

guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma information required by generally accepted accounting principles.

48. Section 335.701 is amended by adding a note at the end of the section as follows:

§ 335.701 Filing of material with the FDIC.

* * * * *

Note: Official filings made at the FDIC's office in Washington, DC should be addressed as follows:

Attention: Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

§ 335.702 [Amended]

49. Section 335.702 is amended by removing the words "at the New York, Chicago, and San Francisco Federal Reserve Banks and" from the second sentence.

By Order of the Board of Directors.

Dated at Washington, DC this 5th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29531 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90932-9232]

Revisions to the Commodity Control List Based on COCOM Review; Chemical and Petroleum Equipment; Transportation Equipment; Electronics and Precision Instruments; Chemicals, Metalloids, Petroleum Products and Related Materials; Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This rule makes several corrections to the Export Administration Regulations (EAR). These corrections address inaccuracies contained in the final rule (FR Doc. 89-23559) published in the Federal Register (54 FR 41055-41068) on October 5, 1989. This rule, which neither expands nor limits the provisions of the EAR, affects Export Control Commodity Numbers 1416A, 1502A, 1529A, 1537A and 1585A of

Supplement No. 1 to § 799.1 (the Commodity Control List).

EFFECTIVE DATE: This rule is effective December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn Sullivan, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4479.

The following corrections are to be made:

1. On page 41057, in the third column, under item 6, in the regulatory text, in the second line of paragraph (f)(3)(ii), "20 rev/min" should read "220 rev/min".

2. On page 41060, in the first column, under item 11, in the regulatory text, in the first line of paragraph (h), "non-contract" should read "non-contact".

3. On page 41060, in the first column, in the regulatory text, under item 11, in the second to last line of paragraph (j), "exceeding I" should read "exceeding 1".

4. On page 41061, in the first column, under item 15, lines eleven and twelve of the amendatory text are corrected to read "By removing the Note immediately following the technical notes:".

5. On page 41063, in the third column, under item 18, the second to last amendatory instruction is revised to read "By redesignating Advisory Note 3, Notes 4 and 5, and (Advisory) Note 6 for the People's Republic of China to read (Advisory) Note 1, Note 2, Note 3, and (Advisory) Note 4 for the People's Republic of China, respectively;".

6. On page 41065, in the first column, under item 22, in the regulatory text, the first and second lines of Technical Note 1 are corrected to read " "Superconductive" materials are materials (i.e., metals, alloys or compounds)".

7. On page 41065, in the first column, under item 22, in the regulatory text, the third line of Technical Note 2 is corrected to read "specific "superconductive" material is the".

8. On page 41065, in the second column, under item 24, the last amendatory instruction in the column is corrected to read "By revising in paragraph (b) the phrase "High speed" to read "Mechanical high speed";".

Dated: December 27, 1989.

Iain S. Baird,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-30339 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Regs. No. 4 and 16]

20 CFR Parts 404 and 416

RIN 0960-AC64

Determining Disability and Blindness; Substantial Gainful Activity

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules raise from \$300 to \$500 the average monthly earnings guidelines we use to determine whether persons with impairments other than blindness are able to do substantial gainful activity (SGA) for purposes of Social Security disability benefits provided under title II of the Social Security Act (the Act) and Supplemental Security Income (SSI) benefits based on disability provided under title XVI of the Act. They also raise the monthly earnings and monthly hours of work guidelines we use to determine whether a person has performed services for purposes of a trial work period month under title II of the Act.

The amount of average monthly earnings that ordinarily demonstrates SGA has not been increased since January 1, 1980, and the amount that shows the performance of services for a trial work period month has not been raised since January 1, 1979. We are raising these levels now after reassessing the current guidelines during our effort to improve our incentives for disabled persons to return to work and in consideration of recommendations of the Disability Advisory Council. We believe that the increase in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to attempt to return to work.

DATES: These rules are effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1758.

SUPPLEMENTARY INFORMATION: These final rules increase the amount of earnings we use as guidelines to assist us in evaluating the work activity of claimants and beneficiaries with impairments other than blindness under title II of the Act and of claimants with impairments other than blindness under

title XVI of the Act. We use evaluation guides, including earnings guidelines, to determine whether an individual has shown the ability to do SGA. Under the previous earnings guidelines in §§ 404.1574 and 416.974, if a person claiming title II or title XVI benefits or receiving title II benefits based on disability had earnings from work activities as an employee that averaged more than \$300 a month, we would ordinarily consider that the person had engaged in SGA. If a person had average earnings of less than \$190 per month, we would consider that he or she had not engaged in SGA unless there was evidence to the contrary. Under the final rules, the \$300 per month limit is raised to \$500 per month and the \$190 per month limit is raised to \$300 per month beginning in calendar years after 1989.

We believe that this increase in the SGA level is a significant improvement to the existing work incentive provisions and is a fiscally responsible change.

In revising these amounts, we considered two proposals from the Disability Advisory Council. The Disability Advisory Council proposed that the SGA level be: (1) Initially adjusted to reflect the growth in average wages since it was last increased; and (2) indexed to average wage growth in future years.

While the final rules do not implement the Disability Advisory Council's proposal to index the SGA level to average wage growth in future years, we are exploring ways to provide for periodic review of our SGA levels. If the Disability Advisory Council's combined proposal to raise the SGA level and adjust it for average wage increases were adopted, it is estimated that the title II program costs over the next 5 years would increase by an additional \$400 million over the cost of these final rules. If the proposed SGA level of \$500 were indexed to average wage growth, it is estimated that the title II program costs would increase by an additional \$230 million over the next 5 years.

These final rules also increase the monthly earnings amounts and the hours of self-employment we use to determine if work activity during a trial work period represents services under the trial work period provisions of title II of the Act. In § 404.1592(b), we define "services" as any activity, even though it is not SGA, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We use this guide when reviewing work done by a person receiving Social Security disability benefits under title II of the Act during his or her trial work period.

We are amending § 404.1592(b) to increase the minimum amount of earnings that we consider shows that a person is performing or has performed services during a trial work period from \$75 a month to \$200 a month, and the number of hours worked in self-employment that we consider to represent services from 15 hours to 40 hours a month. We are increasing both the amount of earnings and hours in self-employment that constitute services for a trial work period month to encourage more title II beneficiaries to attempt to work without losing their benefits. We believe that both of these increases, are more representative of a normal work effort. These figures represent a judgment we have made based on our experience with these types of work efforts.

The Disability Advisory Council also recommended increasing the amount of earnings that counts toward a trial work period from \$75 per month to the amount of the SGA level. Although we agree that an increase in the trial work period exempt amount as shown in these final rules is warranted, we have not adopted the Disability Advisory Council's proposal. The legislative history of the trial work period provision indicates that the Congress recognized and intended that the amount that constitutes trial work need not constitute SGA. In 1960, when the trial work period provision was enacted, the report of the House Ways and Means Committee said:

... Your committee intends that any month in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort * * *

We estimate that raising the trial work period exempt amount as recommended by the Disability Advisory Council would increase title II program costs by \$90 million over a 5-year period, as more people would be receiving benefit payments. In addition, the administrative costs would increase at the rate of an estimated \$75 per beneficiary per year.

The provisions of title XVI concerning the trial work period and the cessation of disability because of the performance of SGA were eliminated as of July 1, 1987, pursuant to section 4 of the Employment Opportunities for Disabled Americans Act, Public Law No. 99-643. We are currently preparing a comprehensive notice of proposed rulemaking covering these and other changes to title XVI made by Public Law

No. 99-643. These proposed rules, among other things, will include the deletion of § 416.992 governing the trial work period and § 416.992a governing the reentitlement period which, as of July 1, 1987, are no longer applicable in adjudicating continuing eligibility for SSI based on disability.

These rules were published as a Notice of Proposed Rulemaking in the Federal Register on July 25, 1989 (54 FR 30907). We received 243 comments from governmental agencies, special interest organizations, and private citizens.

We have grouped the comments according to the issues raised. Most commenters expressed approval of the proposed regulations, although many of those also believed that further changes ought to be made.

General Statement

A commonly expressed concern of the commenters is that the proposed SGA and trial work period earnings level are not high enough to provide for adequate income for persons with disabilities. The following discussion clarifies the intent of the SGA and trial work period levels and explains our position on work activity and the use of the work incentive provisions currently available to title II beneficiaries.

A successful return to work usually involves a progression of events, beginning with an initial attempt at work and continuing through the time a person can increase work activity to the point of being able to successfully do SGA. From the day a person with a disabling impairment begins work, he or she has almost 4 years of continued support beginning with the 9-month trial work period and progressing through the 36-month extended period of eligibility.

The intent of the trial work period is to provide a beneficiary with the opportunity to test his or her ability to work without loss of Social Security disability benefits or medical insurance. During this time, a person's disability benefits will not be terminated based on his or her work regardless of the type of the work performed, the amount of the earnings, or the number of hours worked. However, because Congress has provided that an individual is only entitled to 9 months of a trial work period, it is necessary to have standards for determining whether in a given month an individual has performed services for trial work period purposes.

At the end of the trial work period, we assess work activity to see if a person has demonstrated the ability to do SGA, which is defined as the performance of work activity for pay or profit that involves doing significant physical or

mental activities. The SGA level is the amount of average monthly earnings that we use as a guideline to assist in determining whether a person has engaged in substantial gainful activity. This level is only intended to be an indicator of the ability to work. It is not intended to represent the amount of income for a person to live on, nor is it intended as an income supplement to disability benefits. It should also be noted that factors other than earnings are considered in determining if a person has done SGA. We deduct from earnings those expenses for items and services which are related to the person's impairment and which are necessary for the person to work. In addition, we count only the value of earnings which are actually attributable to the person's ability to work. For example, if a person is paid \$4 per hour, but due to the quality of work, the time it takes to get the job done, and the supervision required, the employer believes the value of the work is really only \$3 per hour, we would use the \$3 per hour rate in determining if the SGA level is met.

When a person demonstrates through work at the SGA earnings level that he or she is able to perform SGA, disability benefits are stopped. However, eligibility for Medicare benefits continues for at least 39 months after the end of the trial work period. There is also an extended period of eligibility for disability benefits which continues for 36 months after the end of the trial work period. If a person is unable to continue earning at the SGA level during this period, he or she will begin to get disability benefits again without the necessity of filing a new claim.

When the trial work period, extended period of eligibility and extended Medicare eligibility period (at least 4 years) have ended, there are other protections for people who become unable to continue to work and have to file a new application for disability benefits. If the new period of disability began within 5 years of the end of the prior period of disability, the person does not have to serve another 5-month waiting period in order to receive disability benefits or another 24-month waiting period to become entitled to Medicare benefits again. Both benefits will become effective with the first full month the person is found disabled.

The trial work period and SGA are just two parts of a total package of incentives and support for disabled beneficiaries who want to work. They must be viewed as part of this complete package in order to understand the level of support offered.

Comment: Several commenters favored changes in the title II program which would create more of a similarity between the title II program and the title XVI program, i.e., elimination of the trial work period and the extended period of eligibility and establishment of a one dollar offset of benefits for every two dollars earned. Some commenters believed that the current title II rules have a variety of inequities which create confusion and concern among beneficiaries.

Response: The Secretary does not have the authority to make these suggested changes to the trial work period and extended period of eligibility because they are statutory provisions. Only Congress can eliminate or alter these provisions through legislation. A disability benefit offset provision, which would create title II work incentives similar to those in the title XVI program, is currently under consideration by Congress.

Comment: Many commenters suggested increasing the minimum monthly earnings amount that counts towards the trial work period earnings level to match the SGA level. Other commenters suggested raising the trial work period earnings level to \$290 (i.e., about 20 hours of work per week at minimum wage). Another commenter suggested that it be increased, but provided no alternative amount.

Response: As noted previously in this preamble, the legislative history of the trial work period provision makes it clear that Congress did not intend to link the trial work period level to the amount that constitutes SGA. Furthermore, we believe that the trial work period level should also not be associated with the amount that represents a minimum wage. The minimum wage amount is set as a level for employers to base payment for services. It does not represent an ability to work or the complexity of work but rather what the market will bear. The trial work period level is set at a level to indicate that a person is trying to work but has not necessarily regained the ability to perform SGA.

It should be noted that the trial work period level is not a limit on earnings. In fact, during the trial work period a person can have unlimited earnings. It is not until nine trial work period service months have been completed, i.e., nine months of work at earnings over the trial work period level, that the work activity is evaluated to see if it is substantial and gainful. If it is not, a beneficiary continues to receive full benefits until such time as he or she

demonstrates the ability to perform SGA.

Raising the trial work period level to \$290 a month would also be very costly, estimated at \$26 million over a 5-year period. We believe that the increase from \$75 to \$200 is fiscally responsible. However, we plan to develop a procedure for review and possible adjustment of the trial work period amount.

Comment: Several other letters recommended changes to the trial work period, such as extending it to provide a longer opportunity to test the ability to work or having more than one trial work period in a period of disability.

Response: Making changes such as these would require legislative action. In June 1989, we suggested legislation which would expand the trial work period and give beneficiaries an opportunity to test their ability to work over a sustained period of time by providing that the 9-month trial work period would be exhausted *only* if services were performed in 9 months within a 60-month period. This proposal would also repeal the provision which precludes eligibility for a new trial work period for a disabled worker who became reentitled to disability benefits without having served a waiting period. In addition, we are exploring improvements and alternatives to the trial work period and the extended period of eligibility through the current Research Demonstration Program.

Comment: Most of the commenters recommended adopting some form of indexing of the earnings amounts that we consider to show that a person has performed services during a trial work period or has performed SGA, pegged either to average wage growth or the inflation rate in future years. The concern cited is that an automatic mechanism is needed to increase the trial work period and SGA amounts in response to inflation to avoid future erosion of these monetary levels.

Response: If the new SGA level of \$500 were indexed to reflect average wage growth or inflation, it is estimated that the title II program costs would increase by an additional \$230 million over the next 5 years.

We believe the responsible approach is to reassess the SGA and trial work period levels periodically rather than to institute automatic annual increases. During these periodic reassessments, we will try to set a level of earnings which will encourage work attempts and provide a valid indicator of ability to work while not discouraging independence from the benefit rolls.

It should be noted that there are provisions in the title II and title XVI programs that act to enhance the SGA earnings level as the cost of living rises. The SGA earnings guideline amounts apply to "countable earnings" in determining whether work is SGA. Countable earnings exclude impairment-related work expenses and earnings that do not reflect the value of a person's actual work, i.e., subsidized earnings. Because impairment-related work expenses and the value of subsidized earnings increase proportionately to inflation, greater portions of a person's total earnings will be excluded in determining countable earnings as these costs rise.

Comment: If the SGA level is not going to be indexed to reflect future inflation, then SGA should not be presumed when a disabled worker's earnings go over the level because of an increase in his or her hourly wage rate.

Response: We believe that an increase in the hourly wage rate is an indication of increased value of the work being performed and demonstrates the ability of a person to sustain work. A pay raise generally is a reflection of an improvement in a person's job performance and is an indication that the person is continuing on the way to self support.

Comment: Many commenters proposed an SGA increase above the proposed SGA amount. Some recommended that the SGA level be raised to the SGA level applicable to the blind, currently \$740. Others suggested \$580, an amount equal to a 40-hour work week at the Federal minimum wage rate. Another commenter proposed \$700. The majority of those favoring a higher increase suggested that we adopt the Disability Advisory Council's proposal to adjust the SGA amount to reflect the growth in average wages since the last increase. If we had adopted the Advisory Council proposal, the SGA level would be increased to \$550, effective January 1, 1990.

Response: Section 223(d)(4) of the Act authorizes the Secretary to prescribe the level of earnings for establishing SGA for nonblind disabled individuals. However, the same section of the Act mandates that the SGA earnings level for blind individuals may not be less than the exempt amount for retired individuals under section 203(f)(8). The distinction between the blind and nonblind disabled was consciously made by Congress. The House and Senate conference reports accompanying the Social Security Amendments of 1977 clearly stated that a different SGA amount was being established for blind persons and that

the conferees did not intend that the amount be applied to the nonblind disabled. Notwithstanding the program cost involved in making the SGA level for the blind applicable to the nonblind, it should be for Congress to eliminate the distinction in the SGA levels for the blind and the nonblind that it created.

The Disability Advisory Council expressed concern that raising the SGA level to the poverty level would create a disincentive to work among low-wage persons with disabilities. Some members of the Disability Advisory Council also believe that raising SGA to a level which approaches the Federal minimum wage level would have the same effect. We share those concerns because, rather than encouraging disabled beneficiaries' efforts to leave the disability rolls, a higher SGA level could entice some to supplement their benefits with earnings from work activity held just below the SGA level. A higher SGA level could also prompt some of the working disabled to stop work and file an application for benefits. Once they were found disabled, they could return to work and retain their entitlement if they limited their work to keep their earnings below SGA. As indicated earlier in the preamble to these regulations, the SGA level is only intended to be an indicator of ability to work. If we were to further raise the SGA level, there would be less incentive for people to expand work activity and leave the benefit rolls.

Moreover, there are other work incentives in the title II program that enhance the SGA level and provide a measure of security for the disabled who are making an effort to work. The Social Security Disability Amendments of 1980 introduced the extended Medicare eligibility provision which allows Medicare coverage to continue for at least 39 months after the trial work period is completed. The continuation of hospital and medical insurance coverage is more important to many disabled workers than a higher SGA level. Another provision of the 1980 amendments allows a disabled worker to receive cash benefits for months in which earnings do not reach the SGA level during a specified period after the trial work period. In these months, the disabled worker receives both a disability benefit and the earned income without penalty. Finally, under the impairment-related work provision enacted in 1980, a disabled worker can have earnings well above the new SGA level without losing benefits if there are deductible impairment-related work expenses or subsidized earnings present to reduce countable earnings below the SGA level.

We believe the increased SGA level we are adopting is fiscally responsible and also provides an added incentive for the disabled to become economically independent from the title II program.

Comment: Three commenters expressed concern over the impact the increase in the SGA level to \$500 will have on the Vocational Rehabilitation (VR) reimbursement program in which reimbursement of State vocational rehabilitation programs is based upon the number of program participants who are successfully rehabilitated.

Response: In the short term, fewer people might fit under the definition of "successful rehabilitation" and reimbursements may drop because, under the new SGA level, we will consider VR successful if the person who received the services works for 9 months at a level of at least \$500 per month rather than the \$300 level which had been used. However, we believe that the higher SGA level will be a good indicator of whether an individual can perform work activity that involves doing significant physical or mental activities.

Comment: Several commenters suggested that Medicare coverage be protected even after the SGA level is reached.

Response: The present extended Medicare eligibility provision provides for continuing Medicare coverage after a person's earnings reach the SGA level.

This provision permits continued hospital and medical protection for at least 39 months after the trial work period is completed. If the beneficiary has already met the 24-month waiting period for Medicare, coverage continues for the 39 months even if a person is not entitled to disability benefits because of SGA level earnings. For beneficiaries who have not yet met the 24-month waiting period, months during the extended period of eligibility count as Medicare waiting period months even though disability benefits are not paid.

In addition, Congress has recently provided for a Medicare buy-in for individuals under age 65 who continue to be disabled, but are no longer entitled to Medicare coverage solely because their earnings exceed the SGA level. They will be able to purchase Medicare coverage during specified enrollment periods for the same monthly premium as that charged for Medicare's hospital insurance (HI) benefits for uninsured individuals.

The provision allows for coverage under the HI program for months after June 1990.

Comment: One commenter recommended that § 404.1592(b) be

changed to clarify when we will exclude certain types of paid training from the trial work period.

Response: This issue will be addressed by a proposed regulation which would incorporate Social Security Rulings into the Regulations. It will be published in the Federal Register for public comment prior to any final decision.

Comment: Another commenter recommended that we allow impairment-related work expenses to be deducted during the trial work period when we decide if an individual has completed a service month.

Response: We disagree that impairment-related work expenses should be deducted from earnings during the trial work period because of the purpose of the trial work period which is to provide a period of time in which a person can test his or her ability to work without facing the loss of disability benefits, rather than to test the amount of the person's earnings potential. It should also be noted that after completion of the trial work period, impairment-related work expenses are deducted from those same earnings to determine if work is considered SGA.

Comment: Several commenters expressed concern over the accuracy of the cost estimates of additional increases in the SGA and trial work period levels and of indexing those levels for future increases.

Response: We continue to believe our cost estimates are accurate. They are based on such factors as the increased number of awards and the decreased number of terminations. The figures are based on the review of actual data.

Although the estimates are as accurate as possible, they are subject to change due to possible changes in claimant and beneficiary work activity which we cannot anticipate.

Comment: Many commenters expressed their support for the proposed regulations and believed they are fair and reasonable. They believe that the changes being made by this final rule are fiscally responsible and will encourage people with disabilities to attempt to return to work.

Regulatory Procedures

Executive Order 12291

Regulatory Impact Analysis

A. Introduction—The Secretary has determined that these regulations require a regulatory impact analysis under Executive Order 12291 because they will result in a major increase in costs for the Federal government. Accordingly, the Department has prepared this Regulatory Impact Analysis to identify the cost impact of these changes and the various alternatives that were explored, and to inform the public of the economic considerations supporting these proposed revisions in accordance with Executive Order 12291.

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule, i.e., a rule that is likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Nature of the Program—Benefits to disabled and blind individuals are provided under title II and title XVI of the Act. Disability is defined under both programs as " * * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * * "

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is SGA and therefore whether that person may be considered disabled under the law. While this is only one of the tests used to determine disability, it is an important tool in disability evaluation. We evaluate the work activity of persons claiming or receiving disability benefits under title II of the Act and that of persons claiming benefits because of a disability under title XVI of the Act. These final regulations increase the amounts of those earnings guidelines.

C. Intended Effect—We expect that the increases in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to return to work. In addition, the increases will permit some disabled persons with earnings in excess of the regulatory limit being changed (\$300 a month) but less than the amount in these final rules, to receive benefits.

D. Projected Costs (\$ in millions)

	Fiscal Year:					
	1990	1991	1992	1993	1994	Total
Program Costs						
Title II	\$26	\$42	\$77	\$87	\$92	\$324
SSI	4	13	17	20	23	77
Medicare	1	5	10	25	35	76
Medicaid	20	30	35	40	45	170
Administrative Costs						
Workyears	80	230	160	60	20	
Costs	9	23	13	5	2	52

The pattern of administrative costs reflects the one-time increase in the SGA amount. As general wage levels continue to rise while the SGA amount remains the same, there will be less incentive for working disabled persons to apply for benefits. As a result, the only large increases in claims and related workloads will occur in the first 2 or 3 years after the change. Workload increases toward the end of the

estimating period will be relatively small.

Although the costs are significant, we believe that these changes are necessary improvements in existing work incentives, and that they are fiscally responsible changes.

Paper Work Reduction Act

These final rules impose no additional reporting and recordkeeping

requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public

Law 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.

Dated: December 4, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 18, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

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

PART 404—[AMENDED]

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

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1574 is amended by revising paragraphs (b)(2)(v), (b)(2)(vi), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii) and (b)(4)(vii) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(v) Your earnings averaged more than \$280 a month in calendar year 1979;

(vi) Your earnings averaged more than \$300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than \$500 a month in calendar years after 1989.

(3) * * *

(v) Your earnings averaged less than \$180 a month in calendar year 1979;

(vi) Your earnings averaged less than \$190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than \$300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than \$280 a month in calendar year 1979;

(vi) Your average earnings are not greater than \$300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than \$500 a month in calendar years after 1989.

* * * * *

3. Section 404.1592 is amended by revising paragraph (b) to read as follows:

§ 404.1592 The trial work period.

* * * * *

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1989 you earn more than \$200 a month (\$75 a month is the amount for calendar years 1979 through 1989, and \$50 a month is the amount for calendar years before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1989, your net earnings are more than \$200 a month (\$75 a month is the amount for calendar years 1979 through 1989, and \$50 a month is the amount for calendar years before 1979), or you work more than 40 hours a month in the business in any calendar year after 1989 (15 hours a month is the figure for calendar years before 1990). We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

* * * * *

PART 416—[AMENDED]

1. The authority citation for subpart I of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.974 is amended by revising paragraphs (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (b)(3)(iv), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii), and (b)(4)(vii) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(iv) Your earnings averaged more than \$260 a month in calendar year 1978;

(v) Your earnings averaged more than \$280 a month in calendar year 1979;

(vi) Your earnings averaged more than \$300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than \$500 a month in calendar years after 1989.

(3) * * *

(iv) Your earnings averaged less than \$170 a month in calendar year 1978;

(v) Your earnings averaged less than \$180 a month in calendar year 1979;

(vi) Your earnings averaged less than \$190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than \$300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than \$280 a month in calendar year 1979;

(vi) Your average earnings are not greater than \$300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than \$500 a month in calendar years after 1989.

* * * * *

[FR Doc. 89-30233 Filed 12-28-89; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Part 416

[Regs. No. 16]

RIN 0960-AC75

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness; Categories of Impairments—AIDS Extension Date

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We may pay benefits to a person applying for supplemental security income benefits on the basis of disability or blindness before making a formal determination when available information indicates a high probability that disability exists. These findings of presumptive disability and blindness may be made at the Social Security field offices only for specified impairment categories; at the State agencies, they may be made for any impairment

category. The presumptive disability category for acquired immunodeficiency syndrome (AIDS) was due to expire on December 31, 1989. We are extending the expiration date of the presumptive disability category for AIDS through December 31, 1991. New treatments for AIDS are now being tested, and additional time is needed to evaluate the efficacy of these treatments.

EFFECTIVE DATE: These final regulations will be effective December 28, 1989 through December 31, 1991, when they will expire, unless extended or revised and promulgated again.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1759.

SUPPLEMENTARY INFORMATION:

On February 11, 1985, we published interim regulations in the *Federal Register* (50 FR 5573) adding AIDS, as then defined by the Centers for Disease Control (CDC), to the impairment categories in § 416.934 to permit field offices to find presumptive disability for this disease. Those regulations were scheduled to expire on February 11, 1988.

In final regulations published in the *Federal Register* (53 FR 3739) on February 9, 1988, we extended the expiration date for the AIDS presumptive disability category until December 31, 1989.

Section 1631(a)(4)(B) of the Social Security Act (the Act) provides that a claimant applying for supplemental security income benefits based on disability or blindness may receive up to 3 months' payments prior to the determination of the individual's disability or blindness if he or she is presumptively disabled or blind and otherwise eligible. When a claimant, who is not working, alleges disability due to AIDS, the field office is allowed to make a finding of presumptive disability after a confirming contact has been made to ascertain that this disease with one or more manifestations (described in Appendix 1 of subpart I of 20 CFR part 416) has been diagnosed by a licensed physician. Confirmation of this diagnosis is made by contact with a physician or some other medical or treating source, such as a member of a hospital or clinic staff, who is able to confirm that such a diagnosis has been made. Presumptive disability may be found immediately upon confirmation of the diagnosis of AIDS with manifestation(s) in Appendix 1 and need not be delayed for the receipt of the actual medical reports or records. A

final disability determination is made later when the State agency receives sufficient medical evidence.

We are again extending the expiration date in these final regulations. This presumptive disability category for AIDS will not be effective through December 31, 1991. Several treatments are now being tested, and additional time is needed to be able to evaluate the efficacy of these treatments. Because AIDS continues to have severe symptoms and a high mortality rate, we are extending the sunset date for an additional 2-year period.

We have made no revisions in the medical criteria used in determining the manifestations of AIDS for presumptive disability purposes. The criteria are in Appendix 1, subpart I of 20 CFR Part 416. Thus, under these amendments, the Social Security Administration will continue to use the same manifestations of AIDS that it has been using since February 9, 1988.

Because of the dynamic nature of research concerning the diagnosis, evaluation, and treatment of AIDS, we will periodically review and reassess this category. We intend to continue to carefully monitor these regulations to determine whether they will need to be revised and updated to reflect advances in scientific knowledge and treatment of this disease. Therefore, these final regulations will cease to be effective after December 31, 1991, unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on these regulations because they are unnecessary. These regulations involve only the extension of the expiration date for the AIDS presumptive disability category, and make no changes to the rules for finding presumptive disability or to the medical criteria used for determining the manifestations of AIDS.

The current regulations expressly provide that the AIDS category may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current criteria being used for making findings of presumptive disability in the AIDS category, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. If we decide at a later date to make any changes in the AIDS evaluation criteria after review of the results of treatment studies now in progress, we will, of course, propose any such revisions for public comment.

Executive Order 12291

This extension of the expiration date for the AIDS presumptive disability category will have no additional impact on current budget costs since it merely extends existing authority for making presumptive disability findings in AIDS cases.

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect disability claimants under title XVI of the Act.

Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(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, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: November 30, 1989.

Gwendolyn S. King,
Commissioner of Social Security.

Approved: December 18, 1989.

Louis W. Sullivan,
Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416, subpart I, chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

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

Subpart I—Determining Disability and Blindness

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.934 is amended by revising paragraph (k) to read as follows:

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

(k) Allegation of acquired immunodeficiency syndrome (AIDS) with one or more manifestations listed in Appendix 1 of this subpart, as diagnosed by a licensed physician; this category is effective only through December 31, 1991, unless extended by the Secretary or revised and promulgated again.

[FR Doc. 89-30232 Filed 12-28-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2582

RIN 1210-AA31

Bonding Under The Federal Employees' Retirement System Act of 1986

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with certain technical changes, an interim rule which applies the temporary bonding regulations under the Employee Retirement Income Security Act of 1974 (ERISA) to the Thrift Savings Fund (Fund) established pursuant to the provisions of the Federal Employees' Retirement System Act of 1986 (FERSA). The interim rule being adopted as final by this document also prescribes the amount of bonds required under FERSA for fiduciaries and other persons who handle funds or other property of the Fund.

This document is being issued because the Secretary of Labor (Secretary) is required by FERSA to prescribe regulations necessary to carry

out the bonding requirements of FERSA on a permanent basis. The final rule contained in this document will help to ensure that each fiduciary and each person who handles funds or other property of the Fund will be properly bonded.

EFFECTIVE DATE: This final rule is effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Judith Bleich Kahn, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-7901 (FTS 523-7901); or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-9596.

SUPPLEMENTARY INFORMATION:

Background

The Federal Employees' Retirement System Act of 1986 (FERSA, Pub. L. 99-335, 100 Stat. 515, 5 U.S.C. 8401 *et seq.*) provides a tax-deferred savings plan ("Thrift Savings Plan") as an option for federal employees, whose contributions may be matched in part by contributions made by employing agencies of the United States Government. Contributions under the Thrift Savings Plan are invested in one or more of three separate investment funds which together comprise the Fund.

In general, the fiduciary responsibility, prohibited transaction, bonding and related rules applicable to the management of the Fund under FERSA are derived from similar rules applicable to private sector employee benefit plans under ERISA.

The bonding requirements applicable to the Fund are set forth in section 8478 of FERSA, which closely parallels section 412 of ERISA. Section 8478(a) of FERSA requires, with certain exceptions, that each fiduciary and each person who handles funds or other property of the Fund shall be bonded as provided in section 8478 against loss by reason of acts of fraud or dishonesty. In this connection, section 8478(b)(1) provides that the Secretary shall prescribe the amount of a bond required under section 8478 at the beginning of each fiscal year. Section 8478(b)(1) further provides that the amount of bond shall not be less than 10 percent of the amount of funds handled, but in no case less than \$1,000 nor more than \$500,000 except that the Secretary, after due notice and opportunity for a hearing to all interested parties, may prescribe a bond in excess of \$500,000. Under section 8478(b)(2), in prescribing the amount of a bond for purposes of

section 8478(b)(1), the amount of funds handled must be determined by reference to the amount of funds handled during the preceding fiscal year by the person, group or class to be covered by the bond (or by their predecessor or predecessors, if any), or to the amount of funds handled during the current fiscal year, estimated as provided in regulations prescribed by the Secretary.

Pursuant to section 8478(c), a bond obtained with respect to the Fund must also include the terms and conditions required by the Secretary and must have as surety thereon a corporate surety company approved for federal bonds. Any such bond, whether covering an individual or a group or class, must be in a form or of a type approved by the Secretary.

Section 8478(d) makes it unlawful for any person to whom FERSA's bonding requirements apply to handle, disburse, or otherwise exercise custody or control over Fund property without being bonded as required by section 8478. It is also unlawful under section 8478(d) for any fiduciary, or any other person having authority to direct the performance of functions involving the handling of Fund property, to permit any such function to be performed by any person to whom FERSA's bonding requirements apply if the requirements of section 8478 are not met.

Section 8478(f) of FERSA provides that the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of section 8478, including regulations exempting a person or a class of persons from FERSA's bonding requirements.

Section 113 of the Federal Employees' Retirement System Technical Corrections Act of 1986 (FERSTCA, Pub. L. 99-556) authorizes the Secretary of Labor to apply with respect to the Fund, through December 31, 1989, the temporary bonding regulations under section 412 of ERISA.

ERISA section 412 requires generally that plan officials who handle funds or other property of private sector employee benefit plans be bonded. On January 10, 1975, the Department of Labor (Department) published a temporary bonding regulation under ERISA section 412 (29 CFR 2655.1, redesignated as 29 CFR 2550.412-1 on May 12, 1975, at 40 FR 20654). Temporary regulation 29 CFR 2550.412-1 references selected portions of the bonding regulations originally issued under the authority of section 13 of the Welfare and Pension Plans Disclosure Act (WPPDA), which was repealed on