

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AER-08FR]

Modification of Class E Airspace; Pittsburgh, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at the Pittsburgh International Airport, Pittsburgh, PA by deleting a portion of the designated airspace area. Closure of the Pittsburgh Metro Airport makes this action necessary. This area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA-520-F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809; telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

History

On May 4, 2001, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace at Pittsburgh International Airport, PA (66 FR 22489).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000 and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies the Class E airspace area at Pittsburgh, PA by deleting a portion of the Class E airspace area extending upward from 700 feet or more above the surface of the earth.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, Pittsburgh, PA [REVISED]

Greater Pittsburgh International Airport, Pittsburgh, PA

(Lat. 40°29'29"N., long. 80°13'57"W.)

Allegheny County Airport, PA

(Lat. 40°21'16"N., long. 79°55'48"W.)

STARG OM

(Lat. 40°29'15"N., long 80°22'14"W.)

That airspace extending upward from 700 feet above the surface within a 7.9 mile radius of Greater Pittsburgh International Airport and within 3.1 miles each side of the Greater Pittsburgh Runway 10R localizer course extending from the 7.9-mile radius to 5.7 miles west of the STARG OM and within a 6.6-mile radius of Allegheny County Airport.

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Issued in Jamaica, New York on August 13, 2001.

Richard J. Ducharme,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 01-21612 Filed 8-27-01; 8:45 am]

BILLING CODE 4910-13-M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN: 0960-AE42

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Revision to Medical-Vocational Guidelines

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are clarifying section 201.00(h) of the medical-vocational guidelines in appendix 2 of subpart P of regulations part 404. This section provides guidance for evaluating disability in individuals under age 50 who have a severe impairment(s) that does not meet or equal in severity the criteria of any listed impairment in appendix 1 of subpart P, but who have a residual functional capacity for no more than the full range of sedentary work and cannot do any past relevant work. The revisions only clarify the current rules.

DATES: These rules will be effective September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 1-410-965-3632, or TTY 1-800-966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213, or TTY 1-800-325-0778.

SUPPLEMENTARY INFORMATION: The Social Security Act (the Act) provides, in title II, for the payment of disability benefits to workers insured under the Act. Title II also provides, under certain circumstances, child's insurance benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for supplemental security income (SSI) payments to persons who are disabled and have limited income and resources.

For adults under both the title II and title XVI programs, including persons claiming child's insurance benefits based on disability under title II,

“disability” is defined in the Act as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” Sections 223(d) and 1614(a) of the Act also state that the individual “shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.”

Based upon this statutory definition, our longstanding regulations at §§ 404.1520 and 416.920 provide for a five-step sequential evaluation process to determine whether an individual is disabled under the Act, which is as follows:

1. Is the individual engaging in substantial gainful activity? If the individual is working and the work is substantial gainful activity, we find that he or she is not disabled. Otherwise, we proceed to step 2 of the sequence.

2. Does the individual have an impairment or combination of impairments that is severe? If the individual does not have an impairment or combination of impairments that is severe, we find that he or she is not disabled. If the individual has an impairment or combination of impairments that is severe, we proceed to step 3 of the sequence.

3. Does the individual’s severe impairment(s) meet or equal in severity the criteria of an impairment listed in appendix 1 of subpart P of part 404? If so, and if the duration requirement is met, we find that he or she is disabled. If not, we proceed to step 4 of the sequence.

4. Does the individual’s severe impairment(s) prevent him or her from doing his or her past relevant work, considering his or her residual functional capacity? If not, we find that he or she is not disabled. If so, we proceed to step 5 of the sequence.

5. Does the individual’s impairment(s) prevent him or her from performing other work that exists in the national economy, considering his or her residual functional capacity, age, education, and work experience? If so, and if the duration requirement is met,

we find that he or she is disabled. If not, we find that he or she is not disabled.

As discussed in § 404.1569, at step 5 of the sequential evaluation process we provide medical-vocational rules in appendix 2 of subpart P of part 404. (By reference, § 416.969 of the regulations provides that appendix 2 is also applicable to adults claiming SSI payments based on disability.) These rules take administrative notice of the existence of numerous unskilled occupations at exertional levels defined in the regulations, such as “sedentary,” “light,” and “medium,” and, based upon a consideration of the individual’s residual functional capacity, age, education, and work experience, either direct a decision or are used as a framework for making a decision at step 5.

The revisions we are making clarify one paragraph in appendix 2, section 201.00(h), which discusses the evaluation of the claims of “younger individuals” (i.e., individuals who have not attained age 50) who have a residual functional capacity limited to the full range of sedentary work administratively noticed by the rules in table No. 1 of appendix 2 or who can perform some sedentary work but not the full range of such work.

There is no exertional category below “sedentary.” Thus, there is no category for “less than sedentary work.” Individuals who cannot do any sedentary work are disabled under our rules. These final rules address individuals who are able to do some of the sedentary occupations of which we take administrative notice, but who cannot do substantially all of the occupations within the range.

Summary of Changes

For clarity, we refer below to the changes in this **Federal Register** document as current rules and to the rules that will be changed by these current rules as the “prior” rules. However, it must be remembered that these final rules do not go into effect until 30 days after the date of this publication. Therefore, the “prior” rules will still be in effect for another 30 days.

We are making some structural changes from the proposed rules for clarity and to make the final rules easier to use. In the Notice of Proposed Rulemaking (NPRM) that was published on September 23, 1997, (62 FR 49636) we proposed to maintain section 201.00(h) as a single paragraph, as in the prior rules. Under that structure, the paragraph in the proposed rule contained 10 sentences. Several of these sentences included multiple clauses. We believe that this structure would

have made the rules difficult to use, and would have made citation to the rules difficult. Therefore, in these final rules, we have divided proposed section 201.00(h) into four subparagraphs, designated as section 201.00(h)(1) through 201.00(h)(4). By this change in structure, we are not making any substantive changes from the proposed rules.

Final section 201.00(h)(1) contains the first three sentences of prior section 201.00(h). We are changing the second sentence of section 201.00(h) in appendix 2, which provided that for individuals who are age 45–49, “age is a less positive factor” than for individuals who are younger than age 45. The final rule more clearly explains that, for individuals who are age 45–49, “age is a less advantageous factor for making an adjustment to other work than for those who are age 18–44.” This clarifies what we have meant by the phrase “a less positive factor” and is consistent with our longstanding rule that, at step 5 of the sequential evaluation process, the issue is whether the individual is able to make an adjustment to work other than any past relevant work considering his or her residual functional capacity, age, education, and work experience.

We restructured the words in the third sentence of section 201.00(h)(1) to make the sentence easier to read and to make it easier to cite to the four numbered clauses in the sentence. In clause (iii) of this sentence (clause (3) of the third sentence of prior section 201.00(h)), we are changing the phrases “relevant past work” and “vocationally relevant past work,” to “past relevant work” to clarify our intended meaning and for consistency in our terminology. We are also clarifying in section 201.00(h)(1)(iv) (clause (4) of the third sentence of prior section 201.00(h)) that the term “illiterate” means that the individual is unable to read or write in English. This makes clearer our original intent that the fourth clause describes individuals who are either 1) unable to communicate in English or 2) able to speak and understand English but are unable to read or write in English. SSA intends to examine the use of the term “illiterate” throughout its regulations, and when appropriate, will clarify that it means the inability to read and write in English.

Final section 201.00(h)(2) contains the fourth sentence of prior section 201.00(h). Because the sentence was very long, we decided to break it up into two sentences in these final rules. We are also revising the language of final section 201.00(h)(2) to be consistent with the foregoing revisions in final

section 201.00(h)(1). We are revising the statement "age is a more positive factor for those who are under age 45" to "[f]or individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work" to correspond to the changes in the second sentence of final section 201.00(h)(1). Likewise, we are clarifying that "illiterate" means illiterate in English, as in the changes to the third sentence of prior section 201.00(h) (the third sentence of final section 201.00(h)(1)).

Final section 201.00(h)(3) contains the fifth sentence of prior section 201.00(h) and the proposed rules, and the sixth and seventh sentences from the proposed rules. In response to public comments which we discuss in detail below, we revised section 201.00(h)(3) to clarify our intent.

Final section 201.00(h)(3) explains that a decision of "disabled" may be appropriate for some individuals under age 45, and individuals age 45–49 for whom rule 201.17 does not direct a decision of "disabled," who do not have the ability to perform a full range of sedentary work. As in the proposed rules, the final rules have expanded this discussion to include individuals age 45–49; the prior provision (the fifth sentence of prior section 201.00(h)) addressed only individuals who were under age 45. In a minor editorial change, we changed the word "and" in the parenthetical statement that adds reference to individuals age 45–49 to the word "or."

Final section 201.00(h)(3) further provides that whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of the factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. Under such an assessment, a finding that an individual is limited to less than the full range of sedentary work does not necessarily equate with a finding of either "disabled" or "not disabled." Some younger individuals who are unable to perform the full range of sedentary work will be able to make an adjustment to other work and some will not. We require an individualized determination considering each individual's remaining occupational base, age, education, and work experience.

Final section 201.00(h)(4) includes the eighth, ninth, and tenth sentences from the proposed rules. As in the proposed rules, we added new language in final section 201.00(h)(4) to further explain the impact of a maximum sustained capability for no more than the full range of sedentary work on an

individual's ability to do other work. The intent is to make clear that such capacity reflects very serious functional limitations and must be appropriately documented by the evidence in the record. As we will further explain below, in response to public comments that indicated that we seemed to be setting a higher evidentiary standard for individuals who are limited to less than the full range of sedentary work than for individuals with greater residual functional capacities, we revised the second sentence of final section 201.00(h)(4) (the ninth sentence of the proposed rules) by adding the phrase, "as with any case." It was not our intent to set a higher standard in this provision.

We are also deleting, without replacement, the two case examples that were in prior section 201.00(h). The intent of those examples was to reinforce a concept already reflected in this paragraph; i.e., that, using the rules as a framework for decisionmaking, a conclusion of "disabled" may be, but is not necessarily, warranted for younger individuals who do not have the residual functional capacity to do a full range of sedentary work.

We are deleting the examples because they are no longer needed and our adjudicative experience has shown that they can be unclear and have been misinterpreted. For example, we have received questions about whether example 2 applied only to cases involving mental impairments or whether it could apply to other types of impairments. Although our intent had always been that the case examples were applicable to all types of impairments, their removal will avoid possible confusion and help ensure consistency in decisionmaking. We explain our reasons further in the **Public Comments** section, below.

Finally, we made a number of minor editorial changes to improve the consistency of terminology in appendix 2. We do not intend these changes to have a substantive effect on the meaning of the rules.

Public Comments

We published these regulatory provisions in the **Federal Register** as an NPRM on September 23, 1997 (62 FR 49636). We provided the public with a 60-day comment period. The comment period closed on November 24, 1997. We received 18 comment letters in response to this notice from people with disabilities, attorneys, and legal services organizations that represent the interests of disabled persons.

Because many comments were detailed, we have condensed,

summarized, or paraphrased them below. We have, however, tried to summarize each commenter's views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of these rules.

There was one comment that was outside the scope of the proposed rules that we do not address below. The commenter questioned the validity of the sedentary occupational base. We addressed the issue raised by the commenter in a **Federal Register** notice, "Disability Benefit Programs; Status of the Rules for Considering Vocational Factors in Evaluating Social Security and Supplemental Security Income Claims Based on Disability (the Medical-Vocational Rules)" (57 FR 43005, September 17, 1992). We again addressed the issue in 1996, when we provided updated information in footnote 5 of Social Security Ruling (SSR) 96–9p (61 FR 34480).

Comment: One commenter suggested editorial changes in the third sentence of proposed section 201.00(h) (the third sentence of final section 201.00(h)(1)). The commenter suggested that we replace the phrase "for such individuals" with "for individuals age 45 to 49," and remove the word "who" from clause (3) to make the structure of the clause clearer.

Response: We agree with the commenter and have incorporated the suggested changes into the final rules. As we noted in the summary of the changes, we also made other revisions in the third sentence of final section 201.00(h)(1) for clarity and to make citation to the provision easier.

Comment: Four commenters thought that the intent of the proposed rules was to change our rules, not to clarify them. The commenters believed that the language would discourage a finding of "disabled" in younger individuals with a maximum sustained capability for less than a full range of sedentary work. They indicated that the language of the proposed rules for finding an individual disabled was not as clear as the language of the rules for finding an individual not disabled.

Two commenters said that we were attempting to "rush" these regulations through without having the new Commissioner carefully review them. Another indicated that we were trying to "get away with" this regulation because of a political climate that was sympathetic to our alleged desire to find individuals "not disabled." Another commenter said that the new rules were an attempt to lower the number of claims approved at the hearing level.

Two commenters opposed adoption of the proposed rules. One did so without stating a reason. The other said we were being "unfair and inhumane," and that the proposal provided a means to deny people Social Security Disability Insurance benefits.

Response: We have made revisions in the final rules to address the concerns raised by some of these commenters.

We are not changing the substance of our rules, only clarifying them. This clarification of our rules is part of our Process Unification effort, an important Social Security Administration Disability Redesign initiative in which we have been engaged since 1996. The improvements in these final rules will help to ensure that the disability program is administered uniformly and equitably.

This clarification of the rules is not related to any "political climate," as one commenter asserted. These final rules have been under development for almost 3 years, and have not been rushed. The commenter who thought we were being "unfair and inhumane" did not tell us why, but that is certainly not our intent. The revisions are intended only to clarify our rules and to ensure that all adjudicators at all levels of the administrative review process understand and apply our rules consistently.

However, in response to these and other comments, we have revised the final rules to more clearly reflect our intent, to show that a residual functional capacity for less than the full range of sedentary work does not, in itself, mean that an individual is disabled or not disabled. The final rules do not direct the outcome of the assessment, but remind adjudicators that some younger individuals who have a residual functional capacity for less than the full range of sedentary work are disabled and some are not, and that it is necessary to make an individualized assessment of the remaining occupational base. We revised the first sentence in final section 201.00(h)(3) (the fifth sentence in the prior rules) to shorten it and to state more clearly and straightforwardly that it may be appropriate to find a younger individual disabled if the individual is unable to perform the full range of sedentary work. We deleted the phrase, "who do not meet all of the criteria of a specific rule," from the sentence in the prior rules because it was unclear and unnecessary. We then added language to explain in general terms the kinds of factors we want adjudicators to consider when they decide whether a younger individual who is limited to less than the full range of sedentary work is

disabled. The language also provides some explanation about what we mean by "erosion of the occupational base."

The final rules also retain the sentence from the proposed rules that reminds adjudicators that we require them to make individualized assessments considering all the relevant facts.

Comment: One commenter thought that the concept of "erosion of the occupational base" was unclear. Another commenter indicated that the reference to the "occupational base" in the context of the proposed rules should be replaced with "residual functional capacity."

Response: We partially adopted the first comment. We define and discuss the term "occupational base" in a number of SSRs. We first addressed the term in SSR 83-10, "Titles II and XVI: Determining Capability To Do Other Work—The Medical-Vocational Rules of Appendix 2" (Social Security Rulings, Cumulative Edition, 1983, p. 174) and most recently in SSR 96-9p. In our SSRs, we explain that "occupational base" generally means the approximate number of occupations that an individual has the residual functional capacity to perform, considering all exertional and nonexertional limitations and restrictions. We also provide considerably more detail in these SSRs on what the term means, how to determine whether there has been "erosion" of the occupational base, and how to determine the extent of any erosion. We do not believe that it would be appropriate to incorporate that much detail into these final rules.

However, we agree with the commenter that it would be helpful to include some more information in our regulations about what we intend when we refer to erosion of the occupational base for individuals who are unable to do the full range of sedentary work. Therefore, we have added language that provides some additional explanation about the issue. A new sentence explains briefly what we mean by the extent of the erosion of the occupational base; i.e., "the impact of the [individual's] limitations or restrictions on the number of sedentary unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education, and work experience, including any transferable skills or education providing for direct entry into skilled work." Of course, our adjudicators will continue to refer to SSRs 83-10 and 96-9p, and other appropriate SSRs, for more detailed guidance.

We did not adopt the second comment because "residual functional capacity" and "occupational base" are not synonymous and serve different purposes in the application of the medical-vocational rules. We have already explained what we mean by "occupational base." In §§ 404.1545 and 416.945 of our regulations, and in our SSRs, such as SSR 96-9p, we explain that residual functional capacity is what an individual can still do despite his or her limitations. Residual functional capacity is an administrative assessment of the extent to which an individual's medically determinable impairment(s) including any symptoms, such as pain, may cause physical or mental limitations or restrictions that may affect his or her capacity to do work-related physical or mental activities. These terms reflect two different concepts and are not interchangeable.

Comment: One commenter referred to a statement we had made in responding to a comment on the original notice of proposed rulemaking for the medical-vocational guidelines on March 7, 1978 (43 FR 9284). This language indicated that a residual functional capacity for less than the full range of sedentary work would represent a fairly restrictive range of work, and that a finding of disabled would be generally expected in such cases. The commenter recommended that we use that language.

Response: We did not adopt the comment. Neither the comment nor our response in the 1978 preamble focused on younger individuals, as these final rules do. Rather, they addressed all individuals without regard to age. For our general claimant population with a residual functional capacity for less than the full range of sedentary work, the great majority will be found disabled based either on medical factors alone (i.e., under the listings) or on the impact of a seriously restricted residual functional capacity in combination with vocational factors. The current rules, on the other hand, address only a small portion of that group of individuals for whom young age may be an advantageous vocational factor.

Comment: Several commenters referred to the last two sentences of the proposed rules, which stated that,

* * * a finding that an individual is limited to less than the full range of sedentary work will be based on a careful consideration of the evidence of an individual's medical impairment(s) and the limitations and restrictions attributable thereto. Such evidence must support the finding that an individual's residual functional capacity is limited to less than the full range of sedentary work.

They believed that our intent was to impose a more exacting standard of review of the medical evidence to support a finding that the residual functional capacity is for less than a full range of sedentary work than for other exertional levels. These commenters indicated that the same standard of review should apply to support findings at all levels of exertion.

Response: We adopted the comments. Although it was not our intent, we agree that the language of the proposed rules could have been misinterpreted in the manner the commenters contended and have clarified it in response to the comments. We changed the second sentence of final section 201.00(h)(4) (the ninth sentence in the proposed rules) by adding the phrase "as with any case" after the word "Therefore" to make clear that the same standard of review of the evidence is required for all claims decided at step 5 of the sequential evaluation process, irrespective of the residual functional capacity level. We believe these changes will make clear that the same standard of review of the evidence is required for all claims evaluated at step 5.

Comment: Many of the commenters opposed the deletion of case examples 1 and 2 from the rules. A number of the commenters who thought that our intent was to change our rules, not just to clarify them, cited deletion of the examples as an example of what they meant. They believed that eliminating the examples would encourage decisionmakers to find individuals with a residual functional capacity for less than the full range of sedentary work "not disabled." The commenters believed that the examples provided guidance on how to apply the complicated concept of less than a full range of sedentary work.

Several of these commenters expressed skepticism about our position that the examples were unclear and had the potential for causing confusion and inconsistency in decisionmaking. The commenters also indicated that removal of the examples would eliminate the only authority to find disabled an individual who is unable to perform the full range of sedentary work. One commenter believed that, until there is consistency of adjudication at all levels, examples are necessary. Another commenter believed that elimination of the examples would increase administrative costs because a vocational expert would be necessary in all situations in which the residual functional capacity is for less than the full range of sedentary work.

Response: We did not adopt the comments. The examples were

originally intended to illustrate the proper application of a new procedure for determining disability when the original rules were published over 20 years ago. However, experience has shown that the examples, especially example 2, have been misinterpreted and applied as if they were rigid principles that are controlling of case outcomes.

For individuals who are able to do some of the sedentary occupations of which we take administrative notice, but who cannot do substantially all of these occupations, adjudicators must consider the unique characteristics of the physical and mental limitations described in the residual functional capacity assessment of each case. Rather than serving as illustrations of proper application of the rules, the examples have led to overly broad generalizations in this most difficult area of adjudication, and we believe have undermined our longstanding requirement for individualized determinations.

In considering these comments, we did consider whether we could modify the examples and retain them in some form. However, we concluded that the concepts that the examples were intended to explain are better described in SSRs, particularly SSR 96-9p, which are binding on all of our adjudicators. We issued SSR 96-9p as part of our Process Unification initiative to explain in detail disability evaluation when an individual has a residual functional capacity for less than a full range of sedentary work. We believe that, as with that SSR, the revisions we are making in these final rules will further help our adjudicators and the public to understand our intent and provide more uniform and equitable decisions.

We do not agree that deleting the examples will increase administrative costs. These final rules do not change our rules and instructions governing the use of vocational experts or for using the rules in appendix 2 as a framework for decisionmaking. A vocational expert will not be needed in every case involving a residual functional capacity for less than a full range of sedentary work. For example, many such individuals may still be found disabled using the rules in appendix 2 as a framework, as set out in these final rules and in SSR 96-9p.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory

action under Executive Order 12866. Thus, they were subject to OMB review. There are no program or administrative costs or savings associated with these final rules. Therefore, no assessment of costs and benefits is required. We have determined that these final rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998 (63 FR 31885).

Regulatory Flexibility Act

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

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements subject to OMB clearance.

(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 in 20 CFR Part 404

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

Dated: May 7, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subpart P of part 404 of 20 CFR Chapter III is amended as set forth below:

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

Subpart P—[Amended]

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 201.00(h), appendix 2, subpart P, is revised to read as follows:

Appendix 2 to Subpart P of Part 404— Medical-Vocational Guidelines

§ 201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).

* * * * *

(h)(1) The term *younger individual* is used to denote an individual age 18 through 49. For individuals who are age 45–49, age is a less advantageous factor for making an adjustment to other work than for those who are age 18–44. Accordingly, a finding of “disabled” is warranted for individuals age 45–49 who:

- (i) Are restricted to sedentary work,
 - (ii) Are unskilled or have no transferable skills,
 - (iii) Have no past relevant work or can no longer perform past relevant work, and
 - (iv) Are unable to communicate in English, or are able to speak and understand English but are unable to read or write in English.
- (2) For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals’ ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.

(3) Nevertheless, a decision of “disabled” may be appropriate for some individuals under age 45 (or individuals age 45–49 for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of “disabled.” Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual’s limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work.

(4) “Sedentary work” represents a significantly restricted range of work, and individuals with a maximum sustained work capability limited to sedentary work have very serious functional limitations. Therefore, as with any case, a finding that an individual is limited to less than the full range of sedentary work will be based on careful consideration of the evidence of the individual’s medical impairment(s) and the limitations and restrictions attributable to it. Such evidence must support the finding that the individual’s residual functional capacity is limited to less than the full range of sedentary work.

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[FR Doc. 01–21623 Filed 8–27–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nequinat; Oxytetracycline; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations that reflect approval of two new animal drug applications (NADAs) for combination drug Type C feeds containing nequinat. In a notice published in the **Federal Register** of February 28, 1978 (43 FR 8182), FDA withdrew approval of these NADAs. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective August 28, 2001.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: ghaibel@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 28, 1978 (43 FR 8182), the agency published a notice that it was withdrawing approval of NADA 42–919 for combination use of nequinat and roxarsone, and NADA 48–205 for combination use of nequinat and oxytetracycline, both in chicken feed. These actions were requested by the sponsor, Ayerst Laboratories, because the products were no longer manufactured or marketed. However, a final rule published in the same issue of the **Federal Register** (43 FR 8134) did not amend all applicable portions of the regulations. At this time, the agency is amending the animal drug regulations in 21 CFR 558.365 and 558.450 to remove portions reflecting approval of these NADA’s.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely making nonsubstantive changes.

This rule does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a rule of “particular applicability.” Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.365 [Amended]

2. Section 558.365 *Nequinat* is amended by removing paragraphs (d)(1)(ii) and (d)(1)(iii), and by redesignating paragraphs (d)(1)(i)(a) and (d)(1)(i)(b) as paragraphs (d)(1)(ii) and (d)(1)(iii).

§ 558.450 [Amended]

3. Section 558.450 *Oxytetracycline* is amended in table 1 in paragraphs (d)(1)(iv) and (d)(1)(vi) by removing the entries for “Nequinat 18.16 g/ton (0.002%)”.

Dated: August 20, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 42, 47, 56, 57, and 77

RIN 1219–AA47

Hazard Communication

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Interim final rule; delay of effective date; re-opening of record; notice of public hearings; close of record.

SUMMARY: MSHA is delaying the effective date, re-opening the record, and holding additional public hearings on the interim final rule for hazard communication (HazCom). We are re-opening the record on our interim final rule to provide interested persons an additional opportunity to comment on any issue relevant to the rulemaking. Several commenters expressed concern that they had not had sufficient time to fully analyze the interim final rule and to develop and submit meaningful comments. This action also will assure that operators have sufficient time to