Issued in Fort Worth, Texas on February 16, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–903 Filed 2–28–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25943; Airspace Docket No. 06–ACE–13]

Modification of Class E Airspace; Phillipsburg, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Phillipsburg, KS.

DATES: *Effective Date:* 0901 UTC, May 10, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; *telephone:* (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 18, 2007 (72 FR 2181). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 10, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Forth Worth, Texas on February 16, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–902 Filed 2–28–07; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0085]

RIN 0960–AG05

Optometrists as ''Acceptable Medical Sources'' To Establish a Medically Determinable Impairment

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the Social Security and Supplemental Security Income (SSI) disability regulations regarding sources of evidence for establishing a medically determinable impairment under titles II and XVI of the Social Security Act (the Act). The revised regulations expand the situations in which we consider licensed optometrists to be ''acceptable medical sources.''

DATES: These rules are effective April 2, 2007.

FOR FURTHER INFORMATION CONTACT: Art Spencer, Director, Office of Disability Evaluation Policy, Social Security Administration, 4465 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–5766 or TTY (410) 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, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

What is an ''acceptable medical source?''

Our rules provide that you must show that you have a medically determinable impairment with evidence from an ''acceptable medical source.'' An ''acceptable medical source'' is an individual who has the training and expertise to provide us with the signs and laboratory findings based on medically acceptable clinical and laboratory diagnostic techniques that establish a medically determinable physical or mental impairment. Our regulations identify professionals whom we consider to be ''acceptable medical sources.'' (See §§ 404.1513(a) and 416.913(a).) In our prior rules, these sections provided that a licensed optometrist was an ''acceptable medical source,'' but only for the measurement of visual acuity and visual fields. They further indicated that, for claims under title II, we might need a report from a physician to determine other aspects of eye diseases.

Our rules in §§ 404.1513(d) and 416.913(d) provide that, once we have established that you have a medically determinable impairment, we consider all other relevant evidence from other medical and non-medical sources, including your own statements, to determine its severity and how it affects you.

Why are we changing our rules?

In the early 1990s, we discussed expanding the role of optometrists as ''acceptable medical sources'' with the American Optometric Association (AOA). However, because licensing requirements and scope of practice varied considerably among jurisdictions at that time, we found that it was not feasible for us to revise our policy.

More recently, we again met with representatives of the AOA and obtained information about the education, qualifications, and State scope-of-practice requirements related to optometrists. Based on our review of accreditation and practice requirements, we have determined that, with the exception of the U.S. Virgin Islands, the licensing requirements, scope of treatment, and diagnostic protocols for licensed optometrists are sufficient to qualify all licensed optometrists as ''acceptable medical sources'' for visual disorders. Therefore, it is now appropriate to revise our regulations to authorize licensed optometrists to be ''acceptable medical sources'' for visual disorders in all jurisdictions but the U.S. Virgin Islands.[1]

The revised regulations expand the situations in which we consider licensed optometrists to be ''acceptable medical sources.'' These revised regulations will allow us to make more decisions based on medical evidence supplied to us solely from optometrists, rather than having to purchase time-consuming and expensive consultative examinations with ophthalmologists. Therefore, these regulations will help some individuals with visual disorders qualify for benefits more quickly.

[1] The U.S. Virgin Islands does not allow optometrists to administer or prescribe pharmaceuticals, including topical application of pharmaceuticals for diagnostic or treatment purposes. Because a complete evaluation of the eye includes the use of diagnostic pharmaceuticals, optometrists in the U.S. Virgin Islands are not qualified to perform a complete evaluation of the eye.

What rules are we revising?

We are revising §§ 404.1513(a)(3) and 416.913(a)(3) to provide that, except in the U.S. Virgin Islands, licensed optometrists are ''acceptable medical sources'' for purposes of establishing a medically determinable impairment for visual disorders only. However, we are maintaining our current rules for licensed optometrists in the U.S. Virgin Islands, where these individuals will continue to be ''acceptable medical sources'' for measurement of visual acuity and visual fields only.

What programs do these revised regulations affect?

These revised rules affect disability and blindness determinations and decisions that we make under titles II and XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or disability or blindness under title XVI, these rules affect the Medicare and Medicaid programs.

Who can get disability benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title II of the Act, you may qualify for a period of disability if you are insured for disability under Social Security and have a disability as defined in section 216(i)(1) of the Act. That section defines disability to include statutory blindness, for purposes of establishing a period of disability under title II. If we find that you are blind and you meet the insured status requirement, we may establish a period of disability for you regardless of whether you can do substantial gainful activity (SGA). A period of disability protects your earnings record under Social Security so that the time you are disabled will not count against you in determining whether you will have worked long enough to qualify for benefits and the amount of your benefits. See §§ 404.320, 404.1505, 404.1581, and 404.1582.

Under title XVI of the Act, we provide for SSI payments on the basis of disability or blindness if you are disabled or blind and have limited income and resources.

How do we define blindness?

For both the title II and title XVI programs, the Act defines blindness as ''central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered * * * as having a central visual acuity of 20/200 or less.'' (See sections 216(i)(1) and 1614(a)(2) of the Act.)

Title II of the Act does not provide a separate category of benefits based on blindness. However, you may be entitled to benefits based on disability under title II of the Act if you are blind.

By contrast, title XVI of the Act provides for a category of payments based on blindness as well as a category of payments based on disability. If you are blind and meet the SSI income and resources requirements, you may be eligible for SSI payments based on blindness. Your blindness does not have to meet a 12-month duration requirement for you to be eligible for these payments. Also, there is no requirement that you must be unable to do any SGA. However, if you are working, we will consider your earnings to determine if you are eligible for SSI payments.

How do we decide whether you are disabled?

If you are applying for disability benefits under title II of the Act, § 404.1513(a) of our regulations provides that we need evidence from ''acceptable medical sources'' to establish whether you have a medically determinable impairment(s). Therefore, in general, to be entitled to disability benefits under title II, your blindness must result from a medically determinable impairment and meet the 12-month duration requirement. (See §§ 404.1508, 404.1513, and 404.1581.) Also, if you are under age 55, you must be unable to do any SGA. (See §§ 404.1582 and 404.1584(b).) Even though you are doing SGA, we may still find that you are entitled to title II disability benefits if—

- You are blind;
- You are age 55 or older; and
- You are unable to use skills or abilities like the ones you used in any SGA which you did regularly and for a substantial period of time. However, we will not pay you any cash benefits for any month in which you are doing SGA. (See §§ 404.1583 and 404.1584(c).)

Section 416.913(a) of our regulations provides that if you are claiming benefits under title XVI on the basis of disability, not blindness, your disability must result from a medically determinable impairment documented by ''acceptable medical sources.'' However, blindness is treated differently under title XVI of the Act. Under title XVI, blindness and disability are separate categories of SSI payments, and the requirements for eligibility based on blindness are different from the requirements for eligibility based on disability. Under title XVI, the only evidence we need to establish statutory blindness is evidence showing that your visual acuity or visual field, in the better eye, meets the criteria described in § 416.981 of our regulations, provided that those measurements are consistent with the other evidence in your case record. We do not need to determine the cause of your blindness for you to be eligible for SSI payments based on blindness. Also, as provided in § 416.983, there is no duration requirement for statutory blindness under title XVI. Section 416.913(f) provides that if you are applying for benefits under title XVI on the basis of statutory blindness, we will require an examination by a physician skilled in diseases of the eye or by an optometrist, whichever you may select.

What is a ''medically determinable impairment?''

We will not consider you to be disabled or blind unless you furnish medical and other evidence that we need to show that you are disabled or blind. (See sections 223(d)(5)(A) and 1614(a)(3)(H)(i) of the Act and §§ 404.1512(a) and 416.912(a) of our regulations.) The Act requires that you show that your disability results from a medically determinable physical or mental impairment. A physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See sections 223(d)(3) and 1614(a)(3)(D) of the Act.) Our regulations provide that a physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings. (See §§ 404.1508 and 416.908.)

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

What do we mean by ''final rules'' and ''prior rules?''

Even though these rules will not go into effect until 30 days after publication of this notice, for clarity we refer to the changes we are making here as the ''final rules'' and to the rules that will be changed by these final rules as the ''prior rules.''

When will we start to use these final rules?

We will use these rules on their effective date. We will continue to use our prior rules until the effective date of these final rules. When the final rules become effective, we will apply them to new applications filed on or after the effective date of these rules and to claims pending before us, as we describe below.

As is our usual practice when we make changes to our regulations, we will apply these final rules on or after their effective date whenever we make a determination or decision, including in those claims in which we make a determination or decision after remand to us from a Federal court. With respect to claims in which we have made a final decision and that are pending judicial review in Federal court, we expect that the court's review of the Commissioner's final decision would be made in accordance with the rules in effect at the time the final decision of the Commissioner was issued. If a court reverses the Commissioner's final decision and remands the case for further administrative proceedings after the effective date of these final rules, we will apply the provisions of these final rules to the entire period at issue in the claim in our new decision issued pursuant to the court's remand.

Public Comments

In the notice of proposed rulemaking (NPRM) we published in the **Federal Register** on March 1, 2006 (71 FR 10456), we provided the public with a 60-day comment period that ended on May 1, 2006.

We received 25 sets of comments. The commenters included medical organizations, a professional association of individuals who evaluate and adjudicate Social Security disability claims, optometrists, and other individuals.

Twenty-three commenters supported the proposed rules. Since these commenters did not recommend any changes to these rules, we have not summarized or responded to their comments below. Because some of the remaining comments were long, we have condensed, summarized, and paraphrased them below. We have tried to present the commenters' views adequately and to respond to the issues raised by the commenters that were within the scope of the rulemaking. We provide our reasons for adopting or not adopting the recommendations in the summaries of the comments and our responses below.

Comment: A commenter disagreed with our proposed changes on the basis that licensed optometrists have less training than ophthalmologists. This commenter was concerned that the expansion of the definition of ''acceptable medical sources'' to include licensed optometrists might not be appropriate.

Response: As we indicated in the NPRM, and as noted above, we obtained information about the education, qualifications, and States' scope-of-practice requirements related to optometrists. Based on our careful review of this information, we have determined that, with the exception of the U.S. Virgin Islands, the licensing requirements, scope of treatment, and diagnostic protocols for licensed optometrists are sufficient to qualify all licensed optometrists as ''acceptable medical sources'' for establishing the existence of visual disorders under our disability programs. Therefore, we have determined that it is appropriate to revise our regulations to make licensed optometrists ''acceptable medical sources'' for establishing visual disorders in all jurisdictions but the U.S. Virgin Islands.

With this change, we will be able to make more decisions based on existing medical evidence, without having to purchase time-consuming and expensive consultative examinations, thereby allowing some individuals with visual disorders to qualify for benefits more quickly. While we respect the knowledge, skills, and education of ophthalmologists, our research shows that optometrists are capable of providing the evidence, including the signs and laboratory findings, that we need to establish a medically determinable visual disorder.

Comment: Two commenters disagreed with our proposed changes because the law and our regulations require that a disability be ''medically determinable.'' They believed that this meant that we should continue to require an examination by a treating or consulting ophthalmologist (M.D. or D.O.) to diagnose and establish the pathology of disorder causing visual impairment. One of these commenters noted the differences between the criteria in titles II and XVI and indicated that in the case of title II disability findings related to blindness, the evidence must show, and an ''acceptable medical source'' must agree, that a medical condition caused the claimant's blindness. This commenter believed that optometrists are not qualified to identify or evaluate the underlying medical cause of blindness, or to monitor, treat, and provide prognoses for many eye diseases that could lead to disabling vision loss or the likely outcomes from those interventions, because they are not fully knowledgeable of the potential treatments and lack the medical training, knowledge, and expertise needed to interpret the clinical and laboratory findings that would be necessary to diagnose a medically determinable impairment.

Response: While we agree that title II requires that a visual disorder must be established by evidence from an ''acceptable medical source,'' the Act does not define who is an ''acceptable medical source.'' Instead, and as we noted in the NPRM (71 FR at 10458) and earlier in this preamble, Congress gave the Commissioner the authority to make rules and regulations that provide for ''the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits * * *.'' See sections 205(a) and 1631(d)(1) of the Act. Under that authority, we have determined that, with the exception of the U.S. Virgin Islands, the licensing requirements, scope of treatment, and diagnostic protocols for licensed optometrists are sufficient to qualify all licensed optometrists as ''acceptable medical sources'' for establishing the existence of visual disorders for purposes of our disability programs, including for purposes of benefits under title II. We do not agree with these commenters that we also need evidence from a physician in these cases.

Comment: One commenter questioned the differences between the eligibility requirements for benefits based on blindness under title XVI and benefits based on disability under title II and title XVI. This commenter noted that it is not necessary to establish the cause of the blindness in order to receive benefits based on blindness under title XVI, but it is necessary to establish the

cause of any visual loss in order to receive disability benefits under either title XVI or title II, including disability benefits based on blindness under title II. The commenter indicated that these differences, as well as the fact that there is no duration requirement for benefits based on blindness under title XVI while there is such a requirement under title II, penalize individuals who receive title II disability benefits based on blindness. The commenter also recommended that if the title XVI eligibility requirements are statutory and cannot be changed, we should apply them when we determine whether individuals are disabled based on blindness under title II.

Response: These rules are required by the Act. ''Blindness'' and ''disability'' are separate categories under title XVI, whereas under title II blindness is considered a type of ''disability.'' The statutory requirements for eligibility based on blindness under title XVI are different from the statutory requirements for eligibility based on disability under title II and title XVI. As a matter of law, we cannot apply the title XVI eligibility requirements for statutory blindness to title II claims for disability.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These rules do not impose any new or revised reporting or recordkeeping requirements on the public.

(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, Blind, 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 (SSI).

Dated: November 27, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations 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. Revise § 404.1513(a)(3) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

(a) * * *

(3) Licensed optometrists, for purposes of establishing visual disorders only (except, in the U.S. Virgin Islands, licensed optometrists, for the measurement of visual acuity and visual fields only);

* * * * *

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

Subpart I—[Amended]

■ 3. 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), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b); 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).

■ 4. Revise § 416.913(a)(3) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

(a) * * *

(3) Licensed optometrists, for purposes of establishing visual disorders only (except, in the U.S. Virgin Islands, licensed optometrists, for the measurement of visual acuity and visual fields only). (See paragraph (f) of this section for the evidence needed for statutory blindness);

* * * * *

[FR Doc. E7–3577 Filed 2–28–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

New Animal Drugs; Maropitant

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 two new animal drug applications (NADAs) filed by Pfizer, Inc. The NADAs provide for the veterinary prescription use of maropitant citrate tablets and maropitant citrate injectable solution for the management of vomiting in dogs.

DATES: This rule is effective March 1, 2007.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–262 for CERENIA (maropitant citrate) Tablets. The NADA provides for the veterinary prescription use of maropitant citrate tablets in dogs for the prevention of acute vomiting and for the prevention of vomiting due to motion sickness. The application is approved as of January 29, 2007, and 21 CFR part 520 is amended by adding new § 520.1315 to reflect the approval.

Pfizer, Inc., also filed NADA 141–263 for CERENIA (maropitant citrate) Injectable Solution, used by veterinary prescription in dogs for the prevention and treatment of acute vomiting. The application is approved as of January 29, 2007, and 21 CFR part 522 is amended by adding new § 522.1315 to reflect the approval.