PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–26–11 Agusta S.p.A.: Amendment 39–12061. Docket No. 2000–SW–58–AD.

Applicability: Model A109E helicopters with tail rotor blade (blade), part number (P/N) 109–8132–01–109, serial number (S/N) A5–0130, A5–0131, A5–0224 through A5–0246, or A5–0249 through A5–0253, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 10 hours time-in-service, unless accomplished previously.

To prevent a blade failure and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace each affected blade with an airworthy blade, P/N 109–8132–01–109 or P/N 109–8132–01–107, with an S/N other than those listed in the applicability section of this AD.

Note 2: Agusta Bollettino Tecnico No. 109EP–13, dated August 3, 2000, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on January 16, 2001.

Note 4: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD 2000–393, dated August 8, 2000.

Issued in Fort Worth, Texas, on December 21, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–33335 Filed 12–28–00; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF12

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Substantial Gainful Activity Amounts; ''Services'' for Trial Work Period Purposes—Monthly Amounts; Student Child Earned Income Exclusion

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the rules to automatically adjust each year, based on any increases in the national average wage index, the average monthly earnings guideline we use to determine whether work done by persons with impairments other than blindness is substantial gainful activity; provide that we will ordinarily find that an employee whose average monthly earnings are not greater than the ''primary substantial gainful activity amount,'' has not engaged in substantial gainful activity without considering other information beyond the employee's earnings; increase the minimum amount of monthly earnings and the minimum number of self-employed work hours in month that we consider shows that a person receiving title II Social Security benefits based on disability is performing or has performed ''services'' during a trial work period, and automatically adjust the earnings amount each year thereafter; increase the maximum monthly and yearly Student Earned Income Exclusion amounts we use in determining Supplemental Security Income (SSI) Program eligibility and payment amounts for student children, and automatically adjust the monthly and yearly exclusion amounts each year thereafter.

We are revising these rules as part of our efforts to encourage individuals with disabilities to test their ability to work and keep working. We expect that these changes will provide greater incentives for many beneficiaries to attempt to work or, if already working, to continue to work or increase their work effort.

EFFECTIVE DATE: These rules are effective January 29, 2001.

FOR FURTHER INFORMATION CONTACT: For information specifically about these final rules, contact Ray Marzoli, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9826 or TTY (410) 966–6210. For information about eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, *Social Security Online, www.ssa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Social Security and the SSI programs (titles II and XVI of the Social Security Act (the Act)) provide benefits to disabled and blind individuals. Disability is generally defined under both programs as, ''* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *.'' The Medicare and Medicaid programs (titles XVIII and XIX of the Act) provide related medical benefits to disabled and blind individuals.

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 11, 2000 (65 FR 49208). We are including all of the proposals contained in the NPRM in these final rules, which are discussed in detail below. We are including one additional change in response to several comments we received about the NPRM.

For a detailed discussion of how we calculate annual automatic adjustments that affect Social Security benefits, see our notice regarding cost-of-living increases and other determinations for the year 2001 that was published in the **Federal Register** for October 24, 2000 (65 FR 63663). We are required by statute to publish in the **Federal Register** every October an updated version of this notice. Future versions will include the annual adjustments provided under these final rules.

The Substantial Gainful Activity Amount

Under 20 CFR 404.1572 and 416.972, the term ''substantial gainful activity'' means work activity that involves significant physical or mental effort and that is done for pay or profit. Work activity is gainful if it is the kind of work usually performed for pay or profit, whether or not profit is realized. Sections 223(d)(4)(A) and 1614(a)(3)(E)

of the Act require the Commissioner to prescribe by regulations the criteria for determining when earnings demonstrate ability to engage in substantial gainful activity for a person who has an impairment other than blindness.

In evaluating initial claims for disability, we make a determination whether an applicant for either Social Security benefits or SSI benefits is engaging in substantial gainful activity. We find applicants not to be disabled if they are working and performing substantial gainful activity, regardless of their medical condition. In addition, after an individual becomes entitled to title II Social Security benefits based on disability, we consider whether a person's earnings demonstrate the ability to engage in substantial gainful activity in determining ongoing entitlement to disability benefits. (We do not use substantial gainful activity as a measure for continuing eligibility for SSI benefits.) Since July 1999, if an individual's average monthly earnings were more than $700, we would ordinarily consider that the person engaged in substantial gainful activity. This earnings guideline level applies to all employees including those in sheltered workshops or comparable facilities and, in certain circumstances, to the self-employed.

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is substantial gainful activity and, therefore, whether that person may be considered disabled under the law. We are revising our rules to provide for annual indexing of this level after reassessing the current earnings guidelines as part of our effort to improve incentives to encourage individuals with disabilities to work. A consistent method of adjusting substantial gainful activity earnings guidelines will benefit applicants and beneficiaries in future years. The national average wage index is a measure of wage growth and, therefore, provides a logical basis for adjusting the earnings guidelines used to indicate ability to work. Indexing ensures that the substantial gainful activity amount is a uniformly representative indicator over time of an individual's ability to work.

Under the revised rules, we will adjust annually the substantial gainful activity amount for people with impairments other than blindness. Beginning January 2001, the guideline will be the larger of the previous year's amount or an increased amount based on the Social Security national average wage index (see section 209(k)(1) of the Act). The annual adjusted guideline will apply to earnings from work activity in months beginning with the month in which the adjusted guideline goes into effect. This means that the first increased amount will apply to earnings in months after December 2000.

Under this revised rule, the substantial gainful activity amount will never be lower than the previous year's amount. However, there may be years when no increase results from the calculation.

Under the calculation provided by this revised rule, we determine the ratio of the national average wage index for 1999 ($30,469.84) to that for 1998 ($28,861.44), which is 1.0557283, and multiply it by the calendar year 2000 monthly-earnings guideline amount of $700, yielding the amount of $739.01. This $739.01 amount is rounded to the nearest multiple of $10, which is $740. Because $740 is larger than the corresponding 2000 amount of $700, the new earnings guideline is $740. This amount is effective for months of work activity beginning January 2001. Beginning 2002, the guideline will be the larger of $740, or the $700 amount multiplied by the ratio of the national average wage index for 2000 to that for 1998 rounded to the nearest multiple of $10. Any new amount that goes into effect January 2002 will be used only to evaluate earnings from work activity in months beginning with January 2002.

The ''Secondary Substantial Gainful Activity Amount''

Since January 1990, if an employee's earnings from work activities averaged less than $300 a month, we generally would have considered that that employee had not been engaging in substantial gainful activity. We referred to this $300 earnings guideline as the ''secondary substantial gainful activity amount'' to distinguish it from the ''primary substantial gainful activity amount'' discussed in the previous section.

We would not have further evaluated work activity below the secondary substantial gainful activity amount unless there was evidence to the contrary showing that the person might have been engaging in substantial gainful activity (e.g., an employee might be in a position to defer or suppress earnings). We would have examined further the work activity of employees who earned between these two levels (the primary and secondary substantial gainful activity levels) because the rules provided that such earnings were neither high nor low enough to determine if substantial gainful activity existed. Additional evidence would have been developed. (A different rule applied to individuals employed in sheltered workshops or comparable facilities. For these people, earnings not greater than the *primary* substantial gainful activity amount ordinarily would establish that the work was not substantial gainful activity.)

Because our experience suggests that the secondary substantial gainful activity amount has not been as useful a tool as we would have liked, we are discontinuing its use. With this rule change, we ordinarily will consider that an employee is not engaging in substantial gainful activity if his or her earnings are equal to or less than the primary substantial gainful activity amount ($740 for months beginning January 2001). We will perform additional development beyond looking at earnings only when circumstances indicate that such an employee may be engaging in substantial gainful activity or might be in a position to defer or suppress earnings. This change does not affect our evaluation guidelines for the self-employed.

Our experience suggests that few applicants and beneficiaries will be affected by this change because few employees have been found to have performed substantial gainful activity on the basis of these secondary rules unless they were also in a position to defer or suppress earnings. Discontinuing these complex secondary guidelines will help simplify our rules and facilitate public understanding of the Social Security disability program as well as improve our work efficiency.

Services for the Trial Work Period

The trial work period is a work incentive. During the trial work period, a title II beneficiary may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period.

Section 222(c)(2) of the Act provides that, for purposes of the trial work period, ''the term 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.'' As established in regulations, § 404.1592(b), we have considered any month in which an employee earns more than $200 from his or her work to be a month of services for the trial work period.

We are increasing the monthly amount of earnings we consider to be

''services'' in a trial work period from $200 to $530 for earnings in months beginning January 2001. Beginning 2002, and for each year thereafter, we will adjust this amount to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index. We are making these changes as part of our effort to improve incentives to encourage individuals with disabilities to work.

Although the dollar amount that ordinarily represents substantial gainful activity was increased from $500 to $700 in 1999, the $200 amount that represents a month of trial work period services has remained the same since 1990. Beneficiaries have been faced with exhausting months of a trial work period while earning as little as $200 a month, even on an intermittent basis. As a result, when beneficiaries were finally able to reach a higher earnings level, they may have already used up many or all of their 9 months of trial work. Increasing the trial work period services amount to $530 should allow more beneficiaries with disabilities to more realistically test their ability to work and will likely lead to work at levels closer to or at substantial gainful activity.

Automatic indexing will allow the trial work period services amount to be a uniformly representative indicator over time of a trial work attempt. We will calculate the adjustments in essentially the same manner as we will for increasing the substantial gainful activity amount. The trial work period amount will never be lower than the previous year's amount. However, there may be years when no increase results from the calculation.

The legislative history of the trial work period provision indicates that Congress did not intend to link the trial work period level to the amount that constitutes substantial gainful activity. Congress enacted the trial work period as part of the Social Security Amendments of 1960. The accompanying House Ways and Means Committee report states, ''Your committee intends that any months 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.'' H.R. Rep. No. 86–1799, at 13 (1960). This change we are making maintains the distinction between the trial work period services amount and the substantial gainful activity amount intended by Congress while providing disabled beneficiaries with greater incentives to test their ability to work.

Several comments we received from the public about our proposed changes stated that we did not sufficiently address trial work period issues for the self-employed. We revisited that issue and, as a result of our analysis, in our final rules, we are increasing the number of hours of self-employed work in a business in a month that we will consider shows that the self-employed person performed services in that month. Since 1990, even if a self-employed person had earnings of $200 or less in a month, we would consider that services were performed in that month if the person worked more than 40 hours in the business. Under this revised rule, if a self-employed person has earnings that are equal to or less than the dollar threshold for services, we will consider that services were performed if the self-employed person works more than 80 hours in a month in his or her business. This change will encourage beneficiaries with disabilities to more realistically test their ability to work with respect to self-employment activities.

The Student Earned Income Exclusion

Section 1612 of the Social Security Act establishes the definition of ''*income*'' for purposes of the SSI program. This section also states what is excluded from income. Section 1612(b)(1) provides an exclusion from earned income, subject to the limitations (as to amount or otherwise) prescribed by the Commissioner, for a child who is a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him or her for gainful employment. With this section, Congress recognized that students with disabilities incur special expenses to go to school. Under our prior regulations, those SSI child beneficiaries who are students have been able to exclude up to $400 a month of earned income with an annual limit of $1,620. By being excluded, this earned income has no effect on eligibility or cash benefit amounts under the SSI program. These monthly and annual amounts have been in place since 1974 when the SSI program began.

In response to increases in school expenses since that time, we are revising these amounts as part of our effort to help SSI child beneficiaries who are students finance their school attendance and encourage them to work. We are increasing the earned income exclusion amount, beginning with earned income for January 2001, to $1,290 a month with an annual limit of $5,200. We also will make automatic adjustments to these amounts each year thereafter to the higher of the previous year's amounts or increased amounts based on the changes in cost-of-living.

The cost-of-living adjustments will ensure that the amounts account for price inflation. We will use a similar method to that currently used to calculate annual cost-of-living adjustments in the SSI program Federal benefit rates. The only differences are that this new calculation will use the calendar year 2001 amounts as the base amounts and any increases in these amounts will be rounded up to the nearest $10. These amounts will never be lower than the previous year's amounts. However, there may be years when no increases result from the calculation.

Public Comments

We received almost 600 comments in response to our proposals. Commenters included many advocates for people with disabilities, State and local government entities, attorneys, employees from SSA field offices, two members of Congress, and private citizens. The comments we received were overwhelmingly in support of the proposals. About 40% also included substantive assessments of the proposals or related suggestions. We have summarized these comments, grouped them by subject, and discuss them below.

Comment: Of the 600 comments received, only 13 expressed opinions not in favor of the proposals. Of those not in favor, three believed that the current SGA, TWP service months, and student earned income exclusion amounts were adequate to encourage someone who has a disability to work. One thought that the changes were too liberal and would have the effect of changing the various benefits paid by the Social Security Administration into another welfare system. Another thought that encouraging people who have a disability to work themselves off the rolls is not in their best interests. Rather than helping, this commenter stated that working would eventually cause these individuals to become destitute because, without their cash and medical benefits, these individuals would not be able to earn enough consistently to adequately provide for themselves. One other thought that liberalizing work incentives further would be useless. This commenter viewed work incentives as a failure because beneficiaries can control their earnings so as not to come off the rolls. Seven others thought the proposals

would adversely affect the solvency of the Social Security trust funds or the U.S. treasury funds.

Response: We appreciate the fact that virtually all the commenters favored the proposal. The Office of the Chief Actuary for SSA estimates that the costs of these proposals are negligible. As such, these changes should not affect the trust funds or the government's expenditures, or promote a welfare system. Advocates for the disabled have long argued that people with disabilities want to work, but to do so they must be provided necessary accommodations and safeguards for their cash benefits and health coverage. The provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, in conjunction with prior work incentives, should provide additional safeguards to prevent any dire consequences resulting from people with disabilities attempting to work. We believe these changes will provide another important step to ensuring these needs are met and thus will promote work efforts.

Comment: Almost all of the other comments that included substantive assessments or suggestions stated that the SGA amount should be indexed using a base amount higher than $700. Many stated that a figure of $900 or an amount equal to that used for statutorily blind individuals for SGA purposes, $1,170, should be used.

Response: The Act provides that the Commissioner is to prescribe by regulation the criteria for determining when earnings demonstrate the ability to engage in SGA for the non-blind. Thus, we designed the SGA guidelines as a way of measuring an individual's ability to work and not as a measure of an individual's need for income. The historical relationship between the SGA amount and average wage growth was roughly consistent between 1961 (when the SGA guideline was first issued by regulation) and 1980. In 1990, we raised the SGA amount to $500 from $300 to coincide to some degree with the growth of the average wage during the 1980s. The increase in the SGA amount in July 1999 to $700 approximately corresponded to the increase in the average wage since 1990. Indexing this SGA amount to average wage growth by regulation maintains the historical relationship.

Before 1977, section 223(d) of the Act authorized the Commissioner to prescribe the level of earnings that demonstrate SGA for all title II applicants and beneficiaries and all title XVI applicants. In 1977, Congress amended the Act to provide a different criterion for setting the SGA level for people who are blind. Congress consciously made this distinction between people who are blind and those with impairments other than blindness. The House and Senate conference report 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 people with impairments other than blindness.

Comment: Many commenters suggested that, since we proposed increasing the monthly earnings amount that we consider to be ''services'' during the trial work period, we consider making services for purposes of the trial work period (TWP) an amount equal to the SGA level, $700. Two commented that despite the proposed increase in the service amount to $530, it is still much too low for persons with blindness whose SGA amount is $1,170.

Response: As we noted earlier, 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. The change we proposed maintains the distinction between the trial work period services amount and the substantial gainful activity amount as Congress intended while still providing beneficiaries with disabilities a more realistic opportunity to test their ability to work. Although Congress provided a different criterion for determining the SGA for individuals who are blind, Congress did not provide different criteria for the blind for determining service months for the TWP.

Comment: A few commenters stated that we did not address TWP service months with respect to self-employed beneficiaries. One suggested increasing the number of hours from 40 to 60, while another suggested doubling the hours.

Response: As we stated earlier, we revisited the issue in response to these comments. As a result of our analysis, we are increasing the minimum number of self-employed hours that we consider shows a person has performed services from more than 40 to more than 80 hours a month.

Comment: Two commenters suggested that the TWP and SGA should vary according to type of impairment particularly those types of impairments, such as chronic fatigue and immune dysfunction syndrome and severe mental illness, that make sustained work efforts very difficult. Persons with these conditions fear losing benefits as the result of sporadic work. One suggested that we use net rather than gross wages for purposes of TWP and SGA.

Response: The issues addressed by these comments are outside the scope of these specific rules changes. We will consider these comments regarding possible future regulatory or legislative changes.

Comment: A number of commenters suggested that we stop using the TWP and SGA to evaluate the work activity of beneficiaries. Some recommended that we use an earnings offset formula to reduce cash benefits gradually as earnings rise (similar to the earned income exclusion currently under title XVI). Several others suggested that there should be no earnings limits for beneficiaries with disabilities similar to beneficiaries who have reached full retirement age, currently age 65. Another suggested that the TWP should be 9 consecutive months of work since sporadic work of a couple of months, now and then, in a 60-month period should not count against an indicator intended to measure the ability to sustain competitive work.

Response: These suggested changes would require new legislation and we cannot implement them by regulation alone. Sections 302 and 303 of the Ticket to Work and Work Incentives Improvement Act of 1999 provide for our conducting a demonstration project to test an earnings-offset formula for title II beneficiaries who try to work.

Comment: Several commenters suggested that we eliminate the age restriction for the SSI student earned income exclusion. A few other commenters urged us to consider changes to the SSI eligibility rules, such as increasing the resource limit ($2,000 for an individual or $3,000 for a couple).

Response: These suggested changes also would require new legislation and we cannot implement them by regulation alone.

Comment: Numerous commenters stated that our efforts have been poor with respect to tracking income and earnings. They believe that this deficiency will become more apparent as more people take advantage of these changes and the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, allowing more overpayments to occur which can derail the work efforts of our beneficiaries.

Response: A number of initiatives are underway to improve the accuracy and timely reporting of earnings. We are improving and extending our interfacing capabilities with federal, state and local databases to gather earnings information quickly and correctly. These efforts are being implemented incrementally, with

careful attention to the privacy concerns of our beneficiaries. In addition, we are in the process of establishing a corps of specially trained staff who can facilitate the gathering of such information. We are currently testing this position, the employment support representative, in 32 sites around the country.

Comment: Many commenters stated that we should improve our collaboration with other federal agencies so that our programs and services complement other federal programs.

Response: While this suggestion addresses an area outside the scope of these specific rule changes, we have been working with other federal agencies, principally in joint committees and task forces, to better mesh our programs and services to theirs.

Comment: One commenter urged us to improve the process for homeless people to apply for disability benefits.

Response: This suggestion is outside the scope of these specific rule changes. Unrelated to these rule changes, however, we have undertaken recently several initiatives to improve our application processes.

Comment: One commenter stated that our proposals were difficult to understand and that examples are needed.

Response: We will be mindful of the need to provide more examples in future proposals.

Final Regulations

We are revising §§ 404.1574(b)(2) and (4), and 416.974(b)(2) and (4) to adjust annually the earnings guidelines that we use to determine whether a non-blind employee is engaged in substantial gainful activity. Beginning January 2001, the guideline will be the higher of the previous year's amount or an increased amount based on the Social Security national average wage index. Under this revised rule, the monthly earnings guideline will increase from $700 to $740 for 2001. (This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in §§ 404.1575 and 416.975.)

We also are revising §§ 404.1574(b)(3) and (6), and 416.974(b)(3) and (6) to provide, effective for months of work activity beginning January 2001, that we will ordinarily find that an employee whose average monthly earnings are equal to or less than the ''primary substantial gainful activity amount'' set forth in §§ 404.1574(b)(2) and 416.974(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. We also are making conforming changes to §§ 404.1574(b)(4) and 416.974(b)(4).

We also are revising § 404.1592 to increase from $200 to $530 the minimum amount of monthly earnings above which we consider shows that a person is performing or has performed ''services'' for counting trial work period months, effective for months of earnings beginning January 2001. We will adjust the amount annually to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index, beginning January 2002. Also, effective January 2001, for a self-employed person with earnings equal to or less than the dollar threshold for services, we are increasing the number of hours of self-employed work in a business each month that we will consider shows services are performed from more than 40 hours to more than 80 hours.

We also are revising § 416.1112(c)(3) to increase the maximum amount of the student earned income exclusion to $1,290 a month, not to exceed $5,200 per year, effective for earned income beginning January 2001. We also will adjust these amounts annually to the higher of the previous year's amounts or increased amounts calculated in essentially the same manner as the annual cost-of-living adjustments to the SSI Program federal benefit rates, beginning January 2002. This calculation will use the 2001 amounts as the base amounts and any increases in these amounts will be rounded to the nearest $10.

Electronic Version

The electronic file of this document is available on the Internet at *www.access.gpo.gov/nara.* This document also is available on our Internet web site, *Social Security Online, www.ssa.gov.*

Regulatory Procedures

Paperwork Reduction Act

These regulations impose no new reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget (OMB).

Executive Order 12866

Based on the costs associated with these final rules, the Social Security Administration has determined that they do not require an assessment of costs and benefits to society per Executive Order 12866 because they do not meet the definition of a ''significant regulatory action.'' These final rules also do not meet the definition of a ''major rule'' under 5 U.S.C. 801ff because the Social Security Administration's budget baseline assumes that substantial gainful activity amounts will keep pace with growth in average wages, and other provisions do not result in costs that exceed the threshold for what constitutes a ''major rule.'' In addition, the Social Security Administration has determined, as required under the aforementioned statute, that these regulations do not create any unfunded mandates for State or local entities under sections 202–205 of the Unfunded Mandates Act of 1995. OMB has reviewed these final rules.

We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II or title XVI benefits because of blindness or disability, and States which administer the Medicaid program and/or pay supplemental benefits to SSI eligible individuals.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: November 9, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons stated in the preamble, the Social Security Administration is amending parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

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

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1574 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001,* and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* If your earnings for months beginning January, 2001, are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity. If your earnings for months before January, 2001, were less than the amount(s) in Table 2 of this section for the year(s) in which you worked, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity.

TABLE 2

For months:	Your monthly earnings averaged less than:
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989	190
In calendar years 1990–2000	300

(4) *Before January 1, 2001, if you worked in a sheltered workshop.* Before January 1, 2001, if you worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings averaged more than the amounts in table 1 of paragraph (b)(2) of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in table 1 of paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in table 1 of paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have engaged in substantial gainful activity. For work performed in a sheltered workshop in months beginning January 2001, the rules of paragraph (b)(2), (3), and (6) apply the same as they do to any other work done by an employee.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that you engaged in substantial gainful activity.*

(i) *Before January 1, 2001,* if your average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although we may apply it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) *Beginning January 1, 2001,* if your average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, we will generally not consider other information in addition to your earnings unless there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to defer or suppress your earnings.

(iii) *Examples* of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

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 (whether legal or illegal), even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work done without remuneration to be *services* if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. We will not consider work you have done as a volunteer in the federal programs described in section 404.1574(d) in determining whether you have performed services in the trial work period.

(1) *If you are an employee.* We will consider your work as an employee to be *services* if:

(i) *Before January 1, 2002*, your earnings in a month were more than the amount(s) indicated in Table 1 for the year(s) in which you worked.

(ii) *Beginning January 1, 2002*, your earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(2) *If you are self-employed.* We will consider your activities as a self-employed person to be *services* if:

(i) *Before January 1, 2002*, your net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which you worked, or the hours you worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which you worked.

(ii) *Beginning January 1, 2002*, you work more than 80 hours a month in the business, or your net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1.—FOR EMPLOYEES

For months	You earn more than
In calendar years before 1979	$50
In calendar years 1979–1989	75
In calendar years 1990–2000	200
In calendar year 2001	530

TABLE 2.—FOR THE SELF-EMPLOYED

For months	Your net earnings are more than	Or you work in the business more than
In calendar years before 1979	$50	15 hours.
In calendar years 1979–1989	75	15 hours.
In calendar years 1990–2000	200	40 hours.
In calendar year 2001	530	80 hours.

* * * * *

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

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

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c) and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

2. Section 416.974 is amended by revising paragraphs (b)(2), (b)(3), (b)(4) and (b)(6) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001*, they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001*, and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* If your earnings for months beginning January, 2001, are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity. If your earnings for month before January, 2001, were less than the amount(s) in Table 2 of this section for the year(s) in which you worked, we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity.

TABLE 2

For months:	Your monthly earnings averaged less than:
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989	190
In calendar years 1990–2000	300

(4) *Before January 1, 2001, if you worked in a sheltered workshop.* Before January 1, 2001, if you worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings averaged more than the amounts in the table in paragraph (b)(2) of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those amounts indicated in table 1 of paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in table 1 of paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have engaged in substantial gainful activity. For work performed in a sheltered workshop in months beginning January 2001, the rules of paragraphs (b)(2), (3), and (6) apply the same as they do to any other work done by an employee.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that you engaged in substantial gainful activity.*

(i) *Before January 1, 2001,* if your average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although we may apply it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) *Beginning January 1, 2001,* if your average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, we will generally not consider other information in addition to your earnings unless there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to defer or suppress your earnings.

(iii) *Examples* of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

3. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

4. Section 416.1112 is amended by revising paragraph (c)(3) to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) * * *

(3) If you are a blind or disabled child who is a student regularly attending school as described in § 416.1861:

(i) *For earned income beginning January 1, 2002,* monthly and yearly maximum amounts that are the larger of:

(A) The monthly and yearly amounts for the previous year, or

(B) Monthly and yearly maximum amounts increased for changes in the cost-of-living, calculated in the same manner as the Federal benefit rates described in § 416.405, except that we will use the calendar year 2001 amounts as the base amounts and will round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(ii) *For earned income before January 1, 2002,* the amounts indicated in Table 1 of this section.

TABLE 1

For months	Up to per month	But not more than in a calendar year
In calendar years before 2001	$400	$1,620
In calendar year 2001	1,290	5,200

[FR Doc. 00–33271 Filed 12–28–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate and Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient decoquinate and monensin Type A medicated articles to make two-way combination drug Type B and Type C medicated feeds used for prevention of coccidiosis and improved feed efficiency in cattle fed in confinement for slaughter.

DATES: This rule is effective December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–148 that provides for use of DECCOX® (27.2 gram per pound (g/lb) decoquinate) and Rumensin® (20, 30, 45, 60, 80, or 90.7 g/lb monensin activity as monensin sodium) Type A medicated articles to make two-way combination Type B and Type C medicated feeds. The Type C medicated feeds contain 13.6 to 27.2 g/ton decoquinate and 5 to 30 g/ton monensin, and are used for prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, and improved feed efficiency in cattle fed in confinement for slaughter. The NADA is approved as of November 16, 2000, and the regulations in 21 CFR 558.195 and 558.355 are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9