

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS**

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 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 the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and Effective, September 16, 2002, is amended as follows:

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

\* \* \* \* \*

**AWP CA E5 Susanville, CA [New]**

Susanville Municipal Airport, CA  
(Lat. 40°22'33" N, long. 120°34'21" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Susanville Municipal Airport and within 2 miles each side of the 134° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10.3 miles southeast of the Susanville Municipal Airport and within 2 miles each side of the 339° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10 miles northwest of the Susanville Municipal Airport.

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Issued in Los Angeles, California, on April 29, 2003.

**John Clancy,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 03–14427 Filed 6–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

**RAILROAD RETIREMENT BOARD**

**20 CFR Part 220**

**RIN 3220–AB50**

**Determining Disability**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Board proposes to amend its regulations to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index and to increase from \$200 to \$530 the minimum amount of monthly earnings to count during a trial work period and then index that amount

to the Social Security national average wage index.

**DATES:** In order for us to consider your comments on these specific proposals, the Board must receive them by August 8, 2003.

**ADDRESSES:** Submit comments in writing to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** The Railroad Retirement Act provides for disability annuities for employees, widow(er)s, and children of deceased railroad employees who are unable to engage in any regular employment because of a physical or mental impairment. Regular employment is defined by reference to the definition of substantial gainful activity under the Social Security Act. Sections 220.141 and 220.142 of the Board's regulations reflect this definition and define "substantial gainful activity" (SGA) as work activity that involves doing significant physical or mental activities for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not profit is realized. Section 220.143 sets forth earnings levels at which the Board considers a person to be engaged in SGA regardless of the severity of his or her impairment. The amount of average monthly earnings that ordinarily demonstrates SGA was increased effective July 1, 1999, when the Board raised from \$500 to \$700 the average monthly earnings guidelines used to determine whether work done by a person is substantial gainful activity.

The Board proposes to issue regulations that would increase certain thresholds for disabled workers. Under the proposal, the average monthly earnings guideline, which is used to determine whether work done by disabled workers (other than those who are blind) is substantial gainful activity, would be increased to \$740.00 for calendar year 2001 and would thereafter be automatically adjusted each year based on increases in the Social Security national average wage index. See 42 U.S.C. 409(k)(1). The amount that is used to determine if a disabled individual has performed "services" during a trial work period also would be subject to an automatic annual adjustment. These changes would conform to changes in the regulations of the Social Security Administration that

became final effective January 29, 2001 (65 FR 82905, December 29, 2000).

In order to be eligible for disability benefits, an applicant must not be performing substantial gainful activity. A beneficiary's ongoing eligibility for disability benefits is also subject to this rule. Therefore, the Board has established both upper and lower thresholds as guidelines for determining, respectively, what is prima facie evidence of engaging in SGA and what is prima facie evidence of not engaging in SGA. Except for those who work in sheltered workshops, disabled workers with earnings between the two thresholds are subject to further examination. Currently, the upper and lower thresholds are \$700 and \$300, respectively. For those working in sheltered workshops, earnings below the upper threshold are prima facie evidence that the worker is not performing SGA.

Under the Board's proposal, beginning January 1, 2002, the upper threshold would be adjusted annually, based on the Social Security national average wage index, to conform to the SGA level determined by the Social Security Administration (SSA) and published in the **Federal Register** each October as part of SSA's notice that includes new adjustments. Under this proposal, the SGA amount would never be lower than the previous year's amount. However, there may be years in which there is no increase.

As part of this proposal, the Board also plans to eliminate the lower SGA threshold so that earnings below the upper threshold would be prima facie evidence that a disabled worker is not engaging in SGA, regardless of whether the worker is working in competitive employment or in a sheltered workshop.

The Board also proposes to increase the monthly amount that a disabled worker may earn within a trial work period without jeopardizing the amount of time remaining in the trial work period. Currently, a disabled worker may test his or her ability to work and still be considered disabled by working during a trial work period. A disabled beneficiary will continue to be considered disabled until the beneficiary performs "service" in at least nine months within a rolling 60-month period. Since 1990, the Board has considered any month in which at least more than \$200 is earned to be a month of service.

Under the proposed rule, the threshold amount would be increased to \$530 for 2001, and then would be adjusted annually thereafter based on the Social Security national average wage index to conform to the amount

determined by the Social Security Administration and published in the **Federal Register** every October. The Board notes that while the SGA amount has increased since 1990, during the same period, the trial work period services amount has remained unchanged. As with the change proposed for the SGA threshold amount, the trial work period amount would never be lower than the previous year's amount.

**Proposed Regulations—Background**

The Board proposes to revise §§ 220.143(b)(2) and (b)(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 average monthly earnings considered to be substantial gainful activity will be increased from \$700 to \$740. Beginning January 2002, the guideline would be the higher of the previous year's amount or an increased amount as computed and published by the Social Security Administration based on the Social Security national average wage index.

The Board also proposes to amend §§ 220.143(b)(2) and (b)(4) to clarify that this guideline applies to earnings from sheltered work. This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in § 220.144 of this part.

The Board proposes to revise §§ 220.143(b)(3) and (b)(6) to provide, beginning January 2002, 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 § 220.143(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. The Board also proposes to make conforming changes to § 220.143(b)(4).

The Board proposes to revise § 220.170 to increase from \$200 to \$530 the minimum amount of monthly earnings that we consider shows that a person is performing or has performed "services" for counting trial work period months, effective January 1, 2001. We also propose to 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 1, 2002.

**Collection of Information Requirements**

The amendments to this part do not impose information collection and recordkeeping requirements.

Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

**Regulatory Impact Statement**

Prior to publication of this proposed rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of \$100 million or more per year.

The amendments made by this proposed rule are not significant. The amendments to §§ 220.143 and 220.170 will index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, and increases from \$200 to 530% the minimum amount of monthly earnings to count during a trial work period, and then index that amount to the Social Security national average wage index.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(l). Section 551(l)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order

13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been found not to be a significant amendment by the Office of Management and Budget.

**List of Subjects in 20 CFR Part 220**

Railroad Retirement.

For the reasons stated in the preamble, the Railroad Retirement Board proposes to amend part 220 of chapter II of title 20 of the Code of Federal Regulations as follows:

**PART 220—DETERMINING DISABILITY**

1. The authority citation for part 220 continues to read as follows:

**Authority:** 45 U.S.C. 231a; 45 U.S.C. 231f.

**Subpart L—Substantial Gainful Activity**

2. Section 220.143 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

**§ 220.143 Evaluation guides for an employed claimant.**

\* \* \* \* \*

(b) \* \* \* (1) \* \* \*

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant show that the claimant engaged in substantial gainful activity if:

(i) *Before January 1, 2002,* the earnings averaged more than the amount(s) in Table 1 of this section for the time(s) in which the claimant worked.

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

(A) The amount for the previous year, or

(B) The amount established by the Social Security Administration to constitute substantial gainful activity for such year.

**TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED**

For months:	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

TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED—Continued

For months:	Monthly earnings averaged more than:
In calendar year 1979 .....	280
In calendar years 1980–1989 ...	300
January 1990–June 1999 .....	500
July 1999–December 2000 .....	700
In Calendar year 2001 .....	740

(3) *Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity.* Beginning January 1, 2001, if the claimant's earnings are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which the claimant works, the Board will generally consider that the earnings from the claimant's work as an employee will show the claimant has not engaged in substantial gainful activity. Before January 1, 2001, if the claimant's earnings were less than the amount(s) in Table 2 of this section for the year(s) in which the claimant worked, the Board will generally consider that the earnings from the claimant's work as an employee will show that the claimant has not engaged in substantial gainful activity.

TABLE 2.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY NOT PERFORMED

For months:	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, 2002, if the claimant worked in a sheltered workshop.* Before January 1, 2002, if the claimant worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the Board will ordinarily consider that the claimant's earnings from this work show that the claimant has engaged in substantial gainful activity if the claimant's earnings averaged more than the amounts in Table 1 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 paragraph (b)(2) of this section will

ordinarily show that the claimant has 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 the claimant's earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in paragraph (b)(2), the Board will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that the claimant may have engaged in substantial gainful activity.

\* \* \* \* \*

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

(i) Before January 1, 2002, if the claimant's average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, the Board will generally consider other information in addition to the claimant's 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 the Board 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, 2002, if the claimant's average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, the Board will generally not consider other information in addition to the claimant's earnings unless there is evidence indicating that the claimant may be engaging in substantial gainful activity or that the claimant is in a position to defer or suppress his or her earnings.

(iii) Examples of other information the Board may consider include, whether—

(A) The claimant's work is comparable to that of unimpaired people in the claimant's 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) The claimant's 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 the claimant's community.

**Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment**

3. Section 220.170 is amended by revising paragraph (b) to read as follows:

**§ 220.170 The trial work period.**

\* \* \* \* \*

(b) *What the Board means by services.* When used in this section, services means any activity, 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 to be services when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(1) *If the claimant is an employee.* The Board will consider the claimant's work as an employee to be services if:

(i) *Before January 1, 2002,* the claimant's earnings in a month were more than the amount(s) indicated in Table 1 of this section for the year(s) in which the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant's 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) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine whether a person has performed services for counting trial work period months.

(2) *If the claimant is self-employed.* The Board will consider the claimant's activities as a self-employed person to be services if:

(i) *Before January 1, 2002,* the claimant's net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which the claimant worked, or the hours the claimant 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 the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant worked more than 40 hours a month in the business, or the claimant's 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) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine

whether a person has performed services for counting trial work period months.

TABLE 1.—FOR NON-SELF EMPLOYED

For months:	You earn more than:
In calendar years before 1979 .....	\$50
In calendar years 1979–1989 .....	75
In calendar years 1990–2001 .....	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 (hours):
In calendar years before 1979 .....	\$50	15
In calendar years 1979–1989 .....	75	15
In calendar years 1990–2000 .....	200	40
In calendar year 2001 .....	530	40

\* \* \* \* \*

Dated: May 30, 2003.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 03–14273 Filed 6–6–03; 8:45 am]

BILLING CODE 7905–01–P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 1000**

[Docket No. FR–4676–N–08]

**Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of negotiated rulemaking committee meeting.

**SUMMARY:** This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that

arise out of the allocation or reallocation of IHBG funds.

**DATES:** The committee meeting will be held on Tuesday, June 17, 2003, Wednesday, June 18, 2003, and Thursday, June 19, 2003. On June 17, 2003, the meeting will begin at approximately 9 a.m. and end at approximately 6 p.m. On June 18, 2003, the meeting will begin at approximately 8 a.m. and end at approximately 6 p.m. On June 19, 2003, the meeting will begin at approximately 8 a.m. and end at approximately 3 p.m. The committee workgroups may, at their discretion, schedule evening sessions on these days.

**ADDRESSES:** The meeting will take place at the Edgewater Hotel, Pier 67, 2411 Alaskan Way, Seattle, Washington 98121; telephone 1–800–624–0670 (this is a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

HUD has established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other IHBG program regulations that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to Native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349) final rule, which created a new 24 CFR part 1000

containing the IHBG program regulations.

**II. Negotiated Rulemaking Committee Meeting**

This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document. The agenda planned for the meeting includes work group sessions and the discussion of work group progress reports by the full committee. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: June 3, 2003.

**Rodger J. Boyd,**

*Deputy Assistant Secretary for Native American Programs.*

[FR Doc. 03–14401 Filed 6–6–03; 8:45 am]

BILLING CODE 4210–33–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 14a**

[REG–122917–02]

RIN 1545–BA75

**Statutory Options**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking; withdrawal of previous rulemaking; and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to statutory options. These proposed regulations affect certain taxpayers who participate in the transfer of stock pursuant to the exercise of incentive stock options and the exercise of options granted pursuant to an employee stock purchase plan (statutory options). These proposed regulations provide guidance to assist these taxpayers in complying with the law in addition to clarifying rules regarding statutory options. This document also withdraws a previous notice of proposed rulemaking.