(2) If no person described in (1) survives, in equal shares to each person who is entitled (or would have been entitled had a timely application been filed) to child's benefits (as described in § 404.350) on the work record of the deceased worker for the month of that worker's death.

(b) *Application requirement.* A person who meets the requirements of paragraph (a)(1) of this section need not apply to receive the lump-sum death payment if, for the month prior to the death of the insured, that person was entitled to wife's or husband's benefits on the insured's earnings record. Otherwise, an application must be filed within 2 years of the insured's death.

25. The heading and introductory language of § 404.393 as redesignated are changed to read as follows:

§ 404.393 Who is entitled to the lump-sum death payment when there is no widow or widower who was living in the same household—death occurs before September 1, 1981.

If the insured individual dies before September 1, 1981 and is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

* * * * *

26. The reference in the first sentence of the text of § 404.394 as redesignated is changed from "§ 404.392" to "§ 404.393".

§ 404.315 [Amended]

27. Section 404.315(a) is amended by changing the reference from "§ 404.116" to "§ 404.130".

§ 404.320 [Amended]

28. Section 404.320(b)(2) is amended by changing the reference from "§ 404.116" to "§ 404.130".

[FR Doc. 83-13053 Filed 5-13-83; 8:45 am]

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20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Withdrawal of Applications of Deceased Claimants

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration is amending its regulations on withdrawal of applications for benefits. The applications affected are those for old-age benefits that would be reduced because of the worker's age. Currently, even if the worker dies before we take action to pay the first of the reduced old-age benefits for which he or she applied, the amount of the widow's or widower's benefits must be limited because the worker was technically entitled to reduced benefits. These regulations will remedy this by permitting the person eligible for widow's or widower's benefits based on the worker's earnings to withdraw the worker's application if the worker died before we certified his or her benefit entitlement to the Treasury Department for payment.

EFFECTIVE DATE: These regulations are effective on May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6629.

SUPPLEMENTARY INFORMATION:

Background

Our existing regulations permit one person, under certain conditions, to withdraw another person's application for social security benefits but only if the person whose application is being withdrawn is alive at the time the withdrawal request is filed.

This was a reasonalbe requirement until Congress amended the law to require limitation of the amount of widow's or widower's benefits if the worker was ever entitled to old-age benefits that were reduced because of his or her age (under 65). Since then there have been instances in which the worker died after applying for reduced benefits, and thus the widow's or widower's benefits were limited, even though the worker died before we certified his or her entitlement to the Treasury Department for payment of any benefits whatsoever. This is because the worker is technically "entitled" to benefits as soon as he or she meets all the requirements for benefits which includes filing an application for those benefits.

We do not believe it was the intent of Congress to limit the widow's or widower's benefit amount where the worker met the technical requirements for entitlement, including the filing of an application, but then died before we actually certified his or her entitlement to the Treasury Department for payment.

New Regulations

There is no statutory provision governing withdrawal of an application for benefits. Accordingly, it is left wholly to the discretion of the Secretary of Health and Human Services to establish criteria for a valid withdrawal of an application. Since under the current law and regulation the worker's entitlement to reduced retirement benefits, regardless of whether actually paid to the worker, will permanently limit the benefit amount payable to the widow or widower, these regulations allow the withdrawal of the application after the worker's death, but only if the worker died before we certified the worker's entitlement to the Treasury Department for payment. The withdrawal may be accomplished by the person eligible for widow's or widower's benefits or by someone else on the widow's or widower's behalf, but requires the consent of any other individual who would lose benefits as a result of the withdrawal.

Public Comments

In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rule Making in the **Federal Register** on September 28, 1982 (47 FR 42587). The public was invited to submit comments pertaining to the proposed amendment within a period of 60 days from the date of publication of the notice. The comment period closed on November 27, 1982. There were no comments received during the comment period.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required. We estimate that by the end of the fifth year from the time that this regulation is first implemented, the Federal cost for the payment of the full amount of benefits to survivors affected by the regulation would be approximately $3 million. Any resulting administrative costs would be negligible.

Paperwork Reduction Act—These regulations impose no new reporting/recordkeeping requirements requiring OMB clearance. Our form SSA-521, Request for Withdrawal of Application, has OMB approval under control number 0960-0015.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as

provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Accordingly, this regulation is adopted without change as set forth below.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

(Secs. 202(j), 205 and 1102 of the Social Security Act, as amended (49 Stat. 623, as amended; 53 Stat. 1362, as amended; 49 Stat. 647, as amended; 42 U.S.C. 402(j), 405, and 1302))

(Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security Disability Insurance; 13.803, Social Security Retirement Insurance; 13.805 Social Security Survivors Insurance)

Dated: March 21, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Part 404 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

In § 404.640, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added, to read as follows:

§ 404.640 Withdrawal of an application

* * * * *

(c) *Request for withdrawal filed after the claimant's death.* An application may be withdrawn after the claimant's death, regardless of whether we have made a determination on it, if—

(1) The claimant's application was for old-age benefits that would be reduced because of his or her age;

(2) The claimant died before we certified his or her benefit entitlement to the Treasury Department for payment;

(3) A written request for withdrawal is filed at a place described in § 404.614 by or for the person eligible for widow's or widower's benefits based on the claimant's earnings; and

(4) The conditions in paragraphs (b)(2) and (3) of this section are met.

* * * * *

[FR Doc. 83-13052 Filed 5-13-83; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Parts 404 and 416

[Regulations No. 4, 16]

Disability and Blindness; Determination of Certain Impairment-Related Work Expenses for Substantial Gainful Activity Purposes and for Purposes of Determining Countable Earned Income

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These rules implement section 302 of Pub. L. 96-265 which concerns certain impairment-related work expenses incurred on or after December 1, 1980, by disabled persons applying for or receiving benefits under the disability insurance program and the supplemental security income (SSI) program. Under these programs, a person who is able to do substantial gainful activity (SGA) is not considered disabled. In determining whether a person has done SGA we consider that person's services and earnings. In determining the amount of earnings for this purpose, regulations in effect for periods prior to December 1980 provide that we deduct the person's impairment-related expenses only if they are incurred solely because of his or her work. These regulations provide that the cost to the individual of impairment-related items and services which the individual needs in order to work, where the expenses were incurred on or after December 1, 1980, will be deducted from earnings even though the items and services also help that individual carry out normal functions of daily living. For the purpose of determining a person's eligibility and benefit amount for SSI, there is an exclusion from income of the first $20 of any income received in a month. Also excluded is $65 of earned income and one-half a person's earned income (not otherwise excluded) in a month. (In the Notice of Proposed Rule Making that preceded these final regulations, we used quarterly amounts in § 416.1112. In these final regulations we are using monthly amounts in accordance with Pub. L. 97-35 which established retrospective monthly accounting effective April 1, 1982. This amendment to the Social Security Act requires eligibility for SSI payments to be determined on a monthly rather than a quarterly basis. A Notice of Proposed Rule Making revising § 416.1112 was published on October 29, 1981 (46 FR 53449).) The regulations provide that we will also exclude from a disabled SSI recipient's earned income the same types of expenses that are deductible under the SGA provision. These impairment-related work expenses will be deducted after excluding $65 of earned income but before excluding one-half of what remains. However, a disabled individual must have countable income within the Federal SSI limit (currently $284.30 per month) without benefit of the work expense exclusion before the exclusion can apply. Once an individual qualifies under the basic Federal income limit for any month after November 1980, he or she continues to qualify for exclusion of work expenses for all subsequent consecutive months in which the Federal income limit or the income limit for federally administered optional State supplementation is met. If an individual later fails to meet the higher of these limits, he or she no longer qualifies for the work expense exlusion until the Federal SSI income limit is again met without benefit of the work expense exclusion.

EFFECTIVE DATE: These regulations are effective May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7336.

SUPPLEMENTARY INFORMATION:

We published a Notice of Proposed Rule Making on January 6, 1982 (47 FR 642). Comments received are discussed in this preamble.

What Expenses May Be Deducted

We define the kinds of impairment-related items or services which are considered under this work incentive provision. We do not, however, present an all-inclusive list of such items and services because such a list would impose unintended limitations.

The regulations include definitions of the items and services for which expenses are deductible. The expenses for these items and services are considered extraordinary in that the individual, because of his or her impairment(s), must have or use the items or services in order to overcome functional limitations which would otherwise preclude his or her working or getting to and from work.

We will deduct certain transportation costs including the costs of modifications to vehicles, driver assistance, taxicabs and other hired vehicles when other means of transportation are not accessible. We considered deducting both the cost of a vehicle modification and the purchase price of the vehicle if it is needed to get to and from work. We rejected the option of deducting the purchase price because automobiles and vans are widely used by most members of the

public and their purchase is a common expense incurred by both disabled and nondisabled individuals. We decided that only the cost of the modification would meet the "extraordinary cost" standard and therefore decided to deduct only those costs. In addition, we have included a mileage allowance for both modified and unmodified vehicles. In the case of an unmodified vehicle, we will deduct the mileage allowance only where a disabled person has no choice, solely because of his or her impairment, but to drive to work. This allowance will be based on the national average costs of operating an automobile based on data provided by the Federal Highway Administration. The current rates range from 15 cents a mile to 26 cents a mile depending on the type of vehicle used. We will update the mileage allowance periodically.

We have provided that payment by a disabled person for attendant care services will be deductible only for services performed at work, going to and from work, or in preparing the individual to go to work and assisting the person in returning from work. Where a disabled person pays a member of his or her family for the performance of attendant care services, the payment will be deductible only if the family member suffers economic loss by reducing or termination his or her own employment or self-employment.

We have provided for a deduction of the cost of residential modifications under certain limited circumstances. Where the individual is employed outside the home, we will deduct only the cost of those changes to the exterior of the residence which enable the individual to get to work (e.g., exterior ramp for a wheel-chair confined person or special exterior railings or pathways for someone who requires crutches). Where the individual works at home, we provide for the deduction of modifications that pertain specifically to the working space in the home. Such costs, however, cannot be deducted as impairment-related work expenses if they are deducted by a self-employed person as business expenses.

We have provided for deduction of expenses for non-medical appliances and equipment (those which are not ordinarily used for medical purposes) only where it can be established that there is an impairment-related and medically verified need for the item because it is essential for the control of the disabling condition. Determinations regarding these types of expenses will be made on the facts of each case.

We have provided that the costs of drugs and medical services are deductible if they are used by the individual to control his or her impairment in order that the individual may work.

Relationship of Expenses to Period of Work

For the purpose of determining SGA we have provided that a payment toward the cost of an item can be deducted if payment is made in a month the person is working (including work in a sheltered workshop), regardless of when the actual purchase was made. We have provided that costs for services can be deducted if payment for the services is made in a month the person is working, provided that the services are received in a month the person is working. Thus, the payment must coincide with the person's earnings as well as his or her receipt of the services. For the purpose of determining the SSI payment amount, we have provided that a payment toward the cost of an item or service can be deducted if payment is made in the month the earned income is received for work performed while the individual utilized the impairment-related item or service. Recognizing that individuals may make purchases in anticipation of work, we provided for the allocation of amounts spent for non-expendable items in the 11 months preceding the first month or work. The payments will be allocated over the 12-consecutive month period beginning with the month of payment. However, only that portion of the payment which is allocated to work months is deductible. In this instance, in order to place the individual on an equal footing with persons who make purchases while working, we will consider the duductible amount to have been paid in the first month of work for the purpose of determining SGA and in the first month earned income is received for the purpose of determining the SSI payment amount. Accordingly, the amount will be deducted in that month or allocated over the 12-consecutive month period beginning with that month. The allocation process is explained in more detail in subsequent paragraphs. In no instance will expenses incurred before December 1, 1980, be deductible, though expenses incurred after November 1980 as a result of a contractual or other arrangement entered into before December 1980, are deductible.

When Expenses May Be Deducted

We have provided that impairment-related work expenses will generally be deductible when paid. If an item or service is paid for on a regular, periodic basis (e.g. monthly), those payments will be deductible in the months in which they are made. We identify these as recurring expenses. If an item or service is paid for at one time, we will deduct the amount of that payment when made or allocate the payment equally over a 12-consecutive month period beginning with the month of payment, whichever the individual selects. If a downpayment is made, we will deduct it when paid or allocate it equally over a 12-consecutive month period, or over the payment period involved if it is less than 12 months, beginning with the month of payment, whichever the individual selects. We identify these as nonrecurring expenses. We will use a special rule when the purchase involves both a recurring and nonrecurring expense.

We considered deducting each nonrecurring payment in the month paid. Where the expense, which could be large, is deducted entirely in the month paid, the person could be found engaging in SGA the following month (and would, therefore, not be disabled). Since SGA determinations are generally based on average earnings over an extended period of time, it is reasonable to allocate nonrecurring payments whenever it would be more beneficial to the disabled person to do so. Moreover, failure to allocate a large expense could discourage a disabled individual from obtaining an item or service needed for him or her to work. The question of the length of the period over which to allocate nonrecurring payments presented several options. We could allocate a one-time payment or downpayment over the item's useful life, but we did not feel it administratively feasible to determine the useful life of an item on a case-by-case basis. We could also allocate downpayments over the length of the installment contract, but this approach could result in unequal treatment of individuals in situations where they purchased identical items. We decided to allocate non-recurring payments over a period of 12 months because it parallels the period used to measure earnings for other program purposes, e.g., the 12-month period is the length of time an impairment must last for a person to be disabled, the 12-month retirement test period, and under the Internal Revenue Code, the 12-month tax year. Also, for SSI payment purposes, a relationship to need could not be reasonably established beyond a 12-month period. We did not choose a shorter period (e.g., 3 months or 6 months) because disability evaluation is generally concerned with the inability to work over an extended period rather than a short, isolated period.

What Kinds of Payments May Be Deducted

In order for impairment-related work expenses to be deductible, they must be paid for in cash or by check rather than in kind. The law states that deductions will be made only where the individual pays for the item or service. We consider this limitation to mean that the individual must pay an actual dollar amount "out-of-pocket" for the impairment-related item or service. Further, we believe this interpretation makes the best use of scarce dollar resources available to SSA to administer the disability program.

Limitations On Deductions of Expenses

Section 302 of Pub. L. 96-265 states with regard to the expenses that "the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe." In its report (No. 96-408) on H.R. 3236 the Senate Finance Committee stated on page 51:

> The committee intends that any such limits not be based on arbitrary conceptions of what amounts are reasonable but rather reflect actual prevailing costs of various categories of impairment-related expenses.

We have related the amounts paid for certain items and services to the prevailing charges listed for the same items and services in the Medicare guidelines under Part B of title XVIII of the Act (Health Insurance for the Aged and Disabled) where the Medicare information is readily available. That information is regularly used to determine reasonable charges for purposes of reimbursement under the Medicare program. We will consider an amount reasonable if it is no more than the prevailing charge established under that title. We will deduct an amount in excess of that charge where the individual shows that it is consistent with the standard or normal charge for the same or similar item or service in the individual's community. For items and services that are not covered by the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which those guides cannot be used because the information is not readily available, we will consider as reasonable the actual costs paid, subject to the standard charge in the individual's community for the same or similar items or services.

We considered allocating deductions based on the time spent working and not working where the item or service is needed for both purposes. We decided to limit the deduction for attendant care to the costs of services performed by the attendant while the individual is at work, getting to and from work, and at home preparing the individual to go to work and assisting the individual in returning from work. In the case of medical devices, equipment and medical services, we decided to permit deduction of the full out-of-pocket costs rather than to allocate the deductions because it is impossible to establish a rational and fair standard for determining the extent to which the costs of an artificial limb, a pacemaker, or hemodialysis, for instance, are work-related.

Comments Received Following Publication of Notice of Proposed Rulemaking

We received comments from 13 sources including 8 private non-profit organizations, 4 State agencies and one individual. Each source commented on one or more provisions of the regulations. For ease of comprehension we have condensed, summarized or paraphrased the comments and have grouped them according to the subject and issues raised. We have tried, to the extent possible, to present the comments and our responses in the order in which the regulations are organized.

Comment: The final regulations should make it clear that for the purpose of determining SGA the impairment-related work expenses are always allowable, i.e., initially as well as for continuation.

Response: We placed the rules on impairment-related work expenses in the portion of the regulations dealing with SGA, beginning with § 404.1571 and § 416.971. These sections specify the following: "The work that you have done *during any period in which you believe you are disabled* may show that you are able to work at the substantial gainful activity level." (Underscoring added.) Thus, the regulations make it clear that impairment-related work expenses must be considered initially as well as for continuation.

Comment: To be deductible, the expense should be directly related, rather than incidentally related, to the individual's ability to work. Therefore, individual determinations may have to be made in some cases as to what constitutes a work-related expense, rather than only using the arbitrary lists of covered or noncovered items.

Response: We agree with this comment. As stated under Supplementary Information, we are defining the *kinds* of impairment-related items or services which will be considered, rather than establishing an all-inclusive list of these items and services which would impose unintended limitations. Where items or services are identified in the rules, we specify that they are examples. Examples are provided to enable the reader to more readily understand the rule. Decisions as to the deductibility of impairment-related work expenses will be made on an individual basis.

Comment: You allow as impairment-related work expenses payments for attendant care services performed by family members who have given up their jobs or reduced their hours of work. You should also recognize the family member who performs attendant care services which prevent him or her from seeking employment.

Response: When a family member sustains an economic loss as a result of providing attendant care, we can reasonably assume that the services were performed with the expectation of remuneration and we would allow a deduction for the payment. We cannot make this assumption in the absence of an economic loss. In writing the rules, we had to recognize that it is common for individuals to perform personal services for members of their families based on familial considerations rather than in expectation of payments.

Comment: The definition of "family member" in §§ 404.1576(c)(1)(iii) and 416.976(c)(1)(iii) is too broad and would discourage the use of those relatives most likely to be able to assist the disabled person. The definition of a family member should be changed to include only those relatives that live with the disabled person.

Response: If the definition were changed as suggested, a relative not living with the disabled person would not be considered to be a family member for purposes of this provision. As a result, any payment to that relative for attendant care services would be deductible whether or not he or she sustains an economic loss in order to provide the services. In our response to the preceding comment we explained that the rule on deductions for these payments to relatives is based on our recognition that individuals often perform services for relatives without expectation of pecuniary gain. In order to avoid deductions in cases of gratuitous services we included the economic loss condition. Although consideration of a relative's place of residence in determining the deductibility of payments would be easier to administer, it would be inconsistent with the aforementioned policy. The fact that a relative may not live with the disabled person should not be determinative of whether the deduction is allowed. The crucial factor is whether an economic loss is suffered.

Comment: The requirement that for payments to family members to be deductible the family member must suffer an economic loss should be applicable only to family members living in the household of the disabled person. While we understand the desire to avoid allowing deductions for services performed by family members living in the household who suffer no economic loss by performing the services, we believe the application of such a stringent criterion to family members not living in the household will, in many instances, defeat the purpose of section 302.

Response: Our response to the preceding comment also applies to this comment. As we interpret this comment it differs from the foregoing only to the extent that the economic loss condition would be applicable when the relative performing the services lives in the household of the recipient, which implies that the household is the property of the disabled person. Again, we do not believe this distinction is significant enough to warrant a change in the rule.

Comment: The regulations should clarify whether a deduction for payment to a family member should be allowed if the family member's normal working hours did not include the times in which the personal attendant services were rendered.

Response: We did not contemplate that it would be necessary to show a correlation between the time the family member performed the attendant care services and the time he or she normally worked. Even though the services may be performed during other than the normal working hours, the family member may, for example, have reduced his or her hours of work in order to obtain the rest needed to care for the disabled person. Thus, it is sufficient if the family member generally establishes that his or her work terminated or was reduced in order to perform the services. We believe the language in the regulations adequately covers this provision.

Comment: Under attendant care, the discussion about assistance with personal services at home in preparation for going to and from work should include deductions for payments to individuals who monitor and administer a visually handicapped individual's insulin.

Response: We have adopted the essence of this suggestion and have revised §§ 404.1576(c)(1)(ii) and 416.976(c)(1)(ii) to include an example which permits this type of deduction to be made.

Comment: Attendant care expenses should be deductible for assistance rendered in shopping, cooking, housekeeping, washing, ironing, and for assistance rendered on nonwork days, since a severely disabled person requires all of these services, every day, to sustain life.

Response: The law permits the deduction of the cost of only those impairment-related items and services which can be *directly associated with enabling a person to work even though the items and services are also needed to carry out the person's normal daily functions. The items or services mentioned cannot be so directly associated. Thus, their costs are generally beyond the scope of this provision.*

Comment: Limiting allowable attendant care deductions to services performed at work, going to and from work, or in preparing the individual to go to work and assisting the person in returning from work seems unreasonable and represents an overly restrictive interpretation of the law. Attendant care costs should be allowable up to and including bedtime, at least on working nights.

Response: Our response to the preceding comment would also apply here. Ordinarily, it can be expected that services within this context that are provided a disabled person upon his or her return home from work would require no more than 1 or 2 hours. However, where it can be shown that services of a longer duration are required to enable the individual to work, and not primarily associated with sustaining or facilitating the person's life, their costs would be deductible.

Comment: In §§ 404.1576(c)(4) and 416.976(c)(4), the term "visual aids" should be changed to either "vision aids" or "optical aids" to more accurately reflect what is intended, i.e., aids designed to enhance sight. Add to the examples in these sections, "sensory aids for the blind," meaning technological devices which have been developed to produce synthetic speech or braille which enables blind persons to use computers, calculators, and word processing equipment. In §§ 404.1576(c)(6) and 416.976(c)(6), change "seeing-eye dog" (which is a dog trained by a specific dog school) to the more generic term, "dog guide."

Response: We have revised the pertinent sections of part 404 as recommended. As the blind are not subject to an SGA test under title XVI we did not make the changes in part 416. The types of expenses referred to are deductible for title XVI payment purposes under § 416.1112.

Comment: Under payments for drugs and services, include as an example immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

Response: We have adopted this suggestion. Sections 404.1576(c)(5)(ii) and 416.976(c)(5)(ii) have been revised to include the additional example.

Comment: Several commenters felt that all or part of the purchase price of a van or automobile needed to get to work should be allowed as an impairment-related work expense. Reasons given are (1) public-transportation is not available to disabled consumers, so they have no option other than to purchase a vehicle, (2) disabled persons must have reliable (and, therefore, new) vehicles which are very expensive, and (3) the Department of Rehabilitation will not modify a vehicle which is more than 2 years old.

Response: While public transportation may not be available to the disabled, this may also be true for the nondisabled. We recognize that vans and automobiles are necessary for some disabled individuals to get to work. However, automobiles and vans are widely used by most members of the public and their purchase price is a common expense incurred by both the disabled and nondisabled. Thus, this expense is not "extraordinary," as is the cost of the modification to the vehicle. To account for the situation where the disabled person must, because of his or her impairment, use an automobile or van to get to and from work, we have provided for a mileage allowance.

Comment: The mileage allowance rates may be too low when the actual costs of operating a modified vehicle are considered. Actual costs should cover depreciation of the vehicle and equipment, insurance costs, and actual operating costs. The impairment-related work expense provision should coincide with the Internal Revenue Service provision which allows for the deduction of actual costs.

Response: Depreciating a vehicle has the same effect as deducting its cost. As indicated in the preceding response, the cost of the vehicle is not considered "extraordinary" and would not, therefore, be deductible. Likewise, the cost of regular equipment cannot be depreciated. However, if the equipment is part of a structural or operational modification that is critical to the operation or usage of the vehicle and is directly related to the individual's impairment, its cost is extraordinary and, therefore, deductible. In this event, a mileage allowance is deductible in addition to the actual cost of the

modification. In response to the recommendation that actual operating costs be deductible, this suggestion was thoroughly considered in the development of the regulations. We believe that the tendency for most people would be to not keep accurate records of their actual expenditures. And it would be difficult for us to evaluate the accuracy of those records. For administrative reasons we decided to use mileage rates established by the Federal Highway Administration. These rates are based upon data which include the costs of gas, oil, maintenance, parking, insurance, and taxes.

Comment: Deduct, under residential modifications, the cost of minor plumbing and electrical modifications that may be required for installation of dialysis equipment.

Response: These types of expenses are associated with a medical device and would be deductible. We have added paragraph (7) to § 404.1576(c) and to § 416.976(c) to reflect that these types of expenses are deductible.

Comment: The sections dealing with the relationship of expenses to the period of work seem unnecessarily complex and potentially troublesome for both disabled people and the Social Security Administration. In addition, it seems unreasonable to require that all bills, in order to be deductible, be paid during a working month. We suggest that the wording be changed to state that bills must be paid not later than the end of the month following when they were incurred. This allows for normal billing procedures. An individual should not be penalized for legitimately incurred work expenses in the previous month because of an inability to pay for services in the same month in which the services were rendered.

Response: The reason these rules seem to be complex is that the rules for determining SGA are different than the rules for determining the SSI payment amount. The amount of earnings from work that an individual performed may show that he or she engaged in SGA. Therefore, in determining whether an individual engaged in SGA, we are concerned with when the income (for the work) was "earned," rather than with when it was received by the individual. On the other hand, eligibility for SSI payments is dependent in part on the amount of income available to the individual. Therefore, for the purpose of determining the SSI payment amount, we are concerned with when the income is received, rather than with when it was earned by the individual.

The impairment-related work expense rules have been formulated on the basis of the preceding considerations. Thus, for the purpose of determining SGA we provide that the cost of an item or service is generally deductible if payment is made in a month the person is working. On the other hand, for the purpose of determining the SSI payment amount we provide that the cost of an item or service is generally deductible if payment is made in the month the income (for the work) is received.

Comment: The proposed rules allow for deductions only at the rate of prevailing charges under Medicare. The Medicare prevailing charge rates are too low and do not permit deducting the cost of custom-made devices and equipment which the individual needs. The actual amount paid should be allowed as a deduction.

Response: The Medicare prevailing rates are not an absolute standard. As specified in the rules, any time the actual cost exceeds the Medicare rate, the disabled person will have an opportunity to demonstrate that the amount paid is consistent with the standard or normal charge for the same or similar item or service in the individual's community. Where this can be established, the actual amount paid will be deductible.

Comment: A blind person may deduct different work expenses in the SSI program than in the disability insurance program. Also, the rules for deducting work expenses of blind SSI recipients are different than the rules for deducting work expenses of regular disabled SSI recipients. Therefore, § 404.1576(f)(4) should be clarified.

Response: Section 302 of Pub. L. 96–265 expressly provides the impairment-related work expense exclusion for the disabled (*not* the blind) under the SSI program. In addition, under the SSI program, the blind are not subject to an SGA test. Consequently, only those blind workers who are filing for or are receiving title II disability insurance benefits are affected by these rules.

Comment: If an employed SSI recipient cannot certify substantial work-related expenses, there is little incentive to work with the disregarding of only the first $65 a month of earned income before deducting one-half of the remaining earnings. A solution would be to liberalize the SGA amount under SSI to a level at, or approaching, the current $500 a month level under disability insurance for blind persons.

Response: The earnings test for SGA purposes which applies to persons who are filing for or receiving SSI benefits (title XVI) because of disability is the same as that which applies to persons who are filing for or receiving title II benefits because of a disability other than blindness. The test of whether a person is disabled is the same for the title XVI program as for the title II program and it would be inconsistent and inequitable to apply different SGA tests. Recognizing that blind persons face special problems with respect to employement, Congress, in 1977, provided higher SGA earnings amounts for the blind under title II. However, the Conference Report (Senate Report No. 95–612 and House of Representatives Report No. 95–837, 95th Congress, First Session) made clear that this more liberal SGA level should not be applied to persons disabled by impairments other than blindness. (Since the title XVI blind are not subject to an SGA test, this new level applies only to title II blind.) Application of this higher level to nonblind persons would clearly be contrary to Congressional intent. Under the SSI program all earnings, whether by a blind person or by a disabled person, are also evaluated under the income and resources provisions of the law. Eligibility for benefits and the amount of the benefit payable are dependent in part upon the amount of a person's income. As the amount of a person's countable income rises, his or her benefit payment is reduced. This evaluation is independent of the determination as to whether a person is doing SGA.

Comment: The SGA rules for the blind are in § 404.1584. But § 404.1584 does not provide that impairment-related work expenses can be excluded from earnings. Therefore, § 404.1584(d) should incorporate by reference § 404.1576 to make it clear that impairment-related work expenses of blind people can be subtracted from their income.

Response: This suggestion has been adopted. We have revised § 404.1584(d) to include the recommendation and to explain by cross-reference that subsidies described in § 404.1574(a)(2) and amounts described in § 404.1575(c) if an individual is self-employed should also be excluded.

Comment: Two commenters objected to the provisions of § 416.1112(c)(5) which provide (1) that the impairment-related work expense exclusion cannot be applied until countable income without benefit of the exclusion is within the Federal SSI limit, and (2) that if subsequently the countable income after the exclusion exceeds the Federal SSI limit or the federally administered optional State supplement limit, the individual no longer qualifies for the exclusion until his or her countable income without the exclusion is again within the Federal limit. It is felt that this provision will present an undue hardship on a disabled worker and,

therefore, a disincentive to employment. A provision must be made to protect employed individuals who temporarily fail to incur an impairment-related work expense (e.g., an individual misses work about 3 weeks in a month and during that time did not have transportation expenses he would normally have) so that their eligibility for the impairment-related work expense exclusion would continue.

Response: Section 1612(b) of the Act (as amended by section 302(b) of Pub. L. 96-265) specifically states that the impairment-related work expense exclusion applies ". . . For purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility." Therefore, the limitation in question is mandated by law. However, it affects use of the exclusion only for purposes of computing a person's countable earned income in determining SSI eligiblity and benefit amount. The limitation does not affect deduction of impairment-related work expenses for purposes of determining whether the person is performing SGA.

Comment: Any attempt to "nibble away" at the meager income of SSI recipients is opposed. A policy which takes away from those persons least able to give should be reconsidered.

Response: The purpose of these rules is to implement a change in the law. This change in the law provides that the cost to an individual of certain items and services which are needed in order to work can be deducted from the individual's earnings. The deduction can be made for the purpose of determining whether the individual engaged in SGA and for the purpose of determining the individual's SSI payment amount. This is a liberalizing change intended to encourage people to return to work. It can increase, but never decrease, the benefits of an SSI recipient.

Regulatory Procedures

Executive Order No. 12291—This regulation does not meet the criteria for a major rule as that term is defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Estimated program costs (titles II and XVI combined) for fiscal years 1982, 1983, 1984, and 1985 are $12 million, $17 million, $22 million and $28 million, respectively. Estimated administrative costs are less than $1 million each year.

Paperwork Reduction Act—These regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance. The reporting forms needed to implement this provision have been approved by OMB already: SSA Nos. 820 and 821 (OMB approval No. 09-60-0059) and SSA No. 3945 (OMB approval No. 09-60-0108).

Regulatory Flexibility Act—We certify that these regulations do not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not necessary.

List of Subjects

20 CFR Part 404.

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416.

Administrative practice and procedure, Aged, Blind, Disabled, Public-Assistance programs, Supplemental Security Income (SSI).

(Secs. 205, 223, 1102, 1612, 1614, and 1631, Social Security Act, as amended; Sec. 302 of Pub. L. 96-265; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; and 86 Stat. 1468, 1471, 1475, as amended; 94 Stat. 450, 451; 42 U.S.C. 405, 423, 1302, 1382a, 1382c and 1383)

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.807 Supplemental Security Income)

These amendments are hereby adopted as set forth below.

Dated: March 4, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

1. In § 404.1574, paragraph (a)(4) is removed and paragraph (b) is revised to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

* * * * *

2. In § 404.1575, paragraph (c) is revised to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

* * * * *

(c) *What we mean by substantial income.* After your normal business expenses are deducted from your gross income to determine net income, we will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in § 404.1576 that have not been deducted in determining your net earnings from self-employment. We will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in § 404.1574(b)(2); or

(2) It averages less than the amounts described in § 404.1574(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar business as their means of livelihood.

* * * * *

3. A new § 404.1576 is added to read as follows:

§ 404.1576 Impairment-related work expenses.

(a) *General.* When we figure your earnings in deciding if you have done substantial gainful activity, we will subtract the reasonable costs to you of certain items and services which, because of your impairment(s), you need and use to enable you to work. The costs are deductible even though you also need or use the items and services to carry out daily living functions unrelated to your work. Paragraph (b) of this section explains the conditions for deducting work expenses. Paragraph (c) of this section describes the expenses we will deduct. Paragraph (d) of this section explains when expenses may be deducted. Paragraph (e) of this section describes how expenses may be allocated. Paragraph (f) of this section explains the limitations on deducting expenses. Paragraph (g) of this section explains our verification procedures.

(b) *Conditions for deducting impairment-related work expenses.* We will deduct impairment-related work expenses if—

(1) You are otherwise disabled as defined in §§ 404.1505, 404.1577 and 404.1581-404.1583;

(2) The severity of your impairment(s) requires you to purchase (or rent)

certain items and services in order to work;

(3) You pay the cost of the item or service. No deduction will be allowed to the extent that payment has been or will be made by another source. No deduction will be allowed to the extent that you have been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if you purchase crutches for $80 but you were, could be, or will be reimbursed $64 by some agency, plan, or program, we will deduct only $16;

(4) You pay for the item or service in a month you are working (in accordance with paragraph (d) of this section); and

(5) Your payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) *What expenses may be deducted.*

(1) *Payments for attendant care services.* (i) If because of your impairment(s) you need assistance in traveling to and from work, or while at work you need assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments you make for those services may be deducted.

(ii) If because of your impairment(s) you need assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments you make for those services may be deducted.

(iii)(A) We will deduct payments you make to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) We consider a family member to be anyone who is related to you by blood, marriage or adoption, whether or not that person lives with you.

(iv) If only part of your payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, we will only deduct that part of the payment which is attributable to those services. For example, an attendant gets you ready for work and helps you in returning from work, which takes about 2 hours a day. The rest of his or her 8 hour day is spent cleaning your house and doing your laundry, etc. We would only deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

(2) *Payments for medical devices.* If your impairment(s) requires that you utilize medical devices in order to work, the payments you make for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(3) *Payments for prosthetic devices.* If your impairment(s) requires that you utilize a prosthetic device in order to work, the payments you make for that device may be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

(4) *Payments for equipment.* (i) *Work-related equipment.* If your impairment(s) requires that you utilize special equipment in order to do your job, the payments you make for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, vision aids, sensory aids for the blind, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) *Residential modifications.* If your impairment(s) requires that you make modifications to your residence, the location of your place of work will determine if the cost of these modifications will be deducted. If you are employed away from home, only the cost of changes made outside of your home to permit you to get to your means of transportation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of your home will not be deducted. If you work at home, the costs of modifying the inside of your home in order to create a working space to accommodate your impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which you work. Examples of such changes are the enlargement of a doorway leading into the workspace or modification of the workspace to accommodate problems in dexterity. However, if you are self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) *Nonmedical appliances and equipment.* Expenses for appliances and equipment which you do not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is essential for the control of your disabling condition, thus enabling you to work. To be considered essential, the item must be of such a nature that if it were not available to you there would be an immediate adverse impact on your ability to function in your work activity. In this situation, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by an individual with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If it is prescribed and used as necessary treatment of your impairment and necessary to enable you to work, we will deduct payments you make toward its cost.

(5) *Payments for drugs and medical services.* (i) If you must use drugs or medical services (including diagnostic procedures) to control your impairment(s) the payments you make for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of your impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental disorders; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal disorders; electroencephalograms and brain scans related to a disabling epileptic condition; tests to determine the efficacy of medication on a diabetic condition; and immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) We will only deduct the costs of drugs or services that are directly related to your impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) *Payments for similar items and services.* (i) *General.* If you are required to utilize items and services not specified in paragraphs (c) (1) through (5) of this section but which are directly related to your impairment(s) and which you need to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, the purchase and maintenance of a guide dog which you need to work, and transportation.

(ii) *Medical supplies and services not described above.* We will deduct payments you make for expendable medical supplies, such as incontinence pads, catheters, ace bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. We will also deduct payments you make for physical therapy which you require because of your impairment(s) and which you need in order to work.

(iii) *Payments for transportation costs.* We will deduct transportation costs in these situations:

(A) Your impairment(s) requires that in order to get to work you need a vehicle that has structural or operational modifications. The modifications must be critical to your operation or use of the vehicle and directly related to your impairment(s). We will deduct the costs of the modifications, but not the cost of the vehicle. We will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) Your impairment(s) requires you to use driver assistance, taxicabs or other hired vehicles in order to work. We will deduct amounts paid to the driver and, if your own vehicle is used, we will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) Your impairment(s) prevents your taking available public transportation to and from work and you must drive your (unmodified) vehicle to work. If we can verify through your physician or other sources that the need to drive is caused by your impairment(s) (and not due to the unavailability of public transportation), we will deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) *Payments for installing, maintaining, and repairing deductible items.* If the device, equipment, appliance, etc., that you utilize qualifies as a deductible item as described in paragraphs (c) (2), (3), (4) and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) *When expenses may be deducted.* (1) *Effective date.* To be deductible an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) *Payments for services.* A payment you make for services may be deducted if the services are received while you are working and the payment is made in a month you are working. We consider you to be working even though you must leave work temporarily to receive the services.

(3) *Payments for items.* A payment you make toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month you are working. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) *How expenses are allocated.* (1) *Recurring expenses.* You may pay for services on a regular periodic basis, or you may purchase an item on credit and pay for it in regular periodic installments or you may rent an item. If so, each payment you make for the services and each payment you make toward the purchase or rental (including interest) is deductible in the month it is made.

Example. B starts work in October 1981 at which time she purchases a medical device at a cost of $4,800 plus interest charges of $720. Her monthly payments begin in October. She earns and receives $400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be $115 ($5520 divided by 48) for each month of work during the 48 months.

(2) *Nonrecurring expenses.* Part or all of your expenses may not be recurring. For example, you may make a one-time payment in full for an item or service or make a downpayment. If you are working when you make the payment we will either deduct the entire amount in the month you pay it or allocate the amount over a 12 consecutive month period beginning with the month of payment, whichever you select.

Example. A begins working in October 1981 and earns $525 a month. In the same month he purchases and pays for a deductible item at a cost of $250. In this situation we could allow a $250 deduction for October 1981, reducing A's earnings below the SGA level for that month.

If A's earnings had been $15 above the SGA earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period, October 1981–September 1982, giving A an allowable deduction of $20.83 a month for each month of work during that period. This deduction would reduce A's earnings below the SGA level for 12 months.

(3) *Allocating downpayments.* If you make a downpayment we will, if you choose, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations we will determine the total payment that you will make over a 12 consecutive month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if your regular monthly payments will extend over a period of less than 12 months.

Example 1. C starts working in October 1981, at which time he purchases special equipment at a cost of $4,800, paying $1,200 down. The balance of $3,600, plus interest of $540, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns $500 a month. He chooses to have the downpayment allocated. In this situation we would allow a deduction of $205.42 a month for each month of work during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work during the remaining installment period.

Explanation:

Downpayment in 10/81	$1,200	
Monthly payments 11/81 through 09/82	1,265	
	12) 2,465	= $205.42

Example 2. D, while working, buys a deductible item in July 1981, paying $1,450 down. However, his first monthly payment of $125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation we would allow a deduction of $225 a month for each month of work during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work.

Explanation:

Downpayment in 07/81	$1,450	
Monthly payments 09/81 through 06/82	1,250	
	12) 2,700	= $225

(4) *Payments made in anticipation of work.* A payment toward the cost of a deductible item that you made in any of the 11 months preceding the month you started working will be taken into

account in determining your impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month you started working the payment will be allocated over the 12-consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9). Installment payments (including a downpayment) that you made for a particular item during the 11 months preceding the month you started working will be totaled and considered to have been made in the month of your first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12-consecutive month period beginning with the month of your first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for in 3 monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, 3 months before the month work began. The amount would be $450 ($600 divided by 12, multiplied by 9). The deductible amount, as determined by these formulas, will then be considered to have been paid in the first month of work. We will deduct either this entire amount in the first month of work or allocate it over a 12-consecutive month period beginning with the first month of work, whichever you select. In the above examples, the individual would have the choice of having the entire $450 deducted in the first month of work or of having $37.50 a month ($450 divided by 12) deducted for each month that he works over a 12-consecutive month period, beginning with the first month of work. To be deductible the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential modifications, nonmedical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for purposes of this subparagraph.

(f) *Limits on deductions.* (1) We will deduct the actual amounts you pay towards your impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, we will apply the prevailing charges under Medicare (Part B of Title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, we will consider the amount that you pay to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount you actually pay is more than the prevailing charge for the same item under the Medicare guidelines, we will deduct from your earnings the amount you paid to the extent you establish that the amount is consistent with the standard or normal charge for the same or similar item or service in your community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, we will consider the amount you pay to be reasonable if it does not exceed the standard or normal charge for the same or similar item(s) or service(s) in your community.

(2) Impairment-related work expenses are not deducted in computing your earnings for purposes of determining whether your work was "services" as described in § 404.1592(b).

(3) The decision as to whether you performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for you to work generally will be based upon your "earnings" and not on the value of "services" you rendered. (See §§ 404.1574(b)(6) (i) and (ii), and 404.1575(a)). This is not necessarily so, however, if you are in a position to control or manipulate your earnings.

(4) The amount of the expenses to be deducted must be determined in a uniform manner in both the disability insurance and SSI programs.

(5) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that you have been, could be, or will be, reimbursed for payments you made. (See paragraph (b)(3) of this section.)

(6) The provisions described in the foregoing paragraphs of this section are effective with respect to expenses incurred on and after December 1, 1980, although expenses incurred after November 1980 as a result of contractual or other arrangements entered into before December 1980, are deductible. For months before December 1980 we will deduct impairment-related work expenses from your earnings only to the extent they exceeded the normal work-related expenses you would have had if you did not have your impairment(s). We will not deduct expenses, however, for those things which you needed even when you were not working.

(g) *Verification.* We will verify your need for items or services for which deductions are claimed, and the amount of the charges for those items or services. You will also be asked to provide proof that you paid for the items or services.

4. In § 404.1584 paragraph (d) is revised to read as follows:

§ 404.1584 Evaluation of work activity of blind people.

* * * * *

(d) *Evaluation of earnings.* The law provides a different earnings test for substantial gainful activity of people who are blind. We will not consider that you are able to engage in substantial gainful activity on the basis of earnings unless your monthly earnings average more than $334.00 in 1978; $375.00 in 1979; $417.00 in 1980; $459.00 in 1981; and $500.00 in 1982. (Sections 404.1574(a)(2), 404.1575(c) and 404.1576 are applicable in determining the amount of your earnings.) Thereafter, an increase in the substantial gainful activity amount will depend on increases in the cost of living. For work activity performed intaxable years before 1978, the earnings considered enough to show an ability to do substantial gainful activity are the same for blind people as for others.

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

5. In § 416.974, paragraph (a)(4) is removed and paragraph (b) is revised to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section, and § 416.976, and then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

* * * * *

6. In § 416.975, paragraph (c) is revised to read as follows:

§ 416.975 Evaluation guides if you are self-employed.

* * * * *

(c) *What we mean by substantial income.* After your normal business expenses are deducted from your gross income to determine net income, we will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in § 416.976 that have not been deducted in determining your net earnings from self-employment. We will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in § 416.974(b)(2); or

(2) It averages less than the amounts described in § 416. 974(b)(2) but the livelihood which you get from the business is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar business as their means of livelihood.

* * * * *

7. A new § 416.976 is added to read as follows:

§ 416.976 Impairment-related work expenses.

(a) *General.* When we figure your earnings in deciding if you have done substantial gainful activity, and in determining your countable earned income (see § 416.1112(c)(5)), we will subtract the reasonable costs to you of certain items and services which, because of your impairment(s), you need and use to enable you to work. The costs are deductible even though you also need or use the items and services to carry out daily living functions unrelated to your work. Paragraph (b) of this section explains the conditions for deducting work expenses. Paragraph (c) of this section describes the expenses we will deduct. Paragraph (d) of this section explains when expenses may be deducted. Paragraph (e) of this section describes how expenses may be allocated. Paragraph (f) of this section explains the limitations on deducting expenses. Paragraph (g) of this section explains our verification procedures.

(b) *Conditions for deducting impairment-related work expenses.* We will deduct impairment-related work expenses if—

(1) You are otherwise disabled as defined in §§ 416.905–416.907;

(2) The severity of your impairment(s) requires you to purchase (or rent) certain items and services in order to work;

(3) You pay the cost of the item or service. No deduction will be allowed to the extent that payment has been or will be made by another source. No deduction will be allowed to the extent that you have been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if you purchase crutches for $80 but you were, could be, or will be reimbursed $64 by some agency, plan, or program, we will deduct only $16;

(4) You pay for the item or service in accordance with paragraph (d) of this section; and

(5) Your payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) *What expenses may be deducted.* (1) *Payments for attendant care services.* (i) If because of your impairment(s) you need assistance in traveling to and from work, or while at work you need assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments you make for those services may be deducted.

(ii) If because of your impairment(s) you need assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments you make for those services may be deducted.

(iii)(A) We will deduct payments you make to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) We consider a family member to be anyone who is related to you by blood, marriage or adoption, whether or not that person lives with you.

(iv) If only part of your payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, we will only deduct that part of the payment which is attributable to those services. For example, an attendant gets you ready for work and helps you in returning from work, which takes about 2 hours a day. The rest of his or her 8 hour day is spent cleaning your house and doing your laundry, etc. We would only deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

(2) *Payments for medical devices.* If your impairment(s) requires that you utilize medical devices in order to work, the payments you make for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(3) *Payments for prosthetic devices.* If your impairment(s) requires that you utilize a prosthetic device in order to work, the payments you make for that device may be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

(4) *Payments for equipment.* (i) *Work-related equipment.* If your impairment(s) requires that you utilize special equipment in order to do your job, the payments you make for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, visual aids, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) *Residential modifications.* If your impairment(s) requires that you make modifications to your residence, the location of your place of work will determine if the cost of these modifications will be deducted. If you are employed away from home, only the cost of changes made outside of your home to permit you to get to your means of transportation (e.g., the installation of an exterior ramp for a wheel-chair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of your home will not be deducted. If you work at home, the costs of modifying the inside of your home in order to create a working space to accommodate your impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which you work. Examples of such changes are the enlargement of a doorway leading into the work space or modification of the work space to accommodate problems in dexterity. However, if you are self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) *Nonmedical appliances and equipment.* Expenses for appliances and equipment which you do not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers,

and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is essential for the control of your disabling condition, thus enabling you to work. To be considered essential, the item must be of such a nature that if it were not available to you there would be an immediate adverse impact on your ability to function in your work activity. In this situation, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by an individual with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If it is prescribed and used as necessary treatment of your impairment and necessary to enable you to work, we will deduct payments you make toward its cost.

(5) *Payments for drugs and medical services.* (i) If you must use drugs or medical services (including diagnostic procedures) to control your impairment(s), the payments you make for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of your impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental disorders; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal disorders; electroencephalograms and brain scans related to a disabling epileptic condition; tests to determine the efficacy of medication on a diabetic condition; and immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) We will only deduct the costs of drugs or services that are directly related to your impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) *Payments for similar items and services.* (i) *General.* If you are required to utilize items and services not specified in paragraph (c)(1) through (5) of this section but which are directly related to your impairment(s) and which you need to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, and transportation.

(ii) *Medical supplies and services not described above.* We will deduct payments you make for expendable medical supplies, such as incontinence pads, catheters, bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. We will also deduct payments you make for physical therapy which you require because of your impairment(s) and which you need in order to work.

(iii) *Payments for transportation costs.* We will deduct transportation costs in these situations:

(A) Your impairment(s) requires that in order to get to work you need a vehicle that has structural or operational modifications. The modifications must be critical to your operation or use of the vehicle and directly related to your impairment(s). We will deduct the costs of the modifications, but not the cost of the vehicle. We will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) Your impairment(s) requires you to use driver assistance, taxicabs or other hired vehicles in order to work. We will deduct amounts paid to the driver and, if your own vehicle is used, we will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) Your impairment(s) prevents your taking available public transportation to and from work and you must drive your (unmodified) vehicle to work. If we can verify through your physician or other sources that the need to drive is caused by your impairment(s) (and not due to the unavailability of public transportation), we will deduct a mileage allowance as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) *Payments for installing, maintaining, and repairing deductible items.* If the device, equipment, appliance, etc., that you utilize qualifies as a deductible item as described in paragraphs (c)(2), (3), (4), and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. (The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) *When expenses may be deducted.* (1) *Effective date.* To be deductible an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) *Payments for services.* For the purpose of determining SGA, a payment you make for services may be deducted if the services are received while you are working and the payment is made in a month you are working. We consider you to be working even though you must leave work temporarily to receive the services. For the purpose of determining your SSI monthly payment amount, a payment you make for services may be deducted if the payment is made in the month your earned income is received and the earned income is for work done in the month you received the services. If you begin working and make a payment before the month earned income is received, the payment is also deductible. If you make a payment after you stop working, and the payment is made in the month you received earned income for work done in the month you received the services, the payment is also deductible.

(3) *Payment for items.* For the purpose of determining SGA, a payment you make toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month you are working. For the purpose of determining your SSI monthly payment amount, a payment you make toward the cost of a deductible item (regardless of when it is acquired) may be deducted if the payment is made in the month your earned income is received and the earned income is for work done in the month you used the item. If you begin working and make a payment before the month earned income is received, the payment is also deductible. If you make a payment after you stop working, and the payment is made in the month you received earned income for work done in the month you used the item, the payment is also deductible. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) *How expenses are allocated.* (1) *Recurring expenses.* You may pay for services on a regular periodic basis, or you may purchase an item on credit and pay for it in regular periodic installments or you may rent an item. If so, each payment you make for the services and each payment you make

toward the purchase or rental (including interest) is deductible as described in paragraph (d) of this section.

Example. B starts work in October 1981 at which time she purchases a medical device at a cost of $4,800 plus interest charges of $720. Her monthly payments begin in October. She earns and receives $400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be $115 ($5520 divided by 48) for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the 48 months.

(2) *Nonrecurring expenses.* Part or all of your expenses may not be recurring. For example, you may make a one-time payment in full for an item or service or make a downpayment. For the purpose of determining SGA, if you are working when you make the payment we will either deduct the entire amount in the month you pay it or allocate the amount over a 12 consecutive month period beginning with the month of payment, whichever you select. For the purpose of determining your SSI monthly payment amount, if you are working in the month you make the payment and the payment is made in a month earned income is received, we will either deduct the entire amount in that month, or we will allocate the amount over a 12 consecutive month period, beginning with that month, whichever you select. If you begin working and do not receive earned income in the month you make the payment, we will either deduct or begin allocating the payment amount in the first month you do receive earned income. If you make a payment for services or items after you stopped working, we will deduct the payment if it was made in the month you received earned income for work done in the month you received the services or used the item.

Example. A begins working in October 1981 and earns and receives $525 a month. In the same month he purchases and pays for a deductible item at a cost of $250. In this situation we could allow a $250 deduction for both SGA and SSI payment purposes for October 1981, reducing A's earnings below the SGA level for that month.

If A's earnings had been $15 above the SGA earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period, October 1981–September 1982, giving A an allowable deduction of $20.83 a month for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during that period. This deduction would reduce A's earnings below the SGA level for 12 months.

(3) *Allocating downpayments.* If you make a downpayment we will, if you choose, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations we will determine the total payment that you will make over a 12 consecutive month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if your regular monthly payments will extend over a period of less than 12 months.

Example 1. C starts working in October 1981, at which time he purchases special equipment at a cost of $4,800, paying $1,200 down. The balance of $3,600, plus interest of $540, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns and receives $500 a month. He chooses to have the downpayment allocated. In this situation we would allow a deduction of $205.42 a month for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the remaining installment period.

Explanation:

Downpayment in 10/81	$1,200	
Monthly payments 11/81 through 09/82	1,265	
	12) 2,465	=$205.42

Example 2. D, while working, buys a deductible item in July 1981, paying $1,450 down. (D earns and receives $500 a month.) However, his first monthly payment of $125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation we would allow a deduction of $225 a month for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes) during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work (for SGA purposes) and for each month earned income is received (for SSI payment purposes).

Explanation:

Downpayment in 07/81	$1,450	
Monthly payments 09/81 through 06/82	1,250	
	12) 2,700	=225

(4) *Payments made in anticipation of work.* A payment toward the cost of a deductible item that you made in any of the 11 months preceding the month you started working will be taken into account in determining your impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month you started working the payment will be allocated over the 12-consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9). Installment payments (including a downpayment) that you made for a particular item during the 11 months preceding the month you started working will be totaled and considered to have been made in the month of your first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12-consecutive month period beginning with the month of your first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for in 3 monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, 3 months before the month work began. The deductible amount would be $450 ($600 divided by 12, multiplied by 9). The amount, as determined by these formulas, will then be considered to have been paid in the first month of work for the purpose of determining SGA and in the first month earned income is received for the purpose of determining the SSI monthly payment amount. For the purpose of determining SGA, we will deduct either the entire amount in the first month of work or allocate it over a 12 consecutive month period beginning with the first month of work, whichever you select. In the above examples, the individual would have the choice of having the entire $450 deducted in the first month of work or of having $37.50 a month ($450 divided by 12) deducted for each month that he works over a 12-consecutive month period, beginning with the first month of work. For the purpose of determining the SSI payment amount, we will either deduct the entire amount in the first month earned income is received or allocate it over a 12-consecutive month period beginning with the first month earned income is received, whichever you select. In the above examples, the individual would have the choice of having the entire $450 deducted in the first month earned income is received or of having $37.50 a month ($450 divided by 12) deducted for

each month he receives earned income (for work) over a 12-consecutive month period, beginning with the first month earned income is received. To be deductible the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential modifications, nonmedical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for purposes of this subparagraph.

(f) *Limits on deductions.* (1) We will deduct the actual amounts you pay towards your impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, we will apply the prevailing charges under Medicare (Part B of Title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, we will consider the amount that you pay to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount you actually pay is more than the prevailing charge for the same item under the Medicare guidelines, we will deduct from your earnings the amount you paid to the extent you establish that the amount is consistent with the standard or normal charge for the same or similar item or service in your community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, we will consider the amount you pay to be reasonable if it does not exceed the standard or normal charge for the same or similar item(s) or service(s) in your community.

(2) Impairment-related work expenses are not deducted in computing your earnings for purposes of determining whether your work was "services" as described in § 416.992(b).

(3) The decision as to whether you performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for you to work generally will be based upon your "earnings" and not on the value of "services" you rendered. [See §§ 416.974(b)(6) (i) and (ii), and 416.975(a)). This is not necessarily so, however, if you are in a position to control or manipulate your earnings.

(4) The amount of the expenses to be deducted must be determined in a uniform manner in both the disability insurance and SSI programs. The amount of deductions must, therefore, be the same for determinations as to substantial gainful activity under both programs. The deductions that apply in determining the SSI payment amounts, though determined in the same manner as for SGA determinations, are applied so that they correspond to the timing of the receipt of the earned income to be excluded.

(5) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that you have been, could be, or will be, reimbursed for payments you made. (See paragraph (b)(3) of this section.)

(6) The provisions described in the foregoing paragraphs of this section are effective with respect to expenses incurred on and after December 1, 1980, although expenses incurred after November 1980 as a result of contractual or other arrangements entered into before December 1980, are deductible. For months before December 1980 we will deduct impairment-related work expenses from your earnings only to the extent they exceeded the normal work-related expenses you would have had if you did not have your impairment(s). We will not deduct expenses, however, for those things which you needed even when you were not working.

(g) *Verification.* We will verify your need for items or services for which deductions are claimed, and the amount of the charges for those items or services. You will also be asked to provide proof that you paid for the items or services.

8. In section 416.1112, paragraph (c)(5) is redesignated (c)(7) and paragraph (c)(6) is redesignated as (c)(8). Paragraph (c)(4) is revised and new paragraphs (c)(5) and (c)(6) are added to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) *Other earned income we do not count.* We do not count as earned income—

* * * * *

(4) $65 of earned income in a month;

(5) Earned income you use to pay impairment-related work expenses described in § 416.976, if you are disabled (but not blind) and under age 65 or you are disabled (but not blind) and received SSI as a disabled person for the month before you reached age 65. (However, if your countable income without benefit of the exclusion exceeds the Federal SSI limit when we determine your initial eligibility, we cannot apply this provision until your countable income without benefit of this exclusion is within the Federal SSI limit.) Once you qualify for the exclusion of impairment-related work expenses, you continue to be entitled to the exclusion for all subsequent consecutive months in which your countable income after the exclusion is within the Federal SSI limit or, if applicable, the higher income limit for an optional supplement which we administer for the State where you live. If in a subsequent month your countable income after the exclusion exceeds either of these limits, you no longer qualify for the exclusion until your countable income without benefit of this exclusion is again within the Federal limit);

(6) One-half of remaining earned income in a month;

(7) Earned income used to meet any expenses reasonably attributable to the earning of the income if you are blind and under age 65 or if you receive SSI as a blind person for the month before you reach age 65. (We consider that you "reach" a certain age on the day before that particular birthday.); and

(8) Any earned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See §§ 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies.

9. In section 416.1124, paragraph (c)(11) is revised to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) *Other unearned income we do not count.* We do not count as unearned income—

* * * * *

(11) Any unearned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See §§ 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies.

[FR Doc. 83-13051 5-13-83; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind and Disabled, Rounding of Supplemental Security Income Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rule with request for comments.

SUMMARY: We are revising our regulations on how Supplemental Security Income (SSI) benefit amounts are established, to take account of section 182 of Pub. L. 97-248, the "Tax Equity and Fiscal Responsibility Act of 1982" which amends section 1617 of the Social Security Act. Under these revised regulations, SSI Federal benefit rates (FBRs), which are adjusted annually to reflect changes in the cost of living, will be rounded to the next lower whole dollar amount. The regulations provide that after future cost-of-living adjustments (COLAs) in SSI benefits have been calculated, the FBRs payable, when not in a whole dollar amount, will be rounded to the next lower whole dollar amount.

DATES: Although these rules are being issued as final regulations effective May 16, 1983, we will consider any comments we receive by July 15, 1983 and will revise these regulations if public comment warrants it.

ADDRESS: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Fred Miranda, Legal Assistant, 3-B-4 Operations Building, Baltimore, Maryland 21235, (301) 594-7341.

SUPPLEMENTARY INFORMATION:

Background

These regulations affect the monthly SSI benefit amounts that we pay. Our existing regulations, as did the law prior to October 1, 1982, provide that SSI FBRs, which are changed annually to reflect COLAs, are rounded to the next higher ten cents. Though the effect of the rounding of benefits on any one recipient is minimal, its overall impact is marked. Each time the COLA is computed, it is based on the previous higher rounded benefit amount. Consequently, over time, this upward rounding procedure has had a compounding effect that results in benefit rates and thus benefit payments that are higher than the COLAs alone would have caused. Accordingly, the cumulative effect of rounding benefit rates upward has been costly.

Section 182 of Pub. L. 97-248, which was enacted on September 3, 1982, provides, effective October 1, 1982, that the FBR's under title XVI of the Social Security Act be rounded to the next lower dollar whenever there is a COLA in the benefits payable which does not result in a whole dollar amount being paid. Under section 182, COLAs in subsequent years are to be based on the preceding year's unrounded Federal benefit rates and income eligibility amount. As a result there would be no singnificant detrimental cumulative effect on the benefits of individuals who, year after year, have their SSI benefits rounded downward.

The Revised Regulations

The revised regulations provide, whenever there is a COLA in the benefits payable under title II of the Social Security Act, that the SSI benefits payable to eligible individuals and couples (see §§ 416.410-416.414, and § 416.531) will likewise be increased, and that the monthly Federal benefit rates which result from any such COLA in SSI benefits will be rounded to the next lower dollar. They also provide that the COLAs in subsequent years will be based on the unrounded Federal benefit rates of the previous year.

Effective Dates

The statutory amendment on the rounding down of SSI benefit rates is effective October 1, 1982. The revised regulations are effective May 16, 1983.

Final Rule

Generally, it is the Department's policy to use notice and comment procedures in the development of rules. However, under the Administrative Procedure Act (5 U.S.C. 553(b)(B)), an agency for good cause may issue rules without using notice and public comment procedures. One such situation arises, as in this case, when the statute is so explicit that policy formulation is not required. Accordingly, we find that publication of a notice of proposed rulemaking is "unnecessary" because the statutory provision upon which the regulations are based allows for no discretion. Therefore, these rules are being issued as final rules and will become effective on the date they are published in the **Federal Register.**

Regulatory Procedures

Executive Order No. 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation because they will not have an annual effect on the economy of $100 million and will not cause increases in costs or prices. The anticipated savings in fiscal years 1983 and 1984 are $5 million and $14 million respectively (assuming the Congress does not delay the July 1983 COLA). Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—These regulations impose no additional reporting and recordkeeping requirement requiring Office of Management and Budget clearance.

Regulatory Flexibility Act—We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

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

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: March 4, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: April 26, 1983.

Margaret M. Heckler,

Secretary of Health and Human Service.

PART 416—[AMENDED]

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart D of Part 416 reads as follows:

Authority: Sec. 1102, 1611, 1612, 1617, and 1631 of the Social Security Act as amended; 49 Stat. 647 as amended, 86 Stat. 1465, 86 Stat 1468, 86 Stat. 1475 (42 U.S.C. 1302, 1382, 1382a, and 1383); Sec. 182 of Pub. L. 97-248, 96 Stat. 404.

2. Section 416.405 is amended to read as follows:

§ 416.405 Cost-of-living adjustments in benefits.

Whenever benefit amounts under title II of the Act (Part 404 of this chapter) are increased by any percentage effective with any month as a result of a determination made under section 215(i) of the Act, each of the dollar amounts in effect for such month under §§ 416.410, 416.412, 416.413, 416.414, and 416.531, as specified in such sections or as previously increased under this section, shall be increased by the same percentage. The result when not a multiple of $12 on an annual basis shall be rounded to the next lower multiple of $12 on an annual basis. The percentage increase shall be applied to the amounts which were derived pursuant to this section before having been rounded as described above.

[FR Doc. 83-13090 Filed 5-13-83; 8:45 am]

BILLING CODE 4910-11-M

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Privacy Act of 1974; Final Rule Exempting a System of Records From Certain Requirements

AGENCY: Office of the Secretary, Office of the General Counsel, Treasury.

ACTION: Final rule.

SUMMARY: On January 5, 1983, the Department of the Treasury published a proposed rule which would amend 31 CFR 1.36, 48 FR 481. The rule would (1) change the name of a system of records, Treasury/OS 00.144, from "Civil Litigation Records" to "Treasury Interagency Automated Litigation System (TRIALS)", (2) exempt TRIALS from the application of certain parts of the Privacy Act in accordance with 31 CFR 1.23(c) and 1.36, and (3) amend § 1.36 to reflect TRIAL's operational characteristics. No comments were received concerning the proposed rule; this publication will thus promulgate the final rule.

EFFECTIVE DATE: June 15, 1983.

FOR FURTHER INFORMATION CONTACT: Stephanie Dick, Office of the Assistant General Counsel (Enforcement & Operations), Room 2000, Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The existing system of records, Civil Litigation Records, is a manual system. The Office of the General Counsel has revised and supplemented this system through automation. The revised system, TRIALS, is essentially a computerized indexing version of the Civil Litigation Records System. TRIALS is a case-management index which provides summary data on Treasury non-tax litigation and administrative proceedings. This document amends 31 CFR 1.36 to reflect the existence of the revised system.

As required by Executive Order 12291, it has been determined that this rule is not a "major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it has been determined that this rule does not have a significant impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, the Department of the Treasury has made a determination that this proposed rule will not impose new recordkeeping, application, reporting or other types of information collection requirements.

Authority: 5 U.S.C. 552a.

List of Subjects in 31 CFR Part 1

Privacy.

Dated: April 28, 1983.

Cora P. Beebe,

Assistant Secretary (Administration).

Promulgation of Regulations

Title 31 CFR 1.36 of Subpart C is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.36 [Amended]

* * * * *

Office of the Secretary

Office of the General Counsel

Noted Exempting a System of Records from Requirements of the Privacy Act.

(a) *In general.* The General Counsel of the Treasury exempts the system of records entitled "Treasury Interagency Automated Litigation System (TRIALS)" from the provisions of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of 5 U.S.C. 552a. The manual part of this system of records contains information or documents relating to litigation or administrative proceedings involving or concerning the Department or its officials, and includes pending, active and closed files. The manual records consist of copies of pleadings, investigative reports, information compiled in reasonable anticipation of a civil action or proceeding, legal memoranda, and related correspondence. Pleadings which have been filed with a court or administrative tribunal are matters of public record and no exemption is claimed as to them. The computerized part of the system contains summary data on Treasury Department non-tax litigation and administrative proceedings, *e.g.*, plaintiff, defendant, attorney, witness, judge and/or hearing officer names, type of case, relief sought, date, docket number, pertinent dates, and issues. The purpose of the exemptions is to maintain the confidentiality of investigatory materials compiled for law enforcement purposes; information compiled in reasonable anticipation of a civil action a proceeding is exempt from access under section (d)(5) until the file is closed; thereafter section (k)(2) may apply in part to the information. Legal memorandum and related correspondence contain no personal information and are not subject to disclosure under section 552a. Determinations concerning whether particular information contained in this system is exempt from disclosure will be made at the time a request is received from an individual to gain access to information pertaining to him.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(k), and pursuant to the authority vested in the General Counsel by 31 CFR 1.23(c).

(c) *Name of System.* Treasury Interagency Automated Litigation System (TRIALS).

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Glacier Bay National Park and Preserve, Alaska; Protection of Humpback Whales

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On April 6, 1983, the National Park Service, Department of the Interior, published in the **Federal Register** (48 FR 14976) a proposed rule to extend on a limited basis the existing temporary regulations for the protection of the humpback whale, an endangered species, at Glacier Bay National Park and Preserve. The affected regulations define terms, limit large and small vessel entry into Glacier Bay, place certain operating restrictions on all vessels within the Bay, and restrict certain commercial fishing activities at