

FROM

§95.7079 JET ROUTE NO. 79

TO

IS AMENDED TO READ IN PART

CHARLESTON, SC VORTAC
TAR RIVER, NC VORTAC
FRANKLIN, VA VORTAC
SALISBURY, MD VORTAC
SEA ISLE, NJ VORTAC
KENNEDY, NY VORTAC

TAR RIVER, NC VORTAC
FRANKLIN, VA VORTAC
SALISBURY, MD VORTAC
SEA ISLE, NJ VORTAC
KENNEDY, NY VORTAC

18000 45000
18000 45000
18000 45000
18000 45000
18000 45000

MEA

MAA

FROM

TO

V-189

IS AMENDED BY ADDING

TAR RIVER, NC VORTAC
WRIGHT BROTHERS, NC
VOR/DME

IS ADDED TO READ
FRANKLIN, VA VORTAC

18000 45000
18000 45000
18000 45000
18000 45000
18000 45000

§95.7193 JET ROUTE NO. 193

WILMINGTON, NC VORTAC

FRANKLIN, VA VORTAC

18000 45000

§95.8005 JET ROUTES CHANGEOVER POINTS**§95.7208 JET ROUTE NO. 208**

ATHENS, GA VORTAC
LIBERTY, NC VORTAC

IS ADDED TO READ
LIBERTY, NC VORTAC
HOPEWELL, VA VORTAC

18000 45000
18000 45000

§95.7209 JET ROUTE NO. 209

GREENWOOD, SC VORTAC
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.
TAR RIVER, NC VORTAC

IS ADDED TO READ
TAR RIVER, NC VORTAC
NORFOLK, VA VORTAC

18000 45000
18000 45000

§95.7210 JET ROUTE NO. 210

DUNKN, GA FIX
VANCE, SC VORTAC

IS ADDED TO READ
VANCE, SC VORTAC
WILMINGTON, NC VORTAC

18000 45000
18000 45000

[FR Doc. 86-10143 Filed 5-8-86; 8:45 am]
BILLING CODE 4910-13-C

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT

CHANGEOVER POINTS

DISTANCE

FROM

IS AMENDED BY ADDING

WRIGHT BROTHERS, NC
VOR/DME

58 TAR RIVER

AIRWAY SEGMENT

CHANGEOVER POINTS

DISTANCE

FROM

J-60

IS AMENDED BY ADDING

RED TABLE, CO VOR/DME

75 HANKSVILLE

J-79

IS AMENDED BY ADDING

SALISBURY, MD VORTAC

20 FRANKLIN

J-209

IS AMENDED BY ADDING

TAR RIVER, NC VORTAC

127 GREENWOOD

5

4

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 60353-6053]

Amendment to the Commodity Control List; GLV Dollar Value Limit

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration published (49 FR 50608-50631, December 31, 1984) a final rule amending the Commodity Control List (CCL). That rule established a new classification category, ECCN 1567A, for certain stored program controlled switching equipment.

The CCL provides a General (export) License GLV value limit on commodities in the list. The GLV value is the maximum value allowed for exporting the commodity without a validated license to the designated Country Groups.

This rule, which neither expands nor limits the provisions of the Export Administration Regulations, corrects the GLV value limit for exports of ECCN 1567A commodities to the People's Republic of China and all destinations in Country Groups QSWYZ. The GLV value was incorrectly stated in the December 31, 1984 rule as being \$1,000 for exports to all destinations.

EFFECTIVE DATE: May 7, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patti Muldonian, Export Administration, (Telephone (202) 377-2440).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of

proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Betty Ferrell, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 399

Exports.

Accordingly, 15 CFR Part 399 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 et seq.; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. Supplement No. 1 to § 399.1 (the Commodity Control List) is amended by revising the GLV \$ Value Limit paragraph for ECCN 1567A (in Commodity Group 5, Electronics and Precision Instruments) to read as follows:

1567A Stored Program Controlled Communication Switching Equipment or Systems and Technology Therefor; and Specially Designed Components Therefor, for the Use of These Equipment or Systems

GLV \$ Value Limit: \$1,000 for Country Groups T & V, except \$0 for the People's Republic of China; \$0 for all other destinations.

Dated: April 30, 1986.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-10050 Filed 5-6-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regs. No. 4 and 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness Frequency and Notice of Continuing Eligibility Reviews

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: Section 15 of the Social Security Disability Benefits Reform Act of 1984, Pub. L. 98-460 (the 1984 Disability Amendments) requires the Secretary to issue regulations which establish the rules to be used to schedule reviews of continuing entitlement of persons receiving benefits because of disability or blindness. Section 221(i) of the Social Security Act requires that all persons with nonpermanent impairments receiving benefits because of disability must generally be reviewed at least once every 3 years. Section 221(i) also requires that the eligibility of persons having permanent impairments be reviewed at such times as the Secretary deems appropriate. There is no definition of "permanent impairment" in the statute. The identification of impairments now considered permanent is based on administrative experience with continuation rates for certain impairments and age groups or combinations thereof. The categories of impairments considered permanent will be continually modified with increased experience and medical developments. In addition there is a body of cases

involving medical conditions which we expect to improve within a short time. These are referred to as medical improvement expected cases (formerly called medical reexamination diary cases) and under administrative procedures are diaried for review. These rules set forth the standards pursuant to which continuing disability reviews (CDR) will be scheduled so that those receiving disability benefits may better understand the review process and its timing. Appropriate definitions are provided, including definitions of permanent and nonpermanent impairments. These regulations also implement sections 6 (a) and (b) of the 1984 Amendments, which require notice to an individual preceding the CDR of his or her case. These rules apply to persons receiving benefits because of disability or blindness under title II or title XVI of the Act.

DATE: These rules are effective May 7, 1986.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 594-7337.

SUPPLEMENTARY INFORMATION: Section 15 of the 1984 Disability Amendments requires the Secretary to publish in regulations the standards to be used in determining the frequency of reviews under section 221(i) of the Social Security Act. Prior to the Social Security Disability Amendments of 1980, Pub. L. 96-265 (the 1980 Disability Amendments), which added section 221(i) to the Act, there was no requirement for a periodic review of disability for all persons who were receiving disability benefits. SSA generally reviewed only those individuals whose conditions were expected to improve. In determining whether such a medical review was appropriate, the nature of the impairment, whether significant medical improvement could be expected, and the individual's age were all considered. An initial medical review diary would generally be set for not less than 6 months or more than 18 months following the most recent decision. A rediary following such a review which resulted in a person's benefits being continued would be established when there was clear reason to expect subsequent improvement and was usually set for a shorter period than the initial diary, generally less than 12 months.

In the 1980 Disability Amendments Congress expressed its concern that looking only at individuals whose

conditions were expected to improve was not adequate. Congress, therefore, mandated a review of all individuals receiving disability benefits under title II at least once every 3 years for those whose impairments are not permanent and on a schedule to be determined by the Secretary for those whose impairments are permanent. The 1982 Amendments (Pub. L. 97-455) provided the Secretary flexibility in carrying out CDR's. In determining the number of cases to be reviewed by any given State over a specific period of time, the Secretary may consider backlogs of pending reviews as well as current and projected staffing levels in the Social Security field offices and State agency and the availability of adequate medical resources which are necessary to do a complete and accurate review. In the 1984 amendments Congress required the Secretary to publish regulations which explain the frequency with which the various periodic continuing disability reviews will be conducted. This mandate was in response to Congressional concern that disabled beneficiaries be generally aware of when their claims will be reviewed and that such reviews not be conducted soon after an individual establishes continuing eligibility following a lengthy appeal.

When We Will Conduct a Continuing Disability Review

A continuing disability review may be conducted if one or more of the following events occurs:

(1) The individual has been scheduled for a medical improvement expected diary review;

(2) The individual has been scheduled for a medical improvement possible or medical improvement not expected diary review (formerly called periodic review) in accordance with the provisions of regulation §§ 404.1590(d) or 416.990(d);

(3) We need a current medical or other report to see if the individual's disability continues. (This could happen when, for example, an advance in medical technology, such as improved treatment for Alzheimer's disease or a change in vocational therapy or technology raises a disability issue);

(4) The individual returned to work and successfully completed a trial work period;

(5) Substantial earnings are reported to the individual's wage record;

(6) The individual tells us that he or she has recovered from his or her disability or has returned to work;

(7) A State vocational rehabilitation agency reports that its services have

been completed or that the individual is now working or is able to work;

(8) Someone in a position to know of the individual's physical or mental condition reports that the individual is not disabled, is not following prescribed treatment, has returned to work or is failing to follow the provisions of the Social Security Act and regulations, and it appears the report could be substantially correct;

(9) Evidence we receive raises a question as to whether the individual's disability continues; or

(10) The individual has been scheduled for a vocational reexamination diary review.

Additional Regulatory Provisions

Other than administrative guidelines which provide that medical improvement expected diary cases generally will be reviewed between 6 and 18 months following entitlement and that medical improvement possible diary cases will be reviewed every 3 years, SSA has not published specific rules with respect to frequency of review.

These final regulations apply to persons receiving benefits because of disability or blindness under either title II or title XVI of the Social Security Act. Although section 221(i) of the Act does not mandate periodic eligibility review of persons receiving benefits under title XVI because of disability or blindness, these final regulations extend the periodic continuing disability review procedures to title XVI blind and disabled beneficiaries. This extension is within the Secretary's regulatory authority under title XVI of the Social Security Act, sections 1631(d)(1) and 1633, and is in accord with the legislative history of the 1980 Amendments to the Act which added section 221(i). The report of the Senate Committee on Finance states:

The committee believes that such [periodic review] procedures should be applied on the same basis to the DI and SSI programs.

We plan to review periodically the eligibility of persons receiving benefits solely under title XVI because of disability or blindness with the same frequency as we review the eligibility of persons receiving disability benefits under title II. This will establish consistency in the operation of the disability programs. When we begin the periodic review of these cases is dependent on such considerations as the backlog of pending reviews, the projected number of new applications, and the availability of resources needed to ensure careful and accurate reviews.

Before we begin these periodic reviews, we will notify the public of the beginning date of the review program by publication of a Notice in the *Federal Register*.

These regulations also reflect sections 6 (a) and (b) of Pub. L. 98-460, which require that when we begin a periodic review of an individual's eligibility to benefits we inform the individual of the nature of the review, the possibility that the review could result in termination of his or her benefits, and his or her right to submit medical evidence for our consideration during the review. We will apply this provision to all continuing disability reviews. Changes to §§ 404.1589 and 416.989 reflect this policy.

In §§ 404.1590 (c), (d) and (e) and 416.990 (c), (d) and (e) we have defined "permanent" (medical improvement not expected) and "nonpermanent" (medical improvement possible) impairments, "vocational reexamination diary" and "medical reexamination diary," discussed the frequency with which we will conduct CDR's, and provided for potential changes in the classification of a person's impairment. We have provided that a nonpermanent impairment that does not require a medical improvement expected diary will be reviewed at least once every 3 years and a permanent impairment at least once every 7 years, but no more frequently than once every 5 years unless a question of continuing eligibility is raised. We also explain in §§ 404.1590(f) and 416.990(f) that we will not conduct a review earlier than 3 years following establishment of continuing eligibility by an administrative law judge, the Appeals Council or a Federal Court, unless the case should be scheduled for medical improvement expected or vocational reexamination diary or a question of continuing eligibility is raised.

Comments Received Following Publication of the Notice of Proposed Rulemaking

These regulations were published as proposed rules on June 18, 1985 (50 FR 25400). Interested parties were given 45 days to submit comments. We received letters from 14 different sources, including some State agencies that make disability determinations, other State agencies such as those concerned with problems of aged and disabled persons, and several legal aid groups. Although most of the commenters expressed more than one concern, many recommended that regulation §§ 404.1589 and 416.989 be amended to provide that the medical improvement review standard be addressed in the notice informing

individuals of a continuing disability review. Many commenters also suggested that we clarify the meaning of "erroneous" shown in §§ 404.1590(b)(3) and 416.990(b)(3). We have addressed these comments, as well as the others that we received, below.

Reasons for Continuing Disability Review

Comment: Several commenters stated that the regulations should specifically list all reasons for conducting a continuing disability review, and delete the general reason in § 404.1590(b)(9) (and similar language in § 416.990(b)(9)) which states, "evidence we receive raises a question as to whether your disability continues". They believe that this reason is so broadly written that it may lead to the abuse of reviewing claims at any time without justification.

Response: Although we have listed the principal reasons for conducting a continuing disability review, we cannot identify every possible event which may occur and which may require a CDR.

We must be able to conduct a review when an event occurs that gives a strong indication that the individual's impairment has improved. For example, a physician may submit an unsolicited medical report or evidence may be received in connection with a nondisability issue which raises a question. We are not including this general reason for review in order to permit reviews without justification, but to permit a review when some unforeseen event occurs which reasonably raises a question of continued disability and, therefore, justifies a review. Accordingly, we have decided to retain this reason for starting a continuing disability review.

Comment: One commenter suggested that we revise the reasons for conducting a continuing disability review upon receipt of information from the Vocational Rehabilitation Agency as follows: (1) the services have been completed (instead of "the individual's training has been completed"); (2) you are now working (instead of "the individual has returned to work"); or (3) you are able to work. The basis for this suggestion was that many individuals receive vocational rehabilitation services but are not trained and have never worked.

Response: We agree with the suggestion and have made the appropriate changes in §§ 404.1590(b)(7) and 416.990(b)(7).

Comment: Several commenters urged that we delete from §§ 404.1590(b)(3) and 416.990(b)(3), "it appears that a decision may have been erroneous" as a reason for conducting a continuing

disability review. They believe this language is so broad that it will permit a medical review soon after an individual's disability is established following a lengthy appeal. Such a review could result in a determination to reverse the favorable administrative law judge, Appeals Council or court decision.

Response: It is our intent that these regulations fully protect against early disability reviews after favorable appeal decisions and that they will prevent improper reviews. As such, we have decided to delete the questioned phrase because the possible erroneous decision situation is covered in regulation §§ 404.989 and 416.1488, entitled, "Good cause for reopening."

Comment: A number of commenters believe the reason for conducting a CDR because a current medical or other report is needed to see if disability continues is worded too broadly. Generally, these commenters feel these sections could be interpreted to affect almost everyone receiving disability benefits.

Response: We believe we must be able to review the claims of individuals with any impairment in which advances in the medical field may change the severity of the impairment. As we cannot anticipate what changes might occur, we cannot identify what the standards might be for conducting the reviews specified in §§ 404.1590(b)(3) and 416.990(b)(3). However, as illustrated by the example in these regulatory sections, the most likely reason for conducting such reviews will be when advances in medical technology or changes in vocational therapy or technology raise an issue as to whether an individual's disability is continuing.

Comment: One commenter stated that we should delete "you return to work and successfully complete a period of trial work" as a reason for conducting a continuing disability review. The reason given is that the issue is already covered by the rule that we will conduct a review when substantial earnings are reported to an individual's wage record. The commenter believes that listing both reasons will cause confusion and will lead to inappropriate reviews each time there are intermittent periods of work during a trial work period.

Response: The two reasons for conducting a continuing disability review mentioned by the commenter refer to two different issues. When a person returns to work, one of two actions can occur. A trial work period can be established for an individual, and a review will not be conducted until

the individual has worked during 9 months. Or, on the other hand, a review can be conducted immediately when substantial earnings are reported to an individual's wage record. Because two different issues are involved, both reasons need to be retained.

Comment: A few commenters objected to providing for CDRs based on information received from a source as described in §§ 404.1590(b)(8) and 416.990(b)(8). One commenter believes that this provision could encourage the filing of nuisance charges against disabled individuals for other than sound medical reasons.

Response: We must investigate reports which raise an issue of continuing disability in order to assure that benefits are being paid only to those who are entitled to them under the law. This reason for conducting a CDR was added when we revised §§ 404.1590(b) and 416.990(b) in 1980. If we are to properly administer the disability program, we cannot ignore unsolicited information such as a medical report or information on work activity which raises a disability issue. However, §§ 404.1590(b)(8) and 416.990(b)(8) state that the report must be from someone in a position to know about the individual and that it could be substantially correct. Thus, CDR's will not be conducted on the basis of rumor or conjecture.

Frequency of Review

Comment: One commenter indicated that the phrase "at least once every 3 years" should be changed to "no more frequently than once every 3 years".

Response: Since the law itself, in addressing this issue, specified "reviews will be conducted at least once every 3 years", we have maintained the language as shown in the proposed regulations.

Comment: A commenter suggested that if no improvement is found after the initial medical improvement expected continuing disability review, the new review should be scheduled for 3 years rather than an "automatic rescheduling." (We assume automatic rescheduling means a 6 to 18 months review diary.)

Response: The regulations do not require "automatic rescheduling." The frequency of reviews as explained in §§ 404.1590(d) and 416.990(d) depends upon whether a person's impairment(s) is: (1) Expected to improve; (2) such that medical improvement cannot be accurately predicted; or (3) permanent. These sections further explain that reviews will generally be done at intervals from 6 months to 18 months if improvement is expected; at least once every 3 years if medical improvement

cannot be accurately predicted; and no less than once every 7 years but no more often than once every 5 years if the person's disability is considered permanent. Furthermore, §§ 404.1590(e) and 416.990(e) specify that impairments may be reclassified. If a person's impairment is reclassified, the frequency with which the case will be reviewed will depend upon the new classification. For example, if a person's impairment was previously expected to improve and following a continuing disability review it is determined that medical improvement cannot now be accurately predicted, the frequency of review will convert to at least once every 3 years.

Although we felt the regulations were clear in this area, we have revised §§ 404.1590(e) and 416.990(e) to specify that a change in the classification of an impairment will change the frequency with which a case will be reviewed.

Comment: One commenter objected to assigning review dates from once every 5 years to once every 7 years for permanently impaired individuals. The objection was based on the feeling that the same review period may not be given to all individuals with the same impairment.

Response: All individuals with permanent impairments will be assigned a 7-year review cycle. However, flexibility in the frequency of review has been established to permit assigning different review periods to different permanent impairment categories should future experience indicate it to be more appropriate to review certain impairments on different time cycles than others. Thus, the timeframes for the review of individuals with permanent impairments may vary based on impairment categories, but individuals with the same impairments will be assigned the same review cycle.

Comment: Another commenter believes that after an individual has been reviewed once and no improvement is found, subsequent reviews should not be more frequent than once every 5 years.

Response: We agree that less frequent reviews may be appropriate if evidence continues to show no improvement in an individual's impairment(s). However, frequency of review depends on a variety of factors such as, the expectations for recovery from specific impairments, treatments, breakthroughs in medical science, etc. Sections 404.1590(e) and 416.990(e) of the regulations, which provide for changing an individual's medical classification, will permit us to extend review cycles appropriately. Individuals may be classified after such review as being permanently disabled regardless of the

type of impairment. Development of procedures for less frequent reviews will be based on experience with reviews under the schedules established by these regulations.

Comment: One commenter stated that the interval for periodic review of permanent disabilities is too brief.

Response: We recognize that the nature of impairments classified as permanent is such that there is little likelihood of recovery and in many cases there will be progressive worsening of the conditions. Nevertheless, we believe that a flexible review period of no less frequently than once every 7 years but no more frequently than once every 5 years is responsive to the congressional concern for a less frequent review cycle for permanent impairment cases.

Comment: Some commenters voiced their concerns regarding reviews after administrative appeals. One commenter suggested that we state we will not conduct a review earlier than 3 years after a decision resulting from an administrative appeal unless the case is scheduled for a medical reexamination diary review because medical improvement can be expected. Other commenters believe the regulations should be clarified to ensure that a continuing disability review will not be conducted within 3 years of a decision by the Appeals Council or a Federal Court.

Response: The final regulations have been amended to define a medical or vocational reexamination diary review as a review for medical or vocational improvement expected cases. We believe the regulations now address the concerns of these commenters as §§ 404.1590(f) and 416.990(f) now provide that a continuing disability review will not be conducted earlier than 3 years after a favorable decision by an administrative law judge, the Appeals Council, or a Federal Court unless medical or vocational improvement is expected before expiration of a 3-year period or a question of continuing disability is raised under one of the other provisions of the regulations.

Permanent Impairments

Comment: A few commenters requested that the list of impairments considered permanent be stated in the regulations. A related comment suggested that the regulations clearly state that the list of permanent impairments is not limited to the examples provided in the regulation. It was further suggested that we more clearly state that the permanent

impairments are those currently maintained in our Program Operations Manual System instructions.

Response: We decided against publishing a specific list of permanent impairments in the regulations. Such a list would be administratively cumbersome and would limit our ability to respond quickly to required revisions in the classification of an individual's impairment due to changes in medical therapy, technology, and administrative experience, etc. Further, whether an impairment is classified as permanent depends on a variety of factors (age, severity, availability of treatment, etc.). As these factors change and influence the classification of an impairment, we need the flexibility to revise the list of impairments considered permanent without having to go through the regulatory process.

Rather than list the permanent impairments in the regulations, we have revised the regulations to indicate that the list of impairments classified as permanent is contained in our operating instructions (Program Operations Manual System) and that the examples cited in the regulations are taken from this list and are not intended to be all inclusive.

Comment: A few commenters indicated that once an individual has been classified as permanently disabled with no likelihood of improvement, it is unfair to require the person to again prove disability. One commenter noted that it is a serious matter for an individual designated as permanently disabled for many years to suddenly be subjected to a review every 7 years as it could lower the morale and esteem of such an individual. It was further suggested that a physician should perform a folder review of the medical evidence of record for individuals determined to be permanently disabled before the regulations are published, and that only individuals with a strong probability of improvement should be notified of and subjected to a review. No reviews should be required for individuals determined to be permanently disabled with no likelihood of improvement after the regulations are published.

Response: Section 221(i) of the Social Security Act requires that the eligibility of individuals with permanent impairments be reviewed at such times as we determine to be appropriate. We are well aware of the sensitivities involved with the review of this category of impairments and have taken precautions to lessen the effect on individuals. A special process for conducting reviews of individuals classified as permanently disabled is

being developed. This process emphasizes paper reviews and telephone contacts to verify that the impairment is continuing. It should eliminate the need for most individuals to visit a Social Security office. Although these are impairments that, by definition, are not expected to improve, we cannot be sure in all instances that a case has been adequately documented or that the condition still exists. Therefore, we must conduct a review as described above. However, regardless of the type of review being conducted, all individuals will receive notice of the review as required by section 221(i)(4) of the Social Security Act.

Comment: One commenter indicated that the definition of permanent impairment should be amended to include a statement that an impairment subject to occasional remission can be included as a permanent classification. The rationale for this is the phrase "and unlikely to improve so as to permit the individual to engage in substantial gainful activity" suggests that conditions subject to temporary remission are not classifiable as permanent.

Response: We agree with the suggestion to amend the definition and have made the necessary change to indicate that temporary remission in the severity of an impairment will not be a factor in deciding if an impairment is permanent. A prime example of such an impairment is multiple sclerosis which has reached the level of severity necessary to meet the medical listing of 20 CFR Part 404, Subpart P, Appendix 1 which our other written guidelines classify as permanent but which has periods of remission.

Comment: One commenter stated §§ 416.990(c) and 404.1590(c) would more clearly define permanent impairments by the use of an example like amputation. The commenter further stated that most individuals believe their impairments are "permanent," and by saying that we might someday review the claims of individuals with Alzheimer's disease and that Parkinsonian Syndrome is "permanent" doesn't clarify to the individual whether or not he or she has a "permanent" impairment. It was also suggested that examples of nonpermanent impairments should be given to help clarify this issue.

Response: We agree with these suggestions and have added "amputation of leg at hip" to the examples in §§ 404.1590(c) and 416.990(c), and have amended these sections to reflect three examples of nonpermanent impairments.

Notices

Comment: Several commenters suggested that the language in the notice to the recipient contained in the proposed revisions to §§ 404.1589 and 416.989 be amended to include information that the beneficiary will be reviewed under the medical improvement review standard, what the standard means and the exceptions to the standards.

Response: We agree with this suggestion and have made the appropriate changes. In most cases, the prereview notice will contain an explanation of the medical improvement review standard and the exceptions to the standard. In SSI blindness cases, however, the medical improvement standard does not apply. Therefore, the notices for those cases will not mention the suggested information.

Comment: One commenter suggested that any notice of termination after a CDR should include a list of legal resources which would enable the individual whose benefits have been curtailed to obtain legal assistance in fighting the termination.

Response: It is not administratively feasible to include such specific information in individual notices. However, Social Security disability termination notices advise individuals that their local Social Security office can provide the names of individuals and groups that can help with appeals. Providing this information at local levels should yield the most helpful, accurate and up-to-date information for these individuals.

Comment: One commenter stated that blind persons need to receive notices in Braille, while many mentally retarded persons must have notices read to them.

Response: Social Security currently offers blind persons the opportunity of receiving notices in Braille translations.

District office staff explain this right to blind individuals during the interview process. If this option is selected, the case is identified for preparation and release of a notice in Braille.

Social Security notices include a statement that a person may call or visit any Social Security office if they have any questions about the notice. If a mentally retarded person does not have a representative selected to receive his or her notice and explain what the notice says, the concluding paragraph of the notice directs the person to request assistance in understanding the notice. This paragraph begins with the following underlined statement: "If you have any questions . . ." Instructions are then provided that if an individual

has any questions about the notice, he or she should call, write or visit any Social Security office to have the questions resolved. We believe that this information satisfies the concerns expressed by the commenter.

Comment: One commenter questioned how disabled individuals and the public are to know which impairments have been reclassified. The commenters asked, "Will there be brochures available and public affairs announcements, or will it only be made available at the time someone receives a letter indicating a review is imminent?"

Response: We do not anticipate that a change in classification of an impairment would generate the need for a wide-spread media campaign.

Generally, the way individuals will be aware of the classification of their impairments is by the notice informing them when they will be scheduled for a continuing disability review. However, a list of impairments which are expected to improve (i.e., impairments for which medical reexamination diaries are established), and a list of impairments which are not expected to improve (i.e., permanent impairments) are published in our Program Operations Manual System instructions. These instructions are available to the public and may be reviewed at any Social Security office.

Comment: Several commenters suggested that the regulations specify that written cessation determination notices sent to the beneficiaries should contain notice of their right to benefit continuation during appeal through the Administrative Law Judge decision.

Response: Written cessation notices will contain information about benefit continuation.

Comment: One commenter suggested that notices must be received at least 60 days in advance to allow individuals sufficient time to make arrangements for transportation and assistance for required physical examinations.

Response: The consultative examination regulations (20 CFR 404.1517 and 416.917) provide regulatory authority for scheduling consultative examinations. We believe our procedures allow sufficient time before a scheduled examination. Notices of these examinations explain that a more suitable examination appointment may be requested if the individual cannot keep a scheduled appointment. The notice tells the person to let the Disability Determination Service know right away if the appointment cannot be kept. We believe that this policy allows for the greatest flexibility in meeting both the administration's case development needs and the individual's personal needs. The prereview notices,

which are referenced in 20 CFR 404.1589 and 20 CFR 416.989, are not used to schedule consultative medical examinations.

Comment: One commenter suggested that prereview notices issued under §§ 404.1589 and 416.989 specify that current benefits will not be stopped prior to a final termination that the determination is justified, that the review is periodic (if applicable), and the review is routine (if applicable).

Response: We agree with this commenter, and we believe the prereview notice responds to these concerns.

Waiver of Timeframes

Comment: A number of commenters expressed concern about §§ 404.1590(g) and 416.990(g) regarding waiver of timeframes. Some commenters stated that this provision could result in some individuals being exempt from review and others not. Other commenters stated that the waiver of timeframes for conducting CDRs should be based on negotiations with the State agency. It was further stated that any such waiver should take into account the size and financial resources of the agency and the number of claims to be processed in order to prevent unrealistic workloads which could lead to inaccurate determinations.

Response: Our response to each specific comment is:

(1) The waiver of timeframes will not exclude anyone from a CDR. The regulations will only provide that in certain specific circumstances States may take a longer time period to complete a review cycle. This waiver provision is essential to assuring that all reviews are done carefully and accurately as required by Pub. L. 98-460.

(2) Negotiations with State agencies are a vital part of the waiver process. Such negotiations help assure compliance with these regulatory provisions.

(3) We have not adopted the suggestion that the size and financial resources of the state agency be considered a factor when determining whether a state should be given a waiver of the timeframes for conducting CDR's since such factors are not authorized by the statute. However, we believe consideration of the factors authorized by the statute responds to the commenter's concerns.

Miscellaneous Comments

Comment: A few commenters stated that the language concerning the reclassification of impairments is not clear and should be clarified by setting out the standards for making a change.

One commenter stated that the beginning of the proposed section should require a regular medical improvement diary for individuals rather than a change in classification. The same commenter stated, "administrative reclassification of types of disabilities for (sic) permanent to nonpermanent or changes in listing or severity should only occur after opportunity for notice and comments on the general reclassification which also notes the CDR impact so that disabled people could properly evaluate the impact of such changes."

Response: Provisions for reclassifying impairments are essential to ensuring that reviews are conducted at correct frequencies. As we are unable to anticipate what changes in medical treatment or technology may occur, we cannot establish more specific regulatory standards for changing the classification of impairments. If we were to wait to reclassify an impairment until individuals were notified and provided an opportunity to comment on the reclassification, we would be unable to conduct reviews at appropriate frequencies. However, as indicated in an earlier response, we have amended §§ 404.1590(e) and 416.990(e) to specify that a change in the classification of an impairment will change the frequency with which a case will be reviewed.

Comment: One commenter suggested that because individuals have already been determined to be disabled, a CDR decision should be called a "redetermination" rather than a "determination."

Response: Each CDR is a new review of a disabled individual with a decision being made as to whether new evidence indicates a determination of medical improvement and whether disability is continuing or has ceased. The term "determination" has been used to describe the written disability decision since the inception of the disability program. On the other hand, the term "redetermination" is used in the Supplemental Security Income Program to describe the written decision covering the review of nondisability factors. We believe that to use the same term for different functions in the two programs would lead to confusion.

Comment: A few commenters raised the issue of who will assign diaries on appeal cases. It was suggested that, to ensure uniformity, administrative law judges establish the medical review diaries on cases which they decide.

Response: Regardless of the level of decisionmaking, diaries are assigned based on the nature and severity of the impairment. Although they are usually

assigned by the decisionmaker at any decision level, there are instances when someone other than the decisionmaker assigns the diary (e.g., the SSA operating component that effectuates the ALJ decision assigns the diary, unless one is specified by the ALJ). When this becomes necessary, the diary is assigned based on the nature and severity of the impairment as reflected in the decision. Considering these factors, we believe we cannot establish regulatory provisions which would restrict a component other than the one that made the decision from establishing a diary. To do so would result in inefficient case processing and ineffective administration of the disability program.

Comment: One commenter stated that in the event a premature review occurs, the review should be stopped as soon as the error is discovered or that any negative determination resulting from such a review be vacated.

Response: Current procedures direct interviewers not to start the CDR if the review category or the date for review is inappropriate. If the review is in progress when the inappropriate category is discovered, ordinarily the review will not be completed. However, should evidence have been secured which shows medical improvement and an ability to engage in substantial gainful activity, we cannot ignore such evidence solely on the basis that we conducted an early review.

Comment: One commenter stated that there is a conflict between the provision for developing at least 12 months of medical history and the need to compare the prior decision to current evidence under the Medical Improvement Review Standard (MIRS).

Response: We believe there is no conflict. The requirement to secure evidence for at least 12 months preceding the review enables us to better assess the individual's impairment at the time of review. Moreover, the requirement is in the statute.

Comment: One commenter recommended that "advances in medical technology which affect eligibility requirements" be clarified.

Response: We refer to an advance in medical technology only as an example to illustrate when we will conduct an unscheduled CDR. This refers to any unforeseen medical discovery which could affect an individual's impairment to the point that it raises a question of whether the individual is still disabled. Since it is used as an example only, we are not defining this further in the regulation.

Comment: One commenter questioned the accuracy of the Regulatory Flexibility Act statement as shown in the proposed rules. This commenter stated, "The Administration's implementation of CDR's for title XVI clients would invariably 'bump from the benefit rolls people who should still be receiving benefits, and this would, in turn, increase the demand for state-funded programs (e.g., Home Relief)."

Response: An individual's payments will be terminated only after he or she has been determined to have medically improved and he or she is able to work or one of the exceptions applies. Therefore, such an individual should not continue to receive SSI benefits based on disability. His/her eligibility for State funded programs would not result directly from SSA's finding that he/she was no longer disabled but from the eligibility requirements for such programs.

Additional Changes in the Regulations

Vocational reexamination diary review has been added to the list of events which will initiate a continuing disability review in §§ 404.1590 and 416.990. We have added this event to these final regulations because of the exceptions to the medical improvement standard required by Pub. L. 98-460 that the individual has benefited from advances in vocational therapy or has undergone vocational therapy related to his or her ability to work and is now able to perform substantial gainful activity. Thus, it seemed advisable to add this event to permit a CDR when an individual, at the time of an initial or CDR decision, is in a vocational therapy, training or other educational program which may improve his or her ability to work.

We have also removed blindness from the general SSI review regulation, § 416.989. That section indicates that a medical improvement standard applies in the reviews discussed in that section. The medical improvement standard does not apply in SSI blindness cases. Therefore, we have added a new § 416.989a to explain when we will review SSI blindness cases and describe the notice we will send in these cases.

Regulatory Procedures

Executive Order No. 12291

These final regulations have been reviewed under Executive Order 12291 and we have determined that they do not create costs of \$100 million or more yearly, or otherwise meet the threshold of the Executive Order. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect only disabled or blind individuals who are receiving title II or title XVI benefits because of disability or blindness. These final regulations should have little or no effect on the States since they reflect the present title II frequency of review cycles. Additionally, the review of title XVI cases (when implemented) should have minimal impact on State-funded programs as individuals whose payments are terminated as a result of such reviews are expected to seek employment rather than assistance from State-funded programs. 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. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: January 22, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: March 12, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Part 404 of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Subpart P of Part 404 is revised to read as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302; sec. 505(a) and (c) of Pub. L. 96-265, secs. 2, 5, 6 and 15 of Pub. L. 98-460.

2. Section 404.1589 is revised to read as follows:

§ 404.1589 We may conduct a review to find out whether you continue to be disabled.

After we find that you are disabled, we must evaluate your impairment(s) from time to time to determine if you are still eligible for disability cash benefits. We call this evaluation a continuing disability review. We may begin a continuing disability review for any number of reasons including your failure to follow the provisions of the Social Security Act or these regulations. When we begin such a review, we will notify you that we are reviewing your eligibility for disability benefits, why we are reviewing your eligibility, that in medical reviews the medical improvement review standard will apply, that our review could result in the termination of your benefits, and that you have the right to submit medical and other evidence for our consideration during the continuing disability review. In doing a medical review, we will develop a complete medical history of at least the preceding 12 months in any case in which a determination is made that you are no longer under a disability. If this review shows that we should stop payment of your benefits, we will notify you in writing and give you an opportunity to appeal. In § 404.1590 we describe those events that may prompt us to review whether you continue to be disabled.

3. Section 404.1590 is revised to read as follows:

§ 404.1590 When and how often we will conduct a continuing disability review.

(a) *General.* We conduct continuing disability reviews to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits or a period of disability ends if the medical or other evidence shows that you are not disabled as determined under the standards set out in section 223(f) of the Social Security Act.

(b) *When we will conduct a continuing disability review.* A continuing disability review will be started if—

(1) You have been scheduled for a medical improvement expected diary review;

(2) You have been scheduled for a periodic review (medical improvement possible or medical improvement not expected) in accordance with the provisions of paragraph (d) of this section;

(3) We need a current medical or other report to see if your disability continues. (This could happen when, for example, an advance in medical technology, such as improved treatment

for Alzheimer's disease or a change in vocational therapy or technology raises a disability issue.);

(4) You return to work and successfully complete a period of trial work;

(5) Substantial earnings are reported to your wage record;

(6) You tell us that you have recovered from your disability or that you have returned to work;

(7) Your State Vocational Rehabilitation Agency tells us that—

(i) The services have been completed; or

(ii) You are now working; or

(iii) You are able to work;

(8) Someone in a position to know of your physical or mental condition tells us that you are not disabled, that you are not following prescribed treatment, that you have returned to work, or that you are failing to follow the provisions of the Social Security Act or these regulations, and it appears that the report could be substantially correct;

(9) Evidence we receive raises a question as to whether your disability continues; or

(10) You have been scheduled for a vocational reexamination diary review.

(c) *Definitions.* As used in this section—

"Medical improvement expected diary"—refers to a case which is scheduled for review at a later date because the individual's impairment(s) is expected to improve. Generally, the diary period is set for not less than 6 months or for not more than 18 months. Examples of cases likely to be scheduled for medical improvement expected diary are fractures and cases in which corrective surgery is planned and recovery can be anticipated.

"Permanent impairment"—medical improvement not expected—refers to a case in which any medical improvement in the person's impairment(s) is not expected. This means an extremely severe condition determined on the basis of our experience in administering the disability programs to be at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications, and unlikely to improve so as to permit the individual to engage in substantial gainful activity. The interaction of the individual's age, impairment consequences and lack of recent attachment to the labor market may also be considered in determining whether an impairment is permanent. Improvement which is considered temporary under §§ 404.1579(c)(4) or 404.1594(c)(3)(iv), as appropriate, will not be considered in deciding if an impairment is permanent. Examples of

permanent impairments taken from the list contained in our other written guidelines which are available for public review are as follows and are not intended to be all inclusive:

(1) Parkinsonian Syndrome which has reached the level of severity necessary to meet the Listing in Appendix 1.

(2) Amyotrophic Lateral Sclerosis which has reached the level of severity necessary to meet the Listing in Appendix 1.

(3) Diffuse pulmonary fibrosis in an individual age 55 or over which has reached the level of severity necessary to meet the Listing in Appendix 1.

(4) Amputation of leg at hip.

"Nonpermanent impairment"—refers to a case in which any medical improvement in the person's impairment(s) is possible. This means an impairment for which improvement cannot be predicted based on current experience and the facts of the particular case but which is not at the level of severity of an impairment that is considered permanent. Examples of nonpermanent impairments are: regional enteritis, hyperthyroidism, and chronic ulcerative colitis.

"Vocational reexamination diary"—refers to a case which is scheduled for review at a later date because the individual is undergoing vocational therapy, training or an educational program which may improve his or her ability to work so that the disability requirement of the law is no longer met. Generally, the diary period will be set for the length of the training, therapy, or program of education.

(d) *Frequency of review.* If your impairment is expected to improve, generally we will review your continuing eligibility for disability benefits at intervals from 6 months to 18 months following our most recent decision. Our notice to you about the review of your case will tell you more precisely when the review will be conducted. If your disability is not considered permanent but is such that any medical improvement in your impairment(s) cannot be accurately predicted, we will review your continuing eligibility for disability benefits at least once every 3 years. If your disability is considered permanent, we will review your continuing eligibility for benefits no less frequently than once every 7 years but no more frequently than once every 5 years. Regardless of your classification, we will conduct an immediate continuing disability review if a question of continuing disability is raised pursuant to paragraph (b) of this section.

(e) *Change in classification of impairment.* If the evidence developed during a continuing disability review demonstrates that your impairment has improved, is expected to improve, or has worsened since the last review, we may reclassify your impairment to reflect this change in severity. A change in the classification of your impairment will change the frequency with which we will review your case. We may also reclassify certain impairments because of improved tests, treatment, and other technical advances concerning those impairments.

(f) *Review after administrative appeal.* If you were found eligible to receive or to continue to receive disability benefits on the basis of a decision by an administrative law judge, the Appeals Council or a Federal court, we will not conduct a continuing disability review earlier than 3 years after that decision unless your case should be scheduled for a medical improvement expected or vocational reexamination diary review or a question of continuing disability is raised pursuant to paragraph (b) of this section.

(g) *Waiver of timeframes.* All cases involving a nonpermanent impairment will be reviewed by us at least once every 3 years unless we, after consultation with the State agency, determine that the requirement should be waived to ensure that only the appropriate number of cases are reviewed. The appropriate number of cases to be reviewed is to be based on such considerations as the backlog of pending reviews, the projected number of new applications, and projected staffing levels. Such waiver shall be given only after good faith effort on the part of the State to meet staffing requirements and to process the reviews on a timely basis. Availability of independent medical resources may also be a factor. A "waiver" in this context refers to our administrative discretion to determine the appropriate number of cases to be reviewed on a State by State basis. Therefore, your continuing disability review may be delayed longer than 3 years following our original decision or other review under certain circumstances. Such a delay would be based on our need to ensure that backlogs, reviews required to be performed by the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98-460), and new disability claims workloads are accomplished within available medical and other resources in the State agency and that such reviews are done carefully and accurately.

PART 416—[AMENDED]

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Subpart I of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382, and 1383; secs. 2, 5, 6, and 15 of Pub. L. 98-460.

2. Section 416.989 is revised to read as follows:

§ 416.989 We may conduct a review to find out whether you continue to be disabled.

After we find that you are disabled, we must evaluate your impairment(s) from time to time to determine if you are still eligible for payments based on disability. We call this evaluation a continuing disability review. We may begin a continuing disability review for any number of reasons including your failure to follow the provisions of the Social Security Act or these regulations. When we begin such a review, we will notify you that we are reviewing your eligibility for payments, why we are reviewing your eligibility, that in medical reviews the medical improvement review standard will apply, that our review could result in the termination of your payments, and that you have the right to submit medical and other evidence for our consideration during the continuing disability review. In doing a medical review, we will develop a complete medical history of at least the preceding 12 months in any case in which a determination is made that you are no longer under a disability. If this review shows that we should stop your payments, we will notify you in writing and give you an opportunity to appeal. In § 416.990 we describe those events that may prompt us to review whether you continue to be disabled.

3. A new § 416.989a is added to read as follows:

§ 416.989a We may conduct a review to find out whether you continue to be blind.

After we find that you are blind, we must evaluate your impairment(s) from time to time to determine if you are still eligible for payments based on blindness. We call this evaluation a continuing disability review. We may begin a continuing disability review for any number of reasons including your failure to follow the provisions of the Social Security Act or these regulations. When we begin such a review, we will notify you that we are reviewing your eligibility for payments, why we are reviewing your eligibility, that our review could result in the termination of

your payments, and that you have the right to submit medical and other evidence for our consideration during the continuing disability review. In doing a medical review, we will develop a complete medical history of at least the preceding 12 months in any case in which a determination is made that you are no longer blind. If this review shows that we should stop your payments, we will notify you in writing and give you an opportunity to appeal. In § 416.990 we describe those events that may prompt us to review whether you continue to be blind.

4. Section 416.990 is revised to read as follows:

§ 416.990 When and how often we will conduct a continuing disability review.

(a) *General.* We conduct continuing disability reviews to determine whether or not you continue to meet the disability or blindness requirements of the law. Payment ends if the medical or other evidence shows that you are not disabled or blind as determined under the standards set out in section 1614(a) of the Social Security Act if you receive benefits based on disability or § 416.986 of this subpart if you receive benefits based on blindness.

(b) *When we will conduct a continuing disability review.* A continuing disability review will be started if—

(1) You have been scheduled for a medical improvement expected diary review;

(2) You have been scheduled for a periodic review (medical improvement possible or medical improvement not expected) in accordance with the provisions of paragraph (d) of this section;

(3) We need a current medical or other report to see if your disability continues. (This could happen when, for example, an advance in medical technology, such as improved treatment for Alzheimer's disease, or a change in vocational therapy or technology raises a disability issue);

(4) You return to work and successfully complete a period of trial work;

(5) Substantial earnings are reported to your wage record;

(6) You tell us that you have recovered from your disability or that you have returned to work;

(7) Your State Vocational Rehabilitation Agency tells us that—

(i) The services have been completed; or

(ii) You are now working; or
(iii) You are able to work;

(8) Someone in a position to know of your physical or mental condition tells us that you are not disabled or blind, that you are not following prescribed treatment, that you have returned to work, or that you are failing to follow the provisions of the Social Security Act or these regulations, and it appears that the report could be substantially correct;

(9) Evidence we receive raises a question as to whether your disability or blindness continues; or

(10) You have been scheduled for a vocational reexamination diary review.

(c) *Definitions.* As used in this section—

"Medical improvement expected diary"—refers to a case which is scheduled for review as a later date because the individual's impairment(s) is expected to improve. Generally, the diary period is set for not less than 6 months or for not more than 18 months. Examples of cases likely to be scheduled for medical improvement expected diary are fractures and cases in which corrective surgery is planned and recovery can be anticipated.

"Permanent impairment"—medical improvement not expected—refers to a case in which any medical improvement in a person's impairment(s) is not expected. This means an extremely severe condition determined on the basis of our experience in administering the disability programs to be at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications, and unlikely to improve so as to permit the individual to engage in substantial gainful activity. The interaction of the individual's age, impairment consequences and the lack of recent attachment to the labor market may also be considered in determining whether an impairment is permanent. Improvement which is considered temporary under §§ 416.994(b)(2)(iv)(D) or 416.994(c)(2)(iv), as appropriate, will not be considered in deciding if an impairment is permanent. Examples of permanent impairments taken from the list contained in our other written guidelines which are available for public review are as follows and are not intended to be all inclusive:

(1) Parkinsonian Syndrome which has reached the level of severity necessary to meet the Listing in Appendix 1 of Subpart P of Part 404 of this chapter.

(2) Amyotrophic Lateral Sclerosis which has reached the level of severity necessary to meet the Listing in Appendix 1 of Subpart P of Part 404 of this chapter.

(3) Diffuse pulmonary fibrosis in an individual age 55 or over which has reached the level of severity necessary

to meet the Listing in Appendix 1 of Subpart P of Part 404 of this chapter.

(4) Amputation of leg at hip.
"Nonpermanent impairment"—refers to a case in which any medical improvement in the person's impairment(s) is possible. This means an impairment for which improvement cannot be predicted based on current experience and the facts of the particular case but which is not at the level of severity of an impairment that is considered permanent. Examples of nonpermanent impairments are: regional enteritis, hyperthyroidism, and chronic ulcerative colitis.

"Vocational reexamination diary"—refers to a case which is scheduled for review at a later date because the individual is undergoing vocational therapy, training or an educational program which may improve his or her ability to work so that the disability or blindness requirement of the Law is no longer met. Generally, the diary period will be set for the length of the training, therapy, or program of education.

(d) *Frequency of review.* If your impairment is expected to improve, generally we will review your continuing eligibility for payments based on disability or blindness at intervals from 6 months to 18 months following our most recent decision. Our notice to you about the review of your case will tell you more precisely when the review will be conducted. If your disability is not considered permanent but is such that any medical improvement in your impairment(s) cannot be accurately predicted, we will review your continuing eligibility for payments at least once every 3 years. If your disability is considered permanent, we will review your continuing eligibility for payments no less frequently than once every 7 years but no more frequently than once every 5 years. Regardless of your classification we will conduct an immediate continuing disability review if a question of continuing disability is raised pursuant to paragraph (b) of this section.

(e) *Change in classification of impairment.* If the evidence developed during a continuing disability review demonstrates that your impairment has improved, is expected to improve, or has worsened since the last review, we may reclassify your impairment to reflect this change in severity. A change in the classification of your impairment will change the frequency with which we will review your case. We may also reclassify certain impairments because of improved tests, treatment, and other technical advances concerning those impairments.

(f) *Review after administrative appeal.* If you were found eligible to receive or to continue to receive, payments on the basis of a decision by an administrative law judge, the Appeals Council or a Federal court, we will not conduct a continuing disability review earlier than 3 years after that decision unless your case should be scheduled for a medical improvement expected or vocational reexamination diary review or a question of continuing disability is raised pursuant to paragraph (b) of this section.

(g) *Waiver of timeframes.* All cases involving a nonpermanent impairment will be reviewed by us at least once every 3 years unless we, after consultation with the State agency, determine that the requirement should be waived to ensure that only the appropriate number of cases are reviewed. The appropriate number of cases to be reviewed is to be based on such considerations as the backlog of pending reviews, the projected number of new applications, and projected staffing levels. Such waiver shall be given only after good faith effort on the part of the State to meet staffing requirements and to process the reviews on a timely basis. Availability of independent medical resources may also be a factor. A "waiver" in this context refers to our administrative discretion to determine the appropriate number of cases to be reviewed on a State by State basis. Therefore, your continuing disability review may be delayed longer than 3 years following our original decision or other review under certain circumstances. Such a delay would be based on our need to ensure that backlogs, reviews required to be performed by the Social Security Disability Benefits Reform Act (Pub. L. 98-460), and new disability claims workloads are accomplished within available medical and other resources in the State agency and that such reviews are done carefully and accurately.

[FR Doc. 86-10128 Filed 5-6-86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F-0109]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for the use of