is considered not to be under a disability as defined in § 416.901.

(c) *Administrative notice of job data.* In the determination of whether jobs as classified by their exertional and skill requirements exist in significant numbers either in the region or the national economy, administrative notice shall be taken of reliable job information available from various governmental and other publications; e.g., "Dictionary of Occupational Titles," published by the Department of Labor; "County Business Patterns," published by the Bureau of the

Census; "Census Reports," also published by the Bureau of the Census; occupational analyses prepared for the Social Security Administration by various State employment agencies; and the "Occupational Outlook Handbook," published by the Bureau of Labor Statistics.

§ 416.910 Exertional requirements.

(a) *General.* For the purpose of determining exertional requirements of work in the national economy, jobs are classified as "sedentary," "light," "medium," "heavy," and "very heavy." Such terms have the same meaning as they have in the "Dictionary of Occupational Titles," published by the Department of Labor, and when used in making disability determinations under this subpart, are defined as follows:

(b) *Sedentary work.* Sedentary work entails lifting 10 pounds maximum and occasionally lifting or carrying such articles as dockets (e.g., files), ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(c) *Light work.* Light work entails lifting 20 pounds maximum with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree, or when it involves sitting most of the time with a degree of pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, an individual must be capable of performing substantially all of the foregoing activities. The functional capacity to perform light work includes the functional capacity to perform sedentary work.

(d) *Medium work.* Medium work entails lifting 50 pounds maximum with frequent lifting or carrying of objects weighing up to 25 pounds. The functional capacity to perform medium work includes the functional capacity to perform sedentary work and light work as well.

(e) *Heavy work.* Heavy work entails lifting 100 pounds maximum with frequent lifting or carrying of objects weighing up to 50 pounds. The functional capacity to perform heavy work includes the functional capacity to perform work at all of the lesser functional levels.

(f) *Very heavy work.* Very heavy work entails lifting objects in excess of 100 pounds with frequent lifting or carrying of objects weighing 50 pounds or more. The functional capacity to perform very heavy work includes the functional capacity to perform work at all of the lesser functional levels.

§ 416.911 Skill requirements.

(a) *General.* For purposes of assessing the skills reflected by an individual's work experience, and of determining the existence in the national economy of work the individual is competent to do, occupations are classified as unskilled, semi-skilled, and skilled. When used in making disability determinations under this subpart, these terms are used in the following sense:

(b) *Unskilled work.* Unskilled work denotes work which requires little or no judgment in the preformance of simple duties that can be learned on the job in a short period of time. Considerable strength may or may not be required. As an example, where the primary work function of occupations consists of handling, feeding, and offbearing (i.e., placing or removing materials from machines which are automatic or operated by others), or machine tending, and average successful job performance can ordinarily be achieved within 30 days, such occupations are considered unskilled. Other types of jobs requiring little specific vocational preparation and little judgment are likewise unskilled. No acquired work skills can be attributed to individuals who have performed only unskilled work.

(c) *Semi-skilled work.* Semi-skilled work denotes work in which some skills are involved but the more complex work functions are not required. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise detecting irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities involving work functions of similar complexity. A job may be classified as semi-skilled where coordination and dexterity are necessary as in the use of the hands or feet for the rapid performance of repetitive tasks.

(d) *Skilled work.* Skilled work requires qualifications in which the independent judgment of the individual determines the machine and manual operations to be performed in obtaining the proper form, quality, or quantity of material to be produced. The individual may be required to lay out work, to estimate quality, suitability and needed quantities of materials, to make precise measurements, to read blueprints or other specifications, or to make necessary computations or mechanical adjustments to control or regulate processes. Other skilled jobs may require dealing with personnel, data, or abstract ideas at a high level of complexity.

(e) *Transferable work skills.* An individual is considered to have transferable skills when the skilled or semi-skilled work functions which he or she has demonstrated in his or her past work can be applied to meet the requirements of skilled or semi-skilled work functions of other jobs or kinds of work. Transferability depends largely on the similarity of occupationally significant work functions among jobs. Transferability is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; and the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved. There are degrees of transferability ranging from a close approximation of work functions involving all three factors to only remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary to warrant the inference of transferability. Where an individual's work skills are so specialized or have been acquired in such a limited vocational setting that they are not readily usable in other industries, jobs and work environments, they are not transferable and the individual may be considered as if he or she is unskilled. (Also see Appendix 2, § 201.00 (e), (f), and § 202.00 (e), (f).)

§ 416.912 Effect of performance of arduous unskilled physical labor.

Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments and, considering his or her age, education, and vocational background is unable to engage in lighter work, such individual may be found to be under a disability. On the other hand, a different conclusion may be reached where it is found that such individual is working or has worked despite his or her impairment or impairments (except where such work is sporadic or is medically contraindicated) depending upon all the facts in the case. In addition, an individual who was doing heavy physical work at the time he or she suffered such impairment might not be considered unable to engage in any substantial gainful activity if the evidence shows that he or she has the training or past work experience which qualifies him or her for substantial gainful work in another occupation consistent with his or her impairment, either on a full-time or a reasonably regular part-time basis.

Example. B, a 60-year old miner, with a fourth grade education, after a life-long history of arduous physical labor alleged that he was under a disability because of arthritis of the spine, hips, and knees and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not disclose either through performance or by similarly persuasive evidence that he has skills or capabilities needed to do lighter work which would be readily transferable to another work environment. Under these circumstances, B may be found to be under a disability.

§ 416.913 Listing of medical-vocational guidelines in Appendix 2.

In light of information that is available about jobs (classified by their exertional and skill requirements) that exist in the national economy, Appendix 2 sets forth rules reflecting the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of § 416.904 (a) and (b) or § 416.912, where an individual is not engaging in substantial gainful activity and is prevented by medically determinable impairment from performing his or her vocationally relevant past work. The Appendix 2 rules do not encompass all possible variations of factors and, as explained in § 200.00 of Appendix 2, are not applicable in any case where any one of the findings of fact made with respect to the individual's vocational factors and residual functional capacity does not coincide with the corresponding criterion of a rule. In such instances, full consideration must be given to all relevant facts in accordance with the definitions and discussions of each factor in §§ 416.905–416.911. However, when the findings of fact made as to all factors coincide with the criteria of a rule, that rule directs a conclusion of disabled or not disabled.

8. Subpart I of Part 416 is further amended by adding a new Appendix 2, to read as follows:

APPENDIX 2—MEDICAL—VOCATIONAL GUIDELINES

Secs.

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of § 416.904 (a) and (b) or § 416.912, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in §§ 416.905–416.911.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specifc rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if the strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, non exertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical features(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles of §§ 416.905–416.911, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussion of each factor in §§ 416.905–416.911, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work as defined in §416.910(b) may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restriction to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work, and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50–54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45–49, age is a less positive factor than for those who are age 18–44. Accordingly, for such individuals (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Part A of Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified; (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44 even if they are illiterate or unable to communicate in English.

TABLE No. 1.—*Residual functional capacity: Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled.
201.02	do	do	Skilled or semiskilled—skills not transferable [1].	Do.
201.03	do	do	Skilled or semiskilled—skills transferable [1].	Not disabled.
201.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
201.05	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
201.06	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Disabled.
201.07	do	do. [2]	Skilled or semiskilled—skills transferable [1].	Not disabled.
201.08	do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Do.
201.09	Closely approaching advanced age.	Limited or less	Unskilled or none	Disabled.
201.10	do	do	Skilled or semiskilled—skills not transferable.	Do.
201.11	do	do	Skilled or semiskilled—skills transferable.	Not disabled.
201.12	do	High school graduate or more—does not provide for entry into skilled work [2].	Unskilled or none	Disabled.
201.13	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.

TABLE No. 1.—*Residual functional capacity: Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)*—Continued

Rule	Age	Education	Previous work experience	Decision
201.14	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable.	Disabled.
201.15	do	do. [3]	Skilled or semiskilled—skills transferable.	Not disabled.
201.16	do	High school graduate or more—provides for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable.	Do.
201.17	Younger individual, age 45 to 49.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
201.18	do	Limited or less—at least literate and able to communicate in English.	do	Not disabled.
201.19	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
201.20	do	do	Skilled or semiskilled—skills transferable.	Do.
201.21	do	High school graduate or more.	Skilled or semiskilled—skills not transferable.	Do.
201.22	do	do	Skilled or semiskilled—skills transferable.	Do.
201.23	Younger individual, age 18 to 44.	Illiterate or unable to communicate in English.	Unskilled or none	Do. [4]
201.24	do	Limited or less—at least literate and able to communicate in English.	do	Do. [4]
201.25	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do. [4]
201.26	do	do	Skilled or semiskilled—skills transferable.	Do. [4]
201.27	do	High school graduate or more.	Unskilled or none	Do. [4]
201.28	do	do	Skilled or semiskilled—skills not transferable.	Do. [4]
201.29	do	do	Skilled or semiskilled—skills transferable.	Do. [4]

[1] See 201.00(f).
[2] See 201.00(d).
[3] See 201.00(g).
[4] See 201.00(h).

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work as defined in § 416.910(c) includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of Semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functonal restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60–64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49) even if illiterate or unable to communicate in English.

TABLE No. 2.—*Residual functional capacity: Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age	Limited or less	Unskilled or none	Disabled.
202.02	do	do	Skilled or semiskilled—skills not transferable.	Do.

TABLE NO. 2.—*Residual functional capacity: Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)* —Continued

Rule	Age	Education	Previous work experience	Decision
202.03	....do	....do	Skilled or semiskilled—skills transferable [1].	Not disabled.
202.04	....do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
202.05	....do	High school graduate or more—provides for direct entry into skilled work [2].	....do	Not disabled.
202.06	....do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable.	Disabled.
202.07	....do	....do. [2]	Skilled or semiskilled—skills transferable [1].	Not disabled.
202.08	....do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable.	Do.
202.09	Closely appoaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
202.10	....do	Limited or less—at least literate and able to communicate in English.	....do	Not disabled.
202.11	....do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.12	....do	....do	Skilled or semiskilled—skills transferable.	Do.
202.13	....do	High school graduate or more.	Unskilled or none	Do.
202.14	....do	....do	Skilled or semiskilled—skills not transferable.	Do.
202.15	....do	....do	Skilled or semiskilled—skills transferable.	Do.
202.16	Younger individual.	Illiterate or unable to communicate in English.	Unskilled or none	Do.
202.17	....do	Limited or less—at least literate and able to communicate in English.	....do	Do.
202.18	....do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.19	....do	....do	Skilled or semiskilled—skills transferable.	Do.
202.20	....do	High school graduate or more.	Unskilled or none	Do.
202.21	....do	....do	Skilled or semiskilled—skills not transferable.	Do.
202.22	....do	....do	Skilled or semiskilled—skills transferable.	Do.

[1] See 202.00(f)
[2] See 202.00(c)

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work as defined in 416.910(d) includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 and over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. (Note that the provisions of § 416.912 must have been given prior consideration.)

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60–64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

TABLE NO. 3.—*Residual functional capacity: Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age.	Marginal or none	Unskilled or none	Disabled.
203.02	....do	Limited or less	None	Do.
203.03	....do	Limited	Unskilled	Not disabled.
203.04	....do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
203.05	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.06	....do	High school graduate or more.	Unskilled or none	Do.
203.07	....do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.

TABLE No. 3.—*Residual functional capacity: Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)*—Continued

Rule	Age	Education	Previous work experience	Decision
203.08	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.09	....do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	....do	....do	Unskilled	Not disabled.
203.12	....do	....do	Skilled or semiskilled—skills not transferable.	Do.
203.13	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.14	....do	High school graduate or more.	Unskilled or none	Do.
203.15	....do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.16	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.17	....do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.18	Closely approaching advanced age.	Limited or less	Unskilled or none	Do.
203.19	....do	....do	Skilled or semiskilled—skills not transferable.	Do.
203.20	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.21	....do	High school graduate or more.	Unskilled or none	Do.
203.22	....do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.23	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.24	....do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.25	Younger individual.	Limited or less	Unskilled or none	Do.
203.26	....do	....do	Skilled or semiskilled—skills not transferable.	Do.
203.27	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.28	....do	High school graduate or more.	Unskilled or none	Do.
203.29	....do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.30	....do	....do	Skilled or semiskilled—skills transferable.	Do.
203.31	....do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work as defined in §416.910(e), or very heavy work as defined in §416.910(f) includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus, an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled even though age, education, and skill level of prior work experience may be considered adverse.

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[4110-07-M]

[Regulations No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—Eligibility

ELIGIBILITY OF INDIVIDUALS RESIDING IN PUBLICLY OPERATED COMMUNITY RESIDENCES SERVING NO MORE THAN 16 RESIDENTS

AGENCY: Social Security Administration, HEW.

ACTION: Final regulations.

SUMMARY: This final rule provides that the term "public institution" does not include publicly operated community residences which serve no more than 16 residents and defines this kind of residence. Thus, individuals who are residing in publicly operated community residences which serve no more than 16 residents, and who are otherwise qualified, are eligible for Supplemental Security Income (SSI) benefits.

This rule encourages the development of small residential facilities as an alternative to care in large institutions for persons who would benefit from a living arrangement closely approximating independent living in a community setting while, at the same time, receiving supportive care and some degree of supervision. These provisions are designed to acclimate residents to community living and to ease the transition into an independent living situation.

EFFECTIVE DATE: November 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. S. J. Weissman, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7341.

SUPPLEMENTARY INFORMATION: On January 31, 1978, this amendment was published in the FEDERAL REGISTER (43 FR 4004) as an interim regulation.

BACKGROUND

Prior to the enactment of section 505(a) of Pub. L. 94-566, section 1611(e)(1) of the Act provided only one exception to the general rule that no person shall be eligible to receive SSI benefits for any month throughout which the individual is an inmate of a public institution. The previous exception, which continues in effect, provides that an individual who is throughout a month in a public institution may be eligible for SSI benefits if the institution is receiving payments under a State plan approved under Title XIX (Medicaid) on his or her behalf, assuming all other SSI eligibility criteria are met. In this situation, the standard payment amount is $25 for each full month of such institutionalization. This amount is then subject to reduction for any countable income which the individual may have. However, if the public institution is not receiving title XIX (Medicaid) payments on his or her behalf, the individual is ineligible for SSI benefits. The rules implementing these statutory provisions are found in Title 20 of the Code of Federal Regulations, § 416.231.

SCOPE OF RULES

1. Section 505(a) of Pub. L. 94-566 added a second exception to the exclusion of inmates of public institutions. Section 1611(e)(1)(C) of the Act now

provides that the term "public institution" does not include publicly operated community residences which serve no more than 16 residents. Accordingly, we have amended § 416.231 by adding a new paragraph (a)(3) to state that for purposes of § 416.231 the term public institution does not include publicly operated community residences which serve no more than 16 residents. Thus, individuals residing in residences of this type are eligible for SSI benefits if all other SSI criteria are met.

2. We have also amended § 416.231 by adding a new paragraph (b)(6)(i). This paragraph defines publicly operated community residences which serve no more than 16 residents as follows:

It must be publicly operated as defined in § 416.231(b)(2); and

It must be planned and designed to serve no more than 16 residents, or the plan and design was changed to serve no more than 16 residents; and

It must be serving no more than 16 residents; and

It must make available some services beyond food and shelter such as social services or help with personal living activities, or training in socialization and life skills; occasional or incidental medical or remedial care may also be provided (as defined in 45 CFR 228.1).

In developing this definition we looked to the wording of the statute. We also considered the background materials contained in the legislative history of the statute. (See Hearing on H.R. 10210 Before the Subcommittee on Public Assistance of the House Committee on Ways and Means, 94th Cong., 2nd Sess. (1976). Also see S. Rep. No. 1265, 94th Cong., 2nd Sess. page 29 (1976).)

The central theme in these materials is the underlying philosophy that community residences provide a desirable alternative to large institutions because they can provide not only life sustaining services of food and shelter, but also can encourage personal independence in an atmosphere of mutual acceptance and support for emotional growth and life enrichment activities. Based on this information, the critical factors used in developing this definition were size, location, and purpose.

We also considered the problems which can arise because of fluctuating occupancy levels in this type of facility. We believe the most feasible and equitable way to meet the intent of the legislation is to look to the number of residents the facility is designed or planned to serve. This is in keeping with the intent of the statute which envisions a 16 resident capacity as an outer limit applicable to community residences. The test is whether or not community residences are designed or planned, according to their specifications, to house and provide services for no more than 16 residents, and whether no more than 16 persons are actually residing in the residence.

A publicly operated community residence, while not considered a "public institution" for purposes of making residents ineligible for SSI under section 161(a)(1)(A) of the Act, is nevertheless an institution, and as such is expected to provide some services beyond food and shelter (§ 416.231(b)(1)). Thus, a publicly operated community residence must make available some other services such as social services, or help with personal living activities, or training in socialization and life skills. Such services may also include occasional or incidental medical or remedial care. It is intended that these services will provide the individual with the skills necessary to return to community living.

3. To further insure clarity of the above definition, we also added a new paragraph (b)(6)(ii) to § 416.231. It describes those public facilities which are not considered community residences even if their accommodations are for 16 or fewer residents. Excluded are educational or vocational training institutions, correctional or holding facilities, medical treatment facilities, and residential facilities located on the grounds of or immediately adjacent to any large institution or multiple-purpose complex.

Educational and vocational training institutions are designed to provide individuals with approved, accredited or recognized educational or training programs preparatory to gainful employment. A publicly operated community residence is designed to acclimate its residents to community living, thereby easing their transition into independent living situations. Since each differs in its primary goal, educational and vocational training institutions cannot qualify as publicly operated community residences. Even though individuals residing in educational or vocational training institutions would not be eligible for SSI benefits under this final rule, such individuals may be eligible for SSI benefits under § 416.231(b)(3). This is so because § 416.231(b)(3) provides that a person is not considered an "inmate of a public institution" when he or she is in a public educational or vocational training institution for purposes of securing education or vocational training.

Correctional or holding facilities are part of the criminal justice system, and medical treatment facilities primarily focus on providing medical or remedial care. Since none of these institutions is designed to provide the desired living arrangement envisioned by the statute, they are excluded from the definition of publicly operated community residences.

Residential facilities located on the grounds of or adjacent to a larger institution or multiple-purpose complex are excluded because their location is inconsistent with the statutory provisions and purposes regarding community residences. Colocated residential facilities are an integral part of the larger institution. Therefore, such a living arrangement would not be considered as an alternative to institutional living. Moreover, a facility so situated is really not part of the community and thus could not as readily accomplish the intended goal.

Discussion of Comments

Interested persons were given the opportunity to submit, within 90 days, data, views, or arguments with regard to the interim regulation. A number of comments were received from private, State, and local organizations. Responses to the comments are discussed below.

Comment: One commenter recommended that a payment of graded higher allowances be allowed based on the number of services provided by halfway houses and that those which do not furnish specified minimum services be eliminated by closing their doors.

Response: Concerning the first part of the comment, there is no statutory provision for varying the amount of Federal SSI benefits based on the number of services a community residence may provide. The second part of the comment relates to the regulations published by the Office of Human Development Services (OHDS) on January 31, 1978 (43 FR 4016) which provides for States to establish standards for such facilities. Accordingly, this comment was forwarded to OHDS for their consideration of that issue.

Comment: Two commenters objected to § 416.231(b)(6)(ii)(a) because it excludes from the definition of "publicly operated community residences which serve no more than 16 residents" residential facilities located on the grounds of or immediately adjacent to any large institution or multiple-purpose complex. They state that this exclusion is inconsistent with the intent and purposes of the statute, constitutes poor social policy, and presents an unnecessary obstacle to the States.

Response: All of the pertinent background information relating to section 505(a) of Pub. L. 94-566 shows that the Congress and other concerned organizations intimately involved in the development of the statute, specifically indicated the need for the limitation in § 416.231(b)(6)(ii)(a). The Congress intentionally chose the term "community residence" to refer to a small, free-standing, community-based living unit and clearly intended that facilities on the grounds of large institutions or immediately adjacent to them be excluded from the definition of "publicly operated community resi-

dences which serve no more than 16 residents," because these living arrangements are not considered to be alternatives to institutional living.

This is borne out in a letter we received from Congressman William Brodhead and Congresswoman Martha Keys (co-sponsors of this legislation) shortly after enactment of this statute in which they shared with us their thoughts on the direction the regulations should take. They specifically stated that "small houses on the grounds of large institutions or immediately adjacent to them should not be considered community residences." Since it was clearly the intent of Congress to exclude this type of residential facility, we are not adopting this recommendation.

Comment: One commenter viewed the interim regulation as a positive step and hoped it would become permanent.

Response: This amendment adopts the interim regulation as a final rule.

Comment: One commenter proposed that: (1) the interim regulation be revised to exclude SSI benefits only from those residences in which more than 16 people are receiving SSI benefits; and (2) the definition of "inmate" be revised to include anyone placed in an institution by court or doctor's order.

Response: The first proposal cannot be adopted because it is not consistent with section 1611(e)(1)(C) of the Social Security Act and its legislative history. That section states "not more than 16 residents." Congress intended that these residential facilities be small enough so that a financial incentive would not exist for the States to fragment their institutions which provide custodial care to those who need it. Throughout the hearings and committee reports on the amendment, the term "small residential facility" is used to refer to small, free-standing, community living units.

With respect to the second proposal, the term "inmate of a public institution" is defined in current regulations (§ 416.231(b)(3)) as a person who is living in a public institution and receiving treatment or services which are appropriate to the person's requirements. This provision is based on section 1611(e)(1) (A) and (B) of the Act. These provisions were not changed by Pub. L. 94-566.

Comment: One commenter suggested that the interim regulation be revised to include people who reside in private homes, private apartments, and family care centers. The commenter also suggested changes concerning the trial work period as it relates to sheltered workshop employment, increasing the limitation on resources, and a number of other points not related to this regulation.

Response: Individuals residing in private homes, private apartments, or family care facilities are not affected by this amendment. This rule concerns only public residences. Qualified individuals residing in private facilities have been and continue to be eligible for the full standard payment amount, unless the facility is receiving payments under a State plan approved under Title XIX (Medicaid) in which case the standard payment amount is $25. Thus, no change is made on this point.

With respect to the commenter's suggestion that the limitation on resources be increased, a Notice of Proposed Rule Making proposing an increase for certain resources (e.g., automobile, personal effects, and household goods) was published in the FEDERAL REGISTER of April 28, 1978 (43 FR 18206). However, the limitation of $1,500 for an individual ($2,250 for a couple) is set by law and cannot be increased by regulations. The commenter's other suggestions not related to this amendment will be studied and given further consideration.

TECHNICAL CHANGES

Section 416.231(a)(3) was reserved at the time this amendment was published as an interim regulation. This reserved paragraph is being deleted and § 416.231(a)(4) is being redesignated § 416.231(a)(3). Conforming editorial corrections have been made to § 416.231(a) and to § 416.231(b)(6)(i) to reflect this change.

Accordingly, with these editorial changes, the amendment is adopted as set forth below.

(Sections 1102, 1611, and 1631 of the Social Security Act as amended, 49 Stat. 647, as amended, 86 Stat. 1466 and 1475; 42 U.S.C. 1302, 1382(e) and 1383(d)(1).)

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

Dated: August 18, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 17, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

Section 416.231 is amended by revising paragraph (a)(1) and adding paragraphs (a)(3), (b)(6)(i), and (b)(6)(ii) to read as follows:

§ 416.231 Limitation on eligibility due to institutional status.

(a) *General.* (1) Except as provided in subparagraphs (2) and (3) of this paragraph, no person shall be an eligible individual or eligible spouse for purposes of title XVI of the Act with respect to any month if throughout such month the person is an inmate of a public institution.

* * * * *

(3) The term "public institution," as used in this section does not include a publicly operated community residence which serves no more than 16 residents. Where it is determined that a community residence is not publicly operated such residence is not a public institution as defined in § 416.231(b)(2) and this section will not apply.

(b) *Definitions.* For purposes of this part the following definitions shall apply:

* * * * *

(6)(i) The term "publicly operated community residence which serves no more than 16 residents" (see § 416.231(a)(3)) means:

(*a*) It must be publicly operated as defined in § 416.231(b)(2); and

(*b*) It must be designed and planned to serve no more than 16 residents, or the plan and design was changed to serve no more than 16 residents; and

(*c*) It must be serving 16 or fewer residents; and

(*d*) It must make available some services beyond food and shelter such as social services, or help with personal living activities, or training in socialization and life skills; occasional or incidental medical or remedial care may also be provided (as defined in 45 CFR 228.1).

(ii) Excluded from the definition of "publicly operated community residences" are the following facilities, even if their accommodations are for 16 residents or less:

(*a*) Residential facilities located on the grounds of or immediately adjacent to any large institution or multiple-puprose complex: and

(*b*) Educational or vocational training institutions that primarily provide an approved or accredited or recognized program to some or all of the individuals residing within it; and

(*c*) Correctional or holding facilities which provide for individuals whose personal freedom is restricted because of a court sentence to confinement (prisoners), court ordered holding (material witness, juvenile) or a pending disposition of charges or status (individuals who have been arrested or detained); and

(*d*) Medical treatment facilities (hospitals and skilled nursing facilities, see 42 U.S.C. 1395x and intermediate care facilities, see 42 U.S.C. 1396d) which provide medical or remedial care on an inpatient basis.

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