

redesignated as newly revised paragraph (b) to read as follows:

**§ 292.602 Exemption of qualifying facilities from certain State law and regulation.**

\* \* \* \* \*

(b) Exemption from certain State laws and regulations.

(1) Any qualifying facility shall be exempted (except as provided in paragraph (b)(2)) of this section from state laws or regulations respecting:

(i) The rates of electric utilities; and  
(ii) The financial and organizational regulation of electric utilities.

(2) A qualifying facility may not be exempted from state laws and regulations implementing subpart C.

(3) Upon request of a state regulatory authority or nonregulated electric utility, the Commission may consider a limitation on the exemptions specified in paragraph (b)(1) of this section.

(4) Upon request of any person, the Commission may determine whether a qualifying facility is exempt from a particular state law or regulation.

5. In § 292.203, paragraphs (a) and (b) are revised to read as follows:

**§ 292.203 General requirements for qualification.**

(a) *Small power production facilities.* Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

(1) Meets the maximum size criteria specified in § 292.204(a); and  
(2) Meets the fuel use criteria specified in § 292.204(b).

(b) *Cogeneration facilities.* A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(1) Meets any applicable operating and efficiency standards specified in § 292.205(a) and (b).

(2) [Reserved]

\* \* \* \* \*

**§ 292.206 [Removed]**

6. Section 292.206 is removed.

**Subchapter D—Approved Forms, Federal Power Act and Public Utility Regulatory Policies Act of 1978**

**PART 131—FORMS**

1. The authority citation for part 131 continues to read:

**Authority:** 16 U.S.C. 791a–825r. 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 131.80 is amended by revising paragraphs 1a, 1b, and 1c of Part A and by adding a new heading and paragraph 15 of Part C to read as follows:

**§ 131.80 FERC Form No. 556, Certification of qualifying facility status for an existing or a proposed small power production or cogeneration facility.**

(See § 292.207 of this chapter.)

**FERC Form 556, OMB No. 1902–0075**

Expires \_\_\_\_\_

*Certification of Qualifying Facility Status for an Existing or a Proposed Small Power Production or Cogeneration Facility*

(To be completed for the purpose of demonstrating up-to-date conformance with the qualification criteria of Section 292.203(a)(1) or Section 292.203(b), based on actual or planned operating experience)

*General instructions:* Part A of the form should be completed by all small power producers or cogenerators. Part B applies to small power production facilities. Part C applies to cogeneration facilities. All references to sections are with regard to Part 292 of Title 18 of the Code of Federal Regulations, unless otherwise indicated.

*Part A—General Information To Be Submitted by All Applicants*

1a. Full name:

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any: QF \_\_\_\_\_

Purpose of instant filing (self-certification or self-recertification [Section 292.207(a)(1)], or application for Commission certification or recertification [Sections 292.207(b) and (d)(2)]):

1b. Full address of applicant:

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility. Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities. In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

\* \* \* \* \*

*Part C—Description of the Cogeneration Facility*

\* \* \* \* \*

*For New Cogeneration Facilities*

15. For any cogeneration facility that was either not certified as a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification under section 292.207 prior to [the date the Commission issues a final rule], also show:

(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner;  
(ii) The electrical, thermal, chemical and mechanical output of the cogeneration

facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and

(iii) Continuing progress in the development of efficient electric energy generating technology.

[FR Doc. 05–20695 Filed 10–17–05; 8:45 am]

**BILLING CODE 6717–01–P**

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 416**

**RIN 0960–AG10**

**Rules for the Issuance of Work Report Receipts, Payment of Benefits for Trial Work Period Service Months After a Fraud Conviction, Changes to the Student Earned Income Exclusion, and Expansion of the Reentitlement Period for Childhood Disability Benefits**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We are proposing to amend our rules to reflect and implement sections 202, 208, 420A, and 432 of the Social Security Protection Act of 2004 (the SSPA). Section 202 of the SSPA requires us to issue a receipt each time you or your representative report a change in your work activity or give us documentation of a change in your earnings if you receive benefits based on disability under title II or title XVI of the Social Security Act (the Act). Section 208 changes the way we pay benefits during the trial work period if you are convicted by a Federal court of fraudulently concealing your work activity. Section 420A changed the law to allow you to become reentitled to childhood disability benefits under title II at any time if your previous entitlement to childhood disability benefits was terminated because of the performance of substantial gainful activity. Section 432 changes the way we decide if you are eligible for the student earned income exclusion. We also propose to change the SSI student policy to include home schooling as a form of regular school attendance. Additionally, we are proposing to apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent.

**DATES:** To be sure that your comments are considered, we must receive them by December 19, 2005.

**ADDRESSES:** You may give us your comments by: using our Internet facility (i.e., Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal: <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

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>. It is also available on the Internet site for SSA (i.e., Social Security Online) at <http://www.socialsecurity.gov/regulations/>.

**FOR FURTHER INFORMATION CONTACT:** Cindy Duzan, Policy Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-4203, or TTY (410) 966-5609 for information about these proposed rules. For information on eligibility or filing for benefits, call our national toll-free number 1 (800) 772-1213 or TTY 1 (800) 325-0778. You may also contact Social Security Online, at <http://www.socialsecurity.gov/>.

#### **SUPPLEMENTARY INFORMATION:**

##### **What is the purpose of this notice of proposed rulemaking (NPRM)?**

In this NPRM, we propose to amend our rules to reflect and codify sections 202, 208, 420A, and 432 of the SSPA. These proposed changes apply to you if you engage in work activity while entitled to or eligible for benefits based on disability under title II or title XVI of the Act.

We also propose to change the SSI student policy to include home schooling as a form of regular school attendance. This may allow more individuals to benefit from the student earned income exclusion. This change, which is separate from the changes being made to reflect and implement the SSPA, will make the title II and title XVI programs uniform with respect to home schooling. The title II program currently recognizes home schooling as a form of school attendance. We also propose to apply the student earned income exclusion when determining the

countable income of an ineligible spouse or ineligible parent.

##### **When will we start to use these rules?**

The effective date of the provisions of the SSPA that are the subject of these proposed rules are set forth below and will take effect on the dates mandated by statute. The changes regarding home schooling will not take effect until we evaluate the public comments we receive and issue final rules in the **Federal Register**. If we publish final rules, we will state in the notice the date on which they go into effect, explain in the preamble how we will apply them, and summarize and respond to the substantive public comments.

##### **What is the purpose of section 202?**

Section 202 of the SSPA requires us to issue a receipt to you or your representative each time you or your representative report a change in your work activity or give us evidence of a change in your earnings, such as your pay stubs, if you receive benefits based on disability under title II or title XVI of the Act. The law provides that we issue a receipt each time you or your representative report to us at least until we establish a centralized computer file that will electronically record the information about the change in your work activity and the date that you make your report. After the centralized computer file is implemented, we will continue to issue receipts to you upon your request.

In the past, the reports you gave to us about your work activity may not have been processed timely, resulting in processing delays. This might have caused us to pay benefits to you incorrectly, without considering the effect your work and earnings may have had on your benefits, causing you to become overpaid. We are implementing a new centralized computer system which will create an electronic record of the work information that you report to us. This will help us ensure that we fulfill our responsibility to process your earnings reports and pay benefits to you correctly. We expect this centralized computer system to be operational in the fall of 2005. Issuing a receipt to you when you report your work or earnings will provide you with proof that you properly fulfilled your responsibility to report your earnings to us until such time as the electronic record is established.

##### **Why must you report your work activity?**

If you receive benefits based on disability under title II of the Act or are eligible for benefits under title XVI, you

are required to report changes in your work activity and earnings to us. (See §§ 404.1588 and 416.708.)

Your earnings can affect your eligibility for benefits or the amount of your benefits.

You can report your work to us:

- By phone to our toll free number;
- In person or by phone to your local office; or
- By mailing your pay stubs to your local office.

We are also making efforts to expand the ways you can report information to us.

##### **What is the effective date of section 202?**

The statutory change that requires us to issue receipts every time you or your representative report a change in your work activity or give us documentation of a change in your earnings is effective as soon as possible, but no later than March 2, 2005. We are currently issuing receipts to you or your representative and will continue to do so at least until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

##### **What is the purpose of section 208?**

Section 208 of the SSPA provides that if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period, no benefits are payable for any trial work period service month (generally a month of work activity, see § 404.1592) that occurred on or after March 2004 and before the date of your conviction. Section 208 of the SSPA will help to deter fraud within the Social Security program by prohibiting payment for trial work period service months to disabled individuals who fraudulently conceal work activity.

##### **What is the trial work period?**

The trial work period allows a title II beneficiary to test his or her ability to work for at least 9 months and still be considered disabled. During your trial work period, you continue to be entitled to receive your Social Security disability insurance benefits regardless of how high your earnings might be so long as you continue to have a disabling impairment. The trial work period continues until you accumulate 9 months (not necessarily consecutive) in which you performed "services" (i.e., work activity) within a rolling 60-consecutive-month period. We use this "services" rule to count trial work

period months. Under section 222(c)(2) of the Act and § 404.1592(b) of the regulations, services means any activity (whether legal or illegal), which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally use earnings guidelines to evaluate whether the work activity you are performing as an employee or self-employed person is services for the trial work period. We consider your work in a particular month to be services if you earn more than \$590 in that month for the year 2005, or work more than 80 self-employed hours in that month. The dollar amount can be adjusted each year based on the national average wage.

#### **What is the effective date of section 208?**

The statutory change provides that an individual is not entitled to receive title II disability benefits for trial work period service months that occur on or after March 2004 and before the date of conviction by a Federal court of fraudulently concealing work activity during that trial work period.

#### **What is the purpose of section 420A?**

Section 420A of the SSPA provides that, if your previous entitlement to childhood disability benefits under title II of the Act ended due to the performance of substantial gainful activity, you may become reentitled to childhood disability benefits at any time if you become disabled again and you meet other requirements for entitlement. Prior to the effective date of section 420A, if childhood disability benefits were terminated because disability ceased, you could become reentitled to benefits only if you became disabled again within 7 years of the most recent termination. Section 420A removes a significant disincentive to work for childhood disability beneficiaries by removing the 7-year restriction on reentitlement for individuals whose entitlement to childhood disability benefits was terminated due to the performance of substantial gainful activity. The 7-year restriction continues to apply to beneficiaries whose previous entitlement to childhood disability benefits terminated because of medical improvement.

#### **What is the effective date of section 420A?**

The statutory change that removed the 7-year restriction on reentitlement to childhood disability benefits under title II of the Act if the previous entitlement terminated due to the performance of substantial gainful activity became effective with respect to benefits

payable for months beginning October 2004.

#### **What is the purpose of section 432?**

Section 432 of the SSPA changes who is eligible for the student earned income exclusion under title XVI of the Act. The law increases the number of persons eligible for the exclusion by eliminating the requirement that you must meet the definition of a child under our SSI rules to be eligible for this exclusion. Specifically, section 432 of the SSPA removes the restriction that you must be unmarried and not head of your own household to qualify. You no longer need to be considered a "child" to get the student earned income exclusion, you only must be under the age of 22, and, as before, regularly attending a school, college, or university, or a course of vocational or technical training to prepare for gainful employment.

#### **What is the student earned income exclusion?**

The student earned income exclusion is a provision that allows us to exclude a greater amount of your earned income if you are a student than we do under our usual income counting rules. If you meet the definition of child for SSI and you are regularly attending school, we exclude a greater amount of your earned income when determining your eligibility for, and the amount of, benefits. For the year 2005, we do not count up to \$1,410 of earned income per month up to a maximum yearly exclusion of \$5,670. These dollar amounts are adjusted each year by the cost-of-living adjustment (COLA) that is used to adjust the SSI Federal Benefit Rate. Section 432 eliminates the requirement that you meet the definition of a child to be eligible for the student earned income exclusion.

#### **Who can use the student earned income exclusion for the period before April 1, 2005?**

Before April 1, 2005, (that is, before the changes made by section 432), you could have qualified for the student earned income exclusion if you were:

- Under age 22;
  - Unmarried;
  - Not head of your own household; and
  - Regularly attending school, college, or university, or a course of vocational or technical training designed to prepare you for gainful employment.
- Section 416.1861 currently provides that you are a student regularly attending school or college, or training that is designed to prepare you for a paying job, if you are enrolled for one

or more courses of study and attend class (1) in a college or university for at least 8 hours a week under a semester or quarter system, (2) in grades 7–12 for at least 12 hours a week, or (3) in a course of training to prepare for a paying job, and attending that training for at least 15 hours a week if the training involves shop practice or 12 hours a week if it does not involve shop practice. These rules do not specifically address home schooling as a form of regular school attendance. However, § 404.367 currently recognizes as full-time school attendance students who are instructed at home in accordance with a home school law of the State or other jurisdiction in which they reside.

#### **How do section 432 and the revision regarding home schooling change the student earned income exclusion?**

Section 432 of the SSPA eliminates the requirement that you must be a child to qualify for the student earned income exclusion. Specifically, it removes the requirement that you must be unmarried and not head of your own household.

These proposed rules regarding home schooling would allow you to be considered a student regularly attending school if you are instructed at home in grades 7–12 for at least 12 hours a week in accordance with a home school law of the State or other jurisdiction in which you live. Allowing home schooling as a form of regular school attendance would make the title II and title XVI programs uniform with respect to home schooling. We hope that our proposed rule change to consider home schooling, and the statute's removal of the child requirement, will increase the number of persons who can use the student earned income exclusion.

#### **Will the student earned income exclusion apply to deemors?**

Yes. Section 1614(f) of the Act requires that when we determine an individual's eligibility for SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household, or, in the case of a child under the age of 18, the income and resources of an ineligible parent living in the same household. We use the term "deeming" to describe this process of considering part of an ineligible spouse's or parent's income and resources to be the individual's own income and resources. Deeming an ineligible parent's income and resources to a child eligible for SSI benefits is only done if the child is under age 18 and the child is living in the same household as the ineligible parent. Section 1614(f) also grants the Commissioner the

discretion to not deem the income and resources of an ineligible spouse or parent to an eligible individual when the Commissioner determines that deeming would be inequitable under the circumstances.

In addition to adding to our regulations the change in how we determine an eligible individual's income required by section 432 of the SSPA, we propose to apply this earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent who is a student.

Extending this student earned income exclusion to the deeming process, as authorized by section 1614(f) of the Act, is consistent with the SSI program's longstanding treatment of income and resources of spouses and parents comparably to the way that income and resources of an eligible individual would be treated. It will also provide incentives to encourage work and education to ineligible individuals living with beneficiaries.

#### **What is the effective date of section 432 and the revision regarding home schooling?**

The statutory changes that allow those who are married and the head of a household to also qualify for the student earned income exclusion are effective with benefits payable April 1, 2005. The changes to allow home schooling as a form of regular school attendance will be effective 30 days after publication of the final rules.

#### **Explanation of Changes**

We propose to revise several of our rules in subparts D, E, J, and P of part 404 and subparts G, K, N, and R of part 416 to:

- Reflect the statutory change that requires us to issue receipts to you or your representative when you or your representative report changes in your work activity or earnings or give us documentation of those changes at least until we establish a centralized computer file to record the information you report to us and the date you report;
- Explain that disability benefits are not payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during that trial work period;
- Reflect the statutory change that expands the number of persons who can use the student earned income exclusion by removing the requirement that you must be a child, unmarried and not head of household;
- Expand the number of persons who can use the student earned income

exclusion by allowing home schooling as a form of regular school attendance;

- Extend application of the student earned income exclusion to the income of an ineligible spouse and ineligible parent for deeming purposes; and
- Reflect the statutory change that eliminates the 7-year time limit on reentitlement to childhood disability benefits when the prior entitlement terminated due to the performance of substantial gainful activity.

The following is an explanation of the specific changes we are proposing and our reasons for making these proposals.

#### **Section 404.351 Who May Be Reentitled to Child's Benefits**

We are proposing to add a new paragraph (d) to explain that, effective with respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at any time if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity.

#### **Section 404.401a When We Do Not Pay Benefits Because of a Disability Beneficiary's Work Activity**

We are proposing to revise the last sentence in current § 404.401a to clarify that earnings from work activity during a trial work period will not stop benefits except as provided in § 404.471.

#### **Section 404.471 Nonpayment of Disability Benefits for Trial Work Period Service Months Upon a Conviction of Fraudulently Concealing Work Activity**

We are proposing to add a new § 404.471 to explain that disability benefits will not be payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period. As explained in § 404.1592, the trial work period is a period during which you may test your ability to work and still continue to receive disability benefits if you still have a disabling impairment, no matter how much you are earning. Under this proposed change, which reflects section 208 of the SSPA of 2004, if you are convicted in Federal court of fraudulently concealing your work activity during your trial work period, disability benefits are not payable for any trial work period service months beginning March 2004 that occur prior to that conviction. Benefits already received that are determined not payable because of the Federal court decision are considered an overpayment on the record. Consistent with section 208, we explain in § 404.471(b) what is

meant by fraudulently concealing work activity. You can be found to be fraudulently concealing work activity if you provide false information concerning the amount of your earnings, engage in work activity under another identity while receiving disability benefits, or take actions to conceal your work activity with the intent of obtaining benefits in excess of amounts due.

#### **Section 404.903 Administrative Actions That Are Not Initial Determinations**

We are proposing to add a new paragraph (x) to § 404.903 to explain that the receipt we give you or your representative as a result of a report of a change in your work activity or earnings is not an initial determination. As explained in existing § 404.903, administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of part 404, and they are not subject to judicial review. The receipt will summarize the information that you give us, and we will ask you to review the information contained in the receipt for accuracy and to tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we determine that you are not now disabled based on what you told us about your work activity, as explained in § 404.1595.

#### **Section 404.1588 Your Responsibility To Tell Us of Events That May Change Your Disability Status**

We are proposing to designate the undesignated current paragraph as paragraph (a) and add a title: *Your responsibility to report changes to us*, and redesignate paragraphs (a), (b), (c), and (d) as (1), (2), (3), and (4). We also propose to add a new paragraph (b), *Our responsibility when you report your work to us*, that clarifies how we will respond when you or your representative report a change in your work activity to us. Section 404.1588(a) explains that if you receive benefits based on disability, you must report to us when there is a change in your work activity; for example, you return to work, or there is an increase in your earnings or the amount of work you are doing. New paragraph (b) explains that we will issue a receipt to you or your representative when you or your representative report a change in your work activity or earnings, until a centralized computer file that records

the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we may continue to issue receipts to you or your representative if you request us to do so.

#### *Section 404.1592 The Trial Work Period*

In § 404.1592 we are proposing to add a new paragraph (f), *Nonpayment of benefits for trial work period service months*, to clarify that benefits will not be payable for trial work period service months if you have been convicted by a Federal court of fraudulently concealing your work activity. We also added a cross-reference to new § 404.471.

#### *Section 416.708 What You Must Report*

We are proposing to amend the last paragraph of paragraph (c) by adding two new sentences to explain how we will respond when you report a change in your earned income. Section 416.708 (c) explains that if you receive SSI benefits, you must report to us when there is a change in your income. The proposed new sentences which would be added to paragraph (c) explain that if you receive SSI benefits based on disability, we will issue a receipt to you or your representative when you or your representative report a change in your work activity or your earned income, at least until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

#### *Section 416.1112 Earned Income We Do Not Count*

We are proposing to amend paragraph (c)(3) to reflect the statutory change eliminating the requirement that you must be a child to qualify for the student earned income exclusion.

#### *Section 416.1161 Income of an Ineligible Spouse, Ineligible Parent, and Essential Person for Deeming Purposes*

We are proposing to amend § 416.1161 by adding a new paragraph (a)(27) to exclude certain earned income of a student as provided by section 432 from the income of an ineligible spouse and ineligible parent for deeming purposes.

#### *Section 416.1403 Administrative Actions That Are Not Initial Determinations*

We are proposing to add a new paragraph (a)(22) to § 416.1403 to

explain that the receipt we give you or your representative as a result of your report of work activity or earnings is not an initial determination. As explained in § 416.1403(a), administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N, and they are not subject to judicial review. The receipt will summarize the information that you or your representative give us and we will ask you to review the information contained in the receipt for accuracy and tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we suspend or reduce your benefit amount based on what you told us about your earnings as explained in § 416.1336.

#### *Section 416.1861 Deciding Whether You Are a Child: Are You a Student?*

We are proposing to add a new paragraph (b) to § 416.1861 to add home schooling conducted in accordance with a home school law of the State or other jurisdiction in which you live as a form of regular school attendance for purposes of title XVI. We are proposing to redesignate paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g). We also are proposing to amend current paragraph (e) to remove references to earnings because we discuss student earnings in a new section.

We are proposing to add a new undesignated centered heading to read, Who is Considered A Student For Purposes of The Student Earned Income Exclusion.

#### *Section 416.1870 Effect of Being Considered a Student*

We are proposing to add a new § 416.1870 to explain that if we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount.

#### *Section 416.1872 Who Is Considered a Student*

We are proposing to add a new § 416.1872 to explain that we consider you to be a student if you are under 22 years old and you are regularly attending school or college or training that is designed to prepare you for a paying job.

#### *Section 416.1874 When We Need Evidence That You Are a Student*

We are proposing to add a new § 416.1874 to explain what evidence we

need if you are a student and you expect to earn over \$65 in any month.

#### *Clarity of These Proposed Rules*

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

#### **Regulatory Procedures**

##### *Executive Order 12866*

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

##### *Regulatory Flexibility Act*

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

##### *Paperwork Reduction Act*

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of these burdens because they were not considered during the clearance of the forms.

| Section           | Annual number of responses | Frequency of response | Average burden per response (in minutes) | Estimated annual burden (in hours) |
|-------------------|----------------------------|-----------------------|------------------------------------------|------------------------------------|
| 404.1588(a) ..... | .....                      | .....                 | .....                                    | 1                                  |
| 416.708 .....     | .....                      | .....                 | .....                                    | 1                                  |
| 416.1861(f) ..... | 15,000                     | 1                     | 10                                       | 2500                               |
| Total .....       | 15,000                     | .....                 | .....                                    | 2500                               |

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/numbers: Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530, Fax Number: 202-395-6974. Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, Fax Number: 410-965-6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

(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: July 11, 2005.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subparts D, E, J, and P of part 404 and subparts G, K, N, and R 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 D—[Amended]

1. The authority citation for subpart D continues to read as follows:

**Authority:** Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.351 is amended by removing “; or” at the end of paragraph (b) and replacing it with a period; removing the period at the end of paragraph (c) and replacing it with “; or”, and adding a new paragraph (d) to read as follows:

##### **§ 404.351 Who may be reentitled to child's benefits.**

\* \* \* \* \*

(d) The first month on or after October 2004 you are under a disability that began after the end of the 84th month following the month in which your entitlement to benefits had ended because your previous disability ended due to the performance of substantial gainful activity.

##### Subpart E—[Amended]

3. The authority citation for subpart E is revised to read as follows:

**Authority:** Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 425, 902(a)(5), and 1320a-8a and 48 U.S.C. 1801).

4. Section 404.401a is amended by revising the last sentence to read as follows:

##### **§ 404.401a When we do not pay benefits because of a disability beneficiary's work activity.**

\* \* \* Except as provided in § 404.471, earnings from work activity during a trial work period will not stop your benefits.

5. Add a new § 404.471 to read as follows:

##### **§ 404.471 Nonpayment of disability benefits for trial work period service months upon a conviction of fraudulently concealing work activity.**

(a) *Nonpayment of benefits during the trial work period.* Beginning with work activity performed in March 2004 and thereafter, if you are convicted by a Federal court of fraudulently concealing your work activity and the concealment of the work activity occurred while you were in a trial work period, monthly disability benefits under title II of the Social Security Act are not payable for months in which you performed services during that trial work period prior to the conviction (see § 404.1592 for a definition of a trial work period and services). Benefits already received for months of work activity in the trial work period prior to the conviction and in the same period of disability during which the fraudulently concealed work activity occurred, will be considered an overpayment on the record.

(b) *Concealment of work activity.* You can be found to be fraudulently concealing work activity if—

(1) You provide false information to us concerning the amount of earnings you received or are receiving for a particular period;

(2) You received or are receiving disability benefits while engaging in work activity under another identity (this would include working under another Social Security number or a forged Social Security number); or

(3) You take other actions to conceal work activity with the intent of fraudulently obtaining benefits in excess of amounts that are due.

##### Subpart J—[Amended]

6. The authority citation for subpart J is revised to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the

Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

7. Section 404.903 is amended by removing the word “and” at the end of paragraph (v), replacing the period at the end of paragraph (w) with “; and”, and adding a new paragraph (x) to read as follows:

**§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(x) Issuing a receipt in response to your report of a change in your work activity.

**Subpart P—[Amended]**

8. The authority citation for subpart P is revised 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; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

9. Section 404.1588 is revised to read as follows:

**§ 404.1588 Your responsibility to tell us of events that may change your disability status.**

(a) *Your responsibility to report changes to us.* If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—

- (1) Your condition improves;
- (2) You return to work;
- (3) You increase the amount of your work; or
- (4) Your earnings increase.

(b) *Our responsibility when you report your work to us.* When you or your representative report changes in your work activity to us under paragraphs (a)(2), (a)(3), and (a)(4) of this section, we will issue a receipt to you or your representative, at least until a centralized computer file that records the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

10. Section 404.1592 is amended by adding a new paragraph (f) to read as follows:

**§ 404.1592 The trial work period.**

\* \* \* \* \*

(f) *Nonpayment of benefits for trial work period service months.* See

§ 404.471 for an explanation of when benefits for trial work period service months are not payable if you are convicted by a Federal court of fraudulently concealing your work activity.

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

**Subpart G—[Amended]**

11. The authority citation for subpart G is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

12. Section 416.708 (c)(4) and the paragraph following (c)(4) are revised to read as follows:

**§ 416.708 What you must report.**

\* \* \* \* \*

(c) \* \* \*

(4) An ineligible child who lives with you.

**Note to paragraph (c):** However, you need not report an increase in your Social Security benefits if the increase is only a cost-of-living adjustment. (For a complete discussion of what we consider income, see subpart K. See subpart M, § 416.1323 regarding suspension because of excess income.) If you receive benefits based on disability, when you or your representative report changes in your earned income, we will issue a receipt to you or your representative until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

\* \* \* \* \*

**Subpart K—[Amended]**

13. The authority citation for subpart K continues to read as follows:

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

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

**§ 416.1112 Earned income we do not count.**

\* \* \* \* \*

(c) \* \* \*

(3) If you are under age 22 and a student who is regularly attending school as described in § 416.1861:

\* \* \* \* \*

15. Section 416.1161 is amended by adding a new paragraph (a)(26) to read as follows:

**§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.**

\* \* \* \* \*

(a) \* \* \*

(26) Earned income of a student as described in § 416.1112(c)(3).

\* \* \* \* \*

**Subpart N—[Amended]**

16. The authority citation for subpart N is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

17. Section 416.1403 is amended by removing the word “and” at the end of paragraph (a)(20), replacing the period at the end of paragraph (a)(21) with “; and”, and adding new paragraph (a)(22) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) \* \* \*

(22) Issuing a receipt in response to your report of a change in your earned income.

\* \* \* \* \*

**Subpart R—[Amended]**

18. The authority citation for subpart R is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c (b), (c), and (d) and 1383 (d)(1) and (e)).

19. Section 416.1861 is amended by redesignating paragraphs (b), (c), (d), (e) and (f) as (c), (d), (e), (f) and (g), and revising newly redesignated paragraph (f), and adding a new paragraph (b) to read as follows:

**§ 416.1861 Deciding whether you are a child: Are you a student?**

\* \* \* \* \*

(b) *If you are instructed at home.* You may be a student regularly attending school if you are instructed at home in grades 7–12 for at least 12 hours a week in accordance with a home school law of the State or other jurisdiction in which you reside.

\* \* \* \* \*

(f) *When we need evidence that you are a student.* We need evidence that you are a student if you are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student.

\* \* \* \* \*

20. Add a new undesignated centered heading and § 416.1870 to read as follows:

**Who Is Considered a Student for Purposes of the Student Earned Income Exclusion**

**§ 416.1870 Effect of being considered a student.**

If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. If you are an ineligible spouse, ineligible parent or an essential person for deeming purposes and we consider you to be a student, we will not count all of your income when we determine how much of your income to deem. Section 416.1110 tells what we mean by earned income. Section 416.1112(c)(3) tells how much of your earned income we will not count. Section 416.1161(a)(27) explains how the student earned income exclusion applies to deemors.

21. Add a new § 416.1872 to read as follows:

**§ 416.1872 Who is considered a student.**

We consider you to be a student if you are under 22 years old and you regularly attend school or college or training that is designed to prepare you for a paying job as described in § 416.1861(a) through (e).

22. Add a new § 416.1874 to read as follows:

**§ 416.1874 When we need evidence that you are a student.**

We need evidence that you are a student if you are under age 22 and you expect to earn over \$65 in any month. Section 416.1861(g) explains what evidence we need.

[FR Doc. 05-20803 Filed 10-17-05; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Part 517

RIN 3141-AA21

#### Freedom of Information Act Procedures

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this document is to propose to amend the procedures followed by the National Indian Gaming Commission (Commission) when processing a request under the Freedom of Information Act (FOIA), as amended

so that the Commission will be in compliance with the provisions of the amendment.

**DATES:** Written comments on this proposed rule must be received by November 17, 2005.

**ADDRESSES:** Comment may be mailed to the National Indian Gaming Commission, FOIA Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to (202) 632-7066 (this is not a toll free number). Comments may be inspected between 9 a.m. and noon and between 2 p.m. and 5 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeannie McCoy at (202) 632-7003 or by fax (202) 632-7066 (these numbers are not toll free).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Congress enacted the FOIA in 1966 and last modified it with the Electronic Freedom of Information Act Amendments of 1996. This amendment addresses FOIA reading rooms and those documents available electronically, agency backlogs of requests, change in fees, and preservation of records among other things. The proposed changes will bring the Commission in compliance with the FOIA, as amended.

Regulatory Flexibility Act: The Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that could be deemed impacts within the scope of the Act. For this reason, the Commission has concluded that the proposed rule will not have a significant impact on those small entities subject to the rule.

Unfunded Mandates Reform Act: The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than \$100 million per year. Thus, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* Furthermore, this

proposal will not have a unique effect on tribal governments.

Small Business Regulatory Enforcement Fairness Act: The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than \$100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

Paperwork Reduction Act: The proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501-3520) would be required.

National Environmental Policy Act: The Commission has determined that this proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Dated: October 7, 2005.

**Philip N. Hogen,**

*Chairman, National Indian Gaming Commission.*

#### List of Subjects in 25 CFR Part 517

Freedom of information.

Accordingly for the reasons set forth above, 25 CFR part 517 is proposed to be revised to read as follows:

#### PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

- 517.1 General provisions.
- 517.2 Public Reading Room.
- 517.3 Definitions.
- 517.4 Requirements for making requests.
- 517.5 Responsibility for responding to requests.
- 517.6 Timing of responses to requests.
- 517.7 Confidential commercial information.
- 517.8 Appeals.
- 517.9 Fees.

The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 552, as amended.

##### § 517.1 General provisions.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended. These regulations provide procedures by