

List of Subjects

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, Parts 772 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 772—[AMENDED]

■ 1. The authority citation for Part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 2. Section 772.1 is amended by adding the phrase “subclasses of energetic materials.” to the end of the definition for “Energetic materials.”

PART 774—[AMENDED]

■ 3. The authority citation for Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 4. In Supplement No. 1 to Part 774 (the Commerce Control List):

■ a. Category 6 Sensors, ECCN 6A005 is amended by removing the reference “6.A.5.d.1.d” and adding in its place “6A005.d.1.d” in paragraph d.1.e in the Items paragraph of the List of Items Controlled section.

■ b. Category 6—Sensors, ECCN 6A008 is amended by removing the Note from paragraph f in the Items paragraph of the List of Items Controlled section.

■ c. Category 9, Aerospace and Propulsion, ECCN 9A001 is amended by revising the introductory text of paragraph (a) in the Items paragraph of the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

9A001 Aero gas turbine engines having any of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

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Items:

a. Incorporating any of the technologies controlled by 9E003.a or 9E003.h; or

* * * * *

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2010–25554 Filed 10–12–10; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2008–0041]

RIN 0960–AG87

Disability Determinations by State Agency Disability Examiners

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules on a temporary basis to permit State agency disability examiners to make fully favorable determinations in certain claims for disability benefits under titles II and XVI of the Social Security Act (Act) without the approval of a State agency medical or psychological consultant. These changes apply only to claims we consider under our rules for quick disability determinations (QDD) or under our compassionate allowance initiative.

DATES: These final rules are effective on November 12, 2010.

FOR FURTHER INFORMATION CONTACT:

Nancy Schoenberg, Office of Compassionate Allowances and Disability Outreach, Social Security Administration, 4692 Annex, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–9408, for information about this notice. 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 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>.

Our Current Rules

Under our current rules, a State agency disability examiner and a State agency medical or psychological consultant generally work together to make a disability determination at the first two levels of the administrative review process for adjudicating

disability claims under titles II and XVI of the Act.¹ The members of the team are jointly responsible for the determination.² Except in prototype States, a State agency disability examiner may solely make a disability determination, without consulting a medical consultant, only when there is no medical evidence to evaluate and the claimant fails or refuses, without a good reason, to undergo a consultative examination.³

Although we evaluate all disability claims using the same criteria, we have developed two methods for expediting certain claims where there is a high probability that we will find the claimant disabled. In the QDD process, we use a computer-based predictive model to analyze specific elements of data in electronic claim files. The predictive model identifies claims in which there is a high potential that the claimant is disabled and in which we can quickly and easily obtain evidence supporting the claimant’s allegations.⁴ In the compassionate allowance initiative, we use a list of conditions to quickly identify diseases and other medical conditions that invariably qualify under the Listing of Impairments (“listings”) in our regulations⁵ at step 3 of the sequential evaluation process for initial claims⁶ based on minimal, but sufficient, objective medical information.⁷

¹ 20 CFR 404.900 and 416.1400.

² 20 CFR 404.1615(c)(1) and 416.1015(c)(1).

³ 20 CFR 404.1615(c)(2) and 416.1015(c)(2). In some States, we are testing a modification to the disability determination procedures that allows State agency disability examiners called “single decisionmakers” (SDM) to make both favorable and unfavorable determinations alone in some cases; that is, without working in a team with a medical or psychological consultant. 20 CFR 404.906(b)(2) and 416.1406(b)(2). We are continuing that testing. However, the changes in these final rules apply in all States, including SDM States. They allow SDMs and other disability examiners to make fully favorable determinations alone in QDD and compassionate allowance claims.

⁴ 20 CFR 404.1619 and 416.1019. Our data demonstrate that the model is working as we intend. See, for example, “Good Practices in Social Security: The Quick Disability Determination (QDD) and Compassionate Allowances (CAL) Initiatives: A case of the Social Security Administration,” International Social Security Association (ISSA), 2009, available at: <http://www.issa.int/aiss/Observatory/Good-Practices/The-Quick-Disability-Determination-QDD-and-Compassionate-Allowances-CAL-Initiatives>. In that paper, we reported to ISSA that the processing time for QDD allowances is about 12 days.

⁵ 20 CFR part 404 subpart P appendix 1, which also applies to title XVI under 20 CFR 416.925.

⁶ 20 CFR 404.1520(a)(4)(iii) and (d) and 416.920(a)(4)(iii) and (d).

⁷ See, generally, <http://www.socialsecurity.gov/compassionateallowances/>. In October 2008, we issued an initial list of 50 conditions that we consider for compassionate allowance. See <http://www.socialsecurity.gov/compassionateallowances/conditions.htm>. We created this list based on input

New QDD and Compassionate Allowance Rules

These final rules allow disability examiners to make certain fully favorable determinations under our QDD rules or under our compassionate allowance initiative without the approval of a medical or psychological consultant. This change is consistent with our goal to allow cases that should be allowed as quickly as possible.⁸ It will also help us to process cases more efficiently because it will give State agency medical and psychological consultants more time to work on those complex cases for which we need their expertise. To accommodate this change, we are redesignating current 20 CFR 404.1615(c)(3) and 416.1015(c)(3) as (c)(4) and adding new paragraphs 20 CFR 404.1615(c)(3) and 416.1015(c)(3).

This revision is a change from our prior position. When we published final rules extending the QDD process to all States,⁹ we declined to adopt a comment to allow disability examiners to make determinations without a medical or psychological consultant's involvement.¹⁰ However, we now have about 3 years of experience using the QDD process nationally, and even longer experience in our Boston region. In light of our experience adjudicating QDD and compassionate allowance cases and our quality assurance reviews of determinations made in States that use single decisionmakers (SDMs), we believe it is appropriate to allow disability examiners to make some fully favorable determinations without a medical or psychological consultation. Our quality assurance reviews for the past 2 fiscal years show that the accuracy rates in the States that use SDMs are comparable to, if not higher than, the accuracy rates in those States that do not use SDMs. Moreover, many of the determinations included in our quality assurance reviews are more complex than QDD and compassionate allowance determinations.

For these reasons, we expect that the accuracy rates of QDDs and compassionate allowance determinations made solely by State agency disability examiners will be

comparable to the accuracy rate of the determinations now made in consultation with medical examiners. We will also have measures in place, in addition to quality assurance reviews, that will provide us with information about the quality of QDDs and compassionate allowance determinations. Therefore, we will be monitoring these determinations made by State agency disability examiners. We are also including a 3-year "sunset date," after which final sections 404.1615(c)(3) and 416.1015(c)(3) will no longer be effective, unless we terminate the rules earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

State agency disability examiners who make fully favorable determinations under these final rules will still have the option of consulting with State agency medical and psychological consultants when they deem it necessary. We will continue to require State agency disability examiners to consult with State agency medical or psychological consultants before they make a fully favorable determination based on a claimant's impairment(s) medically equaling the severity of a listing at step 3.¹¹ Further, to make a fully favorable determination at step 5, adjudicators generally must first determine that a claimant does not have an impairment(s) that meets or medically equals a listing. In these cases, they will have also had to consult with a medical or psychological consultant to determine that there were no impairments that medically equaled a listing.¹² Regardless of whether the State agency disability examiner chooses to consult with a State agency medical or psychological consultant or is required to do so, the disability examiner is solely responsible for the determination.

These final rules do not apply to claims for supplemental security income payments under title XVI for persons under age 18. The Act requires us to make reasonable efforts to ensure that a qualified pediatrician or other medical professional who specializes in a field of medicine appropriate to the child's medical impairment(s) evaluates the child's case.¹³ We interpret this statutory requirement to mean that a medical or psychological consultant must participate as part of a team in all State agency determinations of

childhood disability under title XVI, including fully favorable determinations.

Other Changes

These final rules apply only to claims adjudicated under the QDD process or the compassionate allowance initiative. Our current regulations explain the QDD process but not the compassionate allowance initiative. Therefore, we are adding a definition of "compassionate allowance" in 20 CFR 404.1602 and 416.1002, the sections of part 404 subpart Q and part 416 subpart J that provide definitions of terms.

We are also making a number of conforming changes to our rules to reflect our QDD and compassionate allowance rules in final 20 CFR 404.1615(c)(3) and 416.1015(c)(3). For example, we are revising 20 CFR 404.1546 and 416.946 to recognize that it is possible in some cases for a State agency disability examiner to be responsible for assessing a claimant's residual functional capacity. We are also revising 20 CFR 404.1512, 404.1527, 416.912, and 416.927 to account for situations in which State agency disability examiners will weigh State agency medical or psychological consultant input as opinion evidence. These rules are similar to our current rules for administrative law judges (ALJs) and the Appeals Council (when the Appeals Council makes a decision). We are revising 20 CFR 404.1520a and 416.920a to authorize State agency disability examiners to evaluate the severity of mental impairment(s), and to complete the standard document showing how the disability examiner applied the special technique required by that section, in cases in which they make fully favorable QDD and compassionate allowance determinations when claimants have a mental impairment(s). While we did not propose specific revisions to 20 CFR 404.1520a and 416.920a in the NPRM, these revisions are consistent with our proposal to allow State agency disability examiners to decide QDD and compassionate allowance cases without the approval of a medical or psychological consultant. Because the current QDD model and the current list of compassionate allowance conditions include mental impairments, we need to make these revisions to allow State agency disability examiners to decide those cases alone, as we proposed.

These final rules include revisions to rules that relate to both the initial and reconsideration levels of the administrative review process under 20 CFR 404.1602 and 416.1002. We are making these revisions because:

from a variety of sources, including the public. See, for example, 72 FR 41649 (2007), 73 FR 10715 (2008), and 73 FR 66563 (2008). On March 1, 2010, we added another 38 conditions. See <http://www.socialsecurity.gov/compassionateallowances/newconditions.htm>. We plan to obtain more public input to determine whether and how to expand the list over time.

⁸ See Social Security Administration Strategic Plan 2008–2013, Strategic Goal 2, <http://www.ssa.gov/asp/StrategicGoal2.pdf>.

⁹ 72 FR 51173 (Sept. 6, 2007).

¹⁰ Id. at 51175.

¹¹ 20 CFR 404.1526(c) and 416.926(c).

¹² 20 CFR 404.1520(a)(4) and 416.920(a)(4). Fully favorable determinations based on medical equivalence or at step 5 are only a relatively small fraction of the QDD and compassionate allowance determinations we have made so far.

¹³ Section 1614(a)(3)(I) of the Act and 20 CFR 416.903(f) and 416.1015(e).

(1) Unlike the QDD process, the compassionate allowance initiative is not limited to the initial level of administrative review; and (2) any claimant who is dissatisfied with our determination—even a determination allowing a claimant's claim in full—may request a reconsideration.¹⁴

Finally, we are making minor editorial changes to several rules to recognize that State agency medical consultants are not always physicians. These changes will conform these rules to current 20 CFR 404.1616 and 416.1016. We also are correcting a grammatical error in 20 CFR 404.1619(b)(2) and 416.1019(b)(2) and making other minor editorial changes throughout these final rules.

Relationship of These Rules to Notice of Proposed Rulemaking “Reestablishing Uniform National Disability Adjudication Provisions”

We published a notice of proposed rulemaking (NPRM) “Reestablishing Uniform National Disability Adjudication Provisions” in the **Federal Register** on December 4, 2009. 74 FR 63688. We proposed different revisions to several of the regulatory sections revised by these final rules. The language in these final rules is controlling. We are still evaluating the comments on the December 4, 2009, NPRM.

Public Comments

We published a NPRM in the **Federal Register** on March 4, 2010, and we gave the public 30 days to comment on the NPRM. 75 FR 9821. We received comments from five persons and organizations during this period. We carefully read and considered each of them. They are available for public viewing at <http://www.regulations.gov>. Because some of the comments were long, we have condensed, summarized, and paraphrased them. We have tried to summarize the commenters' views accurately and to respond to the significant issues raised by the commenters that were within the scope of these rules.

Comment: Four of the commenters supported our proposed rules, but one commenter opposed them based on his experience working as a medical consultant in a State agency. He said that his State agency's attempt to have disability examiners make determinations without medical consultant involvement or approval failed and would fail again. The commenter generally questioned the qualifications of disability examiners,

State agency managers, and quality control personnel. The commenter said that our “[p]ilot studies with tight controls and everybody acting on good behavior” would not be representative of the deterioration in quality that he thought would occur over time under our proposed rules. He preferred that State agency disability examiners continue to work with State agency medical consultants on all claims to achieve a balance in quality and resist possible “corruption of the [decisionmaking] process.”

Response: We disagree with this comment. We are confident that disability examiners are competent and able to make these fully favorable determinations. Our confidence is bolstered by the success of the pilot. We simply do not agree with the commenter's assessment of the skills and competence of disability examiners, managers, and quality control personnel. We believe they are highly-skilled and capable employees who do a fine job for us.

Moreover, the commenter's personal experience with one State agency ended almost 20 years ago. His personal experience does not take into account our more recent experience with the SDM initiatives. Our more recent experience, which involves the adjudication of tens of thousands of cases in 20 State agencies, does not show the types of problems cited by the commenter.

Furthermore, these final rules allow State agency disability examiners to make only fully favorable QDD and compassionate allowance determinations. Our procedures for the two initiatives ensure that we select cases that we are very likely to allow. In fact, we make fully favorable determinations in the great majority of cases we identify for QDD and compassionate allowances. Given our program experience using these initiatives, we believe that we do not need State agency medical or psychological consultants to approve these determinations and that the State agencies can better use the services of their medical and psychological consultants for more complex cases in which we need their medical expertise.

Moreover, we are confident that we will be able to quickly detect and correct any quality issues, should they occur, through our quality assurance reviews. We are also required by statute to review at least 50 percent of all State agency allowances,¹⁵ and this sample includes QDD and compassionate allowance determinations. To further

ensure that these final rules do not result in any unforeseen or unintended consequences, we are including in final sections 404.1615(c)(3) and 416.1015(c)(3) a 3-year sunset date and a provision that allows us to terminate the new process even sooner if we determine that it would be appropriate to do so.

Comment: The same commenter also said that our NPRM was “unbalanced” because we authorized State agency disability examiners to make only fully favorable determinations. The commenter asserted that this restriction indicated that we believed that State agency disability examiners were more competent to make allowance determinations than denials and that claimants deserve professional medical input before being denied benefits. Another commenter thought our NPRM was too restrictive and asked us to authorize State agency disability examiners to also make partially favorable determinations, such as favorable determinations with onset dates later than claimants allege.

Response: We disagree with the first commenter. We want to make fully favorable determinations as quickly as possible for claimants who should receive them. We have determined that State agency disability examiners are capable of making fully favorable QDD and compassionate allowance determinations.

The first commenter seems to have also misunderstood the intent of our proposal. We proposed, and decided to adopt, rules that apply only to a subset of our allowance determinations, not all allowances. As we explain above, we have been and are still conducting another project that authorizes State agency disability examiners to make both more complex favorable determinations and unfavorable determinations.¹⁶

We also did not adopt the second comment to authorize State agency disability examiners to make partially favorable determinations. These determinations require findings that a claimant was either disabled at a later onset date than the claimant alleged or that the claimant had a “closed” period of disability and is no longer disabled. Thus, the same considerations that led us to exclude unfavorable determinations and continuing disability reviews also apply to partially favorable determinations. We proposed to authorize State agency disability examiners to make only what are essentially some of the most obvious allowance determinations in our

¹⁴ 20 CFR 404.907 and 416.1407.

¹⁵ Sections 221(c)(3) and 1633(e)(2) of the Act.

¹⁶ See footnote 3, above.

caseload. At this time, we are not expanding that authority to partially favorable or unfavorable determinations.

Comment: We received two comments about the sunset date from commenters who supported the NPRM. One commenter asked why we included a sunset date and suggested that we make these rules permanent. Another commenter supported the sunset date in case we find that the process is not working satisfactorily.

Response: We decided to include a sunset date for these rules because we believe that we need to evaluate how the rules work in practice. If we decide based on that evaluation that the process is not working satisfactorily, the sunset date will allow us to let the program expire without the need for an additional change to our rules. The sunset date requires us only to publish a final rule in the **Federal Register** to notify the public if we decide to extend the process beyond the 3-year period or to terminate it before the expiration of that period. We do not need to publish new regulations or propose changes if we want the process to end at the expiration of the 3-year period. We have used sunset dates in some of our other rules, and we have extended them when we have determined that they are working well. For example, on July 13, 2009, we extended our rules that allow attorney advisors in hearing offices to conduct prehearing proceedings, which include issuing fully favorable decisions at the ALJ hearing level.¹⁷

Comment: One commenter disagreed with the statement in our preamble that said: “We would also require State agency disability examiners to consult with State agency medical or psychological consultants before they make a fully favorable determination based on medical equivalence to a listing at step 3 or based on a finding of inability to do other work at step 5 of our sequential evaluation process.”¹⁸ The commenter wanted us to authorize State agency disability examiners to make fully favorable determinations based on medical equivalence without needing to first obtain “approval” from State agency medical or psychological consultants. The commenter believed that the requirement we described would severely restrict disability examiner authority in QDD and compassionate allowance claims and make the rules “almost impractical.”

Response: We believe the commenter may have misunderstood our proposed rule. We did not say that State agency

disability examiners would need approval from a State agency medical or psychological consultant before issuing a fully favorable determination in this process. We simply explained that State agency disability examiners who are solely responsible for QDD and compassionate allowance determinations would be subject to the same rules about determining medical equivalence as other decisionmakers at other levels of our administrative review process when we cannot allow a case as a QDD or compassionate allowance.

Under our longstanding regulations, all adjudicators at all levels of the administrative review process must consider the opinion of “one or more medical or psychological consultants designated by the Commissioner” whenever they make a finding that an impairment(s) does or does not medically equal a listing. 20 CFR 404.1526(c) and 416.926(c).

These requirements apply to State agency disability examiners. At the initial and reconsideration levels of the administrative review process, the requirement for medical or psychological consultant input is normally satisfied because a State agency medical or psychological consultant is part of a team that makes the determination.

We disagree with the commenter’s opinion that requiring State agency disability examiners to follow the same rule as other adjudicators would make our proposal impractical. Most claimants who qualify under the QDD and compassionate allowance initiatives have impairments that meet listings, and these rules do not require disability examiners to consult with a medical or psychological consultant before determining that a claimant’s impairment(s) meets a listing.

Under the new process in these final rules, State agency disability examiners will be solely responsible for their fully favorable QDD and compassionate allowance determinations. Nevertheless, if in QDD and compassionate allowance cases, disability examiners are not able to find that a claimant’s impairment(s) meets the severity of a listed impairment, they will need to follow the longstanding requirement to obtain an opinion about medical equivalence from medical or psychological consultants. Although they must obtain and review such opinions, State agency disability examiners are not bound to accept them as binding, and the State agency medical or psychological consultants will not need to “approve” the determinations.

Also, these final rules do not require a State agency disability examiner to

obtain an opinion about residual functional capacity before making a fully favorable determination. In the NPRM’s preamble, we were explaining only that, to allow a case at step 5 of the sequential evaluation process, a State agency disability examiner will necessarily have had to obtain a State agency medical or psychological consultant’s opinion about medical equivalence at step 3.

Authority for These Final Rules

Under the Act, we have full power and authority to make rules and regulations and to establish necessary or appropriate procedures to carry out the provisions of the Act. Sections 205(a), 702(a)(5), and 1631(d)(1). In addition, we have the power to promulgate regulations that establish the procedures State agencies must follow when performing the disability determination function for us. Sections 221(a)(2) and 1633.

Regulatory Procedures

Executive Order 12866

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, OMB reviewed them.

The Office of the Chief Actuary provided two estimates of the effects of these final rules, due to uncertainty over the extent to which the compassionate allowance initiative and the predictive model underlying the QDD process can be enhanced. The first estimate assumes the percent of cases designated QDD or compassionate allowance remains at the recent level (3.8%). The second estimate assumes that we will adjudicate 6% of all cases under the QDD or compassionate allowance models by the end of fiscal year (FY) 2012. The following table presents the year-by-year estimates of the effect of these final rules on OASDI benefit payments and Federal SSI payments for the fiscal year period 2010–2019 under these two sets of assumptions. All estimates are based on the assumptions underlying the President’s FY 2010 Budget and assume these final rules are effective July 1, 2010. The estimates reflect projected costs should the changes be extended through 2019.

¹⁷ “Attorney Advisor Program Sunset Date Extension,” 74 FR 33327.

¹⁸ 75 FR at 9822.

TABLE 1—ESTIMATED INCREASES IN OASDI BENEFITS AND FEDERAL SSI PAYMENTS—RETAIN QDD AND COMPASSIONATE ALLOWANCE AT 3.8% OF ALL INITIAL RECEIPTS

[In millions]

Fiscal year	OASDI	SSI	Total
2010	*	*	*
2011	*	*	*
2012	\$1	*	\$1
2013	1	*	1
2014	1	*	1
2015	1	*	1
2016	1	*	1
2017	1	*	1
2018	1	*	2
2019	2	*	2
Totals:			
2010–14	2	*	3
2010–19	9	1	10

*Increase in OASDI benefit payments or Federal SSI payments of less than \$500,000. (Totals may not equal the sum of components due to rounding.)

TABLE 2—ESTIMATED INCREASES IN OASDI BENEFITS AND FEDERAL SSI PAYMENTS—EXPAND QDD AND COMPASSIONATE ALLOWANCE TO 6% OF ALL INITIAL RECEIPTS

[In millions]

Fiscal year	OASDI	SSI	Total
2010	*	*	*
2011	*	*	\$1
2012	\$1	*	1
2013	2	*	2
2014	2	*	2
2015	2	*	3
2016	3	*	3
2017	3	*	3
2018	3	*	4
2019	4	\$1	4
Totals:			
2010–14	5	1	6
2010–19	20	3	23

*Increase in OASDI benefit payments or Federal SSI payments of less than \$500,000. (Totals may not equal the sum of components due to rounding.)

Regulatory Flexibility Act

We certify that these final rules do not have a significant economic impact on a substantial number of small entities as they affect only States and individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to make a regulatory flexibility analysis.

Paperwork Reduction Act

These final rules do not create any new or affect any existing collections. They do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program No 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, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending 20 CFR part 404 subparts P and Q and part 416 subparts I and J 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 is revised to read as follows:

Authority: Secs. 202, 205(a)–(b), and (d)–(h), 216(i), 221(a), (i), and (j), 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), (i), and (j), 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).

■ 2. Amend § 404.1512 by removing the word “and” from the end of paragraph (b)(5), redesignating paragraph (b)(6) as paragraph (b)(8) and revising redesignated paragraph (b)(8), and adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 404.1512 Evidence.

* * * * *

(b) * * *

(6) At the initial level of the administrative review process, when a State agency disability examiner makes the initial determination alone (*see* § 404.1615(c)(3)), opinions provided by State agency medical and psychological consultants based on their review of the evidence in your case record (*see* § 404.1527(f)(1)(ii));

(7) At the reconsideration level of the administrative review process, when a State agency disability examiner makes the determination alone (*see* § 404.1615(c)(3)), findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological

consultants and other program physicians, psychologists, or other medical specialists at the initial level of the administrative review process, and other opinions they provide based on their review of the evidence in your case record at the initial and reconsideration levels (*see* § 404.1527(f)(1)(iii)); and

(8) At the administrative law judge and Appeals Council levels (including the administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter), findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. *See* §§ 404.1527(f)(2)–(3).

* * * * *

■ 3. Amend § 404.1520a by adding a third sentence to the introductory text of paragraph (e), revising paragraph (e)(1), redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(4) and (e)(5), and adding new paragraphs (e)(2) and (e)(3) to read as follows:

§ 404.1520a Evaluation of mental impairments.

* * * * *

(e) *Documenting application of the technique.* * * * The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 404.1615(c)(1), the State agency medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. A State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence.

(2) When a State agency disability examiner makes the determination alone as provided in § 404.1615(c)(3), the State agency disability examiner has overall responsibility for assessing medical severity and for completing and signing the standard document.

(3) When a disability hearing officer makes a reconsideration determination as provided in § 404.1615(c)(4), the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

■ 4. Amend § 404.1527 by revising paragraph (f)(1), and revising paragraphs (f)(2)(i) and (f)(2)(ii) to read as follows:

§ 404.1527 Evaluating opinion evidence.

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) may make the determination of disability together with a State agency disability examiner or provide one or more medical opinions to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (see § 404.1615(c)). The following rules apply:

(i) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 404.1615(c)(1), he or she will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or medically equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case but are not in themselves evidence at the level of the administrative review process at which they are made.

(ii) When a State agency disability examiner makes the initial determination alone as provided in § 404.1615(c)(3), he or she may obtain the opinion of a State agency medical or psychological consultant about one or more of the medical issues listed in paragraph (f)(1)(i) of this section. In

these cases, the State agency disability examiner will consider the opinion of the State agency medical or psychological consultant as opinion evidence and weigh this evidence using the relevant factors in paragraphs (a) through (e) of this section.

(iii) When a State agency disability examiner makes a reconsideration determination alone as provided in § 404.1615(c)(3), he or she will consider findings made by a State agency medical or psychological consultant at the initial level of the administrative review process and any opinions provided by such consultants at the initial and reconsideration levels as opinion evidence and weigh this evidence using the relevant factors in paragraphs (a) through (e) of this section.

(2) * * *

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. State agency medical and psychological consultants and other program physicians, psychologists, and other medical specialists are highly qualified physicians, psychologists, and other medical specialists who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings and other opinions of State agency medical and psychological consultants and other program physicians, psychologists, and other medical specialists as opinion evidence, except for the ultimate determination about whether you are disabled (see § 404.1512(b)(8)).

(ii) When an administrative law judge considers findings of a State agency medical or psychological consultant or other program physician, psychologist, or other medical specialist, the administrative law judge will evaluate the findings using the relevant factors in paragraphs (a) through (e) of this section, such as the consultant's medical specialty and expertise in our rules, the supporting evidence in the case record, supporting explanations the medical or psychological consultant provides, and any other factors relevant to the weighing of the opinions. Unless a treating source's opinion is given controlling weight, the administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician, psychologist, or other medical specialist, as the administrative law judge must do for any opinions from treating sources, nontreating sources,

and other nonexamining sources who do not work for us.

■ 5. Amend § 404.1529 by removing “§§ 404.1512(b)(2) through (6)” in the third sentence of paragraph (a) and adding “§§ 404.1512(b)(2) through (8)” in its place, and by revising the third sentence of paragraph (b), to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 404.914 through 404.918 and in fully favorable determinations made by State agency disability examiners alone under § 404.1615(c)(3)), a State agency medical or psychological consultant or other medical or psychological consultant designated by the Commissioner (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

■ 6. Revise § 404.1546(a) to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.*

When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 404.1615(c)(1), a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity. When a State agency disability examiner makes a disability determination alone as provided in § 404.1615(c)(3), the disability examiner is responsible for assessing your residual functional capacity.

Subpart Q—[Amended]

■ 7. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

■ 8. Amend § 404.1602 by adding a definition of “compassionate allowance” in alphabetical order to read as follows:

§ 404.1602 Definitions.

* * * * *

Compassionate allowance means a determination or decision we make under a process that identifies for expedited handling claims that involve impairments that invariably qualify under the Listing of Impairments in appendix 1 to subpart P based on minimal, but sufficient, objective medical evidence.

* * * * *

■ 9. Amend § 404.1615 by revising the introductory text of paragraph (c), removing the word “or” at the end of paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(4), and adding a new paragraph (c)(3) to read as follows:

§ 404.1615 Making disability determinations.

* * * * *

(c) Disability determinations will be made by:

* * * * *

(3) A State agency disability examiner alone if the claim is adjudicated under the quick disability determination process (see § 404.1619) or as a compassionate allowance (see § 404.1602), and the initial or reconsidered determination is fully favorable to you. This paragraph will no longer be effective on November 12, 2013 unless we terminate it earlier or extend it beyond that date by publication of a final rule in the **Federal Register**; or

* * * * *

■ 10. Amend § 404.1619 by revising paragraphs (b) introductory text, (b)(1), (b)(2), and (c) to read as follows:

§ 404.1619 Quick disability determination process.

* * * * *

(b) If we refer a claim to the State agency for a quick disability determination, a designated quick disability determination examiner must do all of the following:

(1) Subject to the provisions in paragraph (c) of this section, make the disability determination after consulting with a State agency medical or psychological consultant if the State agency disability examiner determines consultation is appropriate or if consultation is required under § 404.1526(c). The State agency may certify the disability determination forms to us without the signature of the medical or psychological consultant.

(2) Make the quick disability determination based only on the medical and nonmedical evidence in the file.

* * * * *

(c) If the quick disability determination examiner cannot make a determination that is fully favorable, or if there is an unresolved disagreement between the disability examiner and the medical or psychological consultant (except when a disability examiner makes the determination alone under § 404.1615(c)(3)), the State agency will adjudicate the claim using the regularly applicable procedures in this subpart.

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

Subpart I—[Amended]

■ 11. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 12. Amend § 416.912 by removing the word “and” from the end of paragraph (b)(5), redesignating paragraph (b)(6) as paragraph (b)(8) and revising redesignated paragraph (b)(8), and adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 416.912 Evidence.

* * * * *

(b) * * *

(6) At the initial level of the administrative review process, when a State agency disability examiner makes the initial determination alone (see § 416.1015(c)(3)), opinions provided by State agency medical and psychological consultants based on their review of the evidence in your case record (see § 416.927(f)(1)(ii));

(7) At the reconsideration level of the administrative review process, when a State agency disability examiner makes the determination alone (see § 416.1015(c)(3)), findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians, psychologists, or other medical specialists at the initial level of the administrative review process, and other opinions they provide based on their review of the evidence in your case

record at the initial and reconsideration levels (see § 416.927(f)(1)(iii)); and

(8) At the administrative law judge and Appeals Council levels (including the administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter), findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2)–(3).

* * * * *

■ 13. Amend § 416.920a by adding a third sentence to the introductory text of paragraph (e), revising paragraph (e)(1), redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(4) and (e)(5), and adding new paragraphs (e)(2) and (e)(3) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(e) *Documenting application of the technique.* * * * The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 416.1015(c)(1), the State agency medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. A State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence.

(2) When a State agency disability examiner makes the determination alone as provided in § 416.1015(c)(3), the State agency disability examiner has overall responsibility for assessing

medical severity and for completing and signing the standard document.

(3) When a disability hearing officer makes a reconsideration determination as provided in § 416.1015(c)(4), the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

■ 14. Amend § 416.927 by revising paragraph (f)(1), and revising paragraphs (f)(2)(i) and (f)(2)(ii) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) may make the determination of disability together with a State agency disability examiner or provide one or more medical opinions to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (see § 416.1015(c)). The following rules apply:

(i) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 416.1015(c)(1), he or she will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or medically equals the requirements for any impairment listed in appendix 1 to subpart P of part 404 of this chapter, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case but are not in themselves evidence at the level of the administrative review process at which they are made.

(ii) When a State agency disability examiner makes the initial determination alone as provided in § 416.1015(c)(3), he or she may obtain the opinion of a State agency medical or psychological consultant about one or more of the medical issues listed in paragraph (f)(1)(i) of this section. In these cases, the State agency disability examiner will consider the opinion of the State agency medical or psychological consultant as opinion

evidence and weigh this evidence using the relevant factors in paragraphs (a) through (e) of this section.

(iii) When a State agency disability examiner makes a reconsideration determination alone as provided in § 416.1015(c)(3), he or she will consider findings made by a State agency medical or psychological consultant at the initial level of the administrative review process and any opinions provided by such consultants at the initial and reconsideration levels as opinion evidence and weigh this evidence using the relevant factors in paragraphs (a) through (e) of this section.

(2) * * *

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. State agency medical and psychological consultants and other program physicians, psychologists, and other medical specialists are highly qualified physicians, psychologists, and other medical specialists who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings and other opinions of State agency medical and psychological consultants and other program physicians, psychologists, and other medical specialists as opinion evidence, except for the ultimate determination about whether you are disabled (see § 416.912(b)(8)).

(ii) When an administrative law judge considers findings of a State agency medical or psychological consultant or other program physician, psychologist, or other medical specialist, the administrative law judge will evaluate the findings using the relevant factors in paragraphs (a) through (e) of this section, such as the consultant's medical specialty and expertise in our rules, the supporting evidence in the case record, supporting explanations the medical or psychological consultant provides, and any other factors relevant to the weighing of the opinions. Unless a treating source's opinion is given controlling weight, the administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician, psychologist, or other medical specialist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and other nonexamining sources who do not work for us.

* * * * *

■ 15. Amend § 416.929 by removing “§§ 416.912(b)(2) through (6)” in the

third sentence of paragraph (a) and adding “§§ 416.912(b)(2) through (8)” in its place, and by revising the third sentence of paragraph (b), to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 416.1414 through 416.1418 and in fully favorable determinations made by State agency disability examiners alone under § 416.1015(c)(3)), a State agency medical or psychological consultant or other medical or psychological consultant designated by the Commissioner (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

■ 16. Revise § 416.946(a) to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 416.1015(c)(1), a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity. When a State agency disability examiner makes a disability determination alone as provided in § 416.1015(c)(3), the disability examiner is responsible for assessing your residual functional capacity.

* * * * *

Subpart J—[Amended]

■ 17. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

■ 18. Amend § 416.1002 by adding a definition of “compassionate allowance” in alphabetical order to read as follows:

§ 416.1002 Definitions.

* * * * *

Compassionate allowance means a determination or decision we make under a process that identifies for expedited handling claims that involve impairments that invariably qualify under the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter based on minimal, but sufficient, objective medical evidence.

* * * * *

■ 19. Amend § 416.1015 by revising the introductory text of paragraph (c), removing the word “or” at the end of paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(4), and adding a new paragraph (c)(3) to read as follows:

§ 416.1015 Making disability determinations.

* * * * *

(c) Disability determinations will be made by:

* * * * *

(3) A State agency disability examiner alone if you are not a child (a person who has not attained age 18), and the claim is adjudicated under the quick disability determination process (see § 416.1019) or as a compassionate allowance (see § 416.1002), and the initial or reconsidered determination is fully favorable to you. This paragraph will no longer be effective on November 12, 2013 unless we terminate it earlier or extend it beyond that date by publication of a final rule in the **Federal Register**; or

* * * * *

■ 20. Amend § 416.1019 by revising paragraphs (b) introductory text, (b)(1), (b)(2), and (c) to read as follows:

§ 416.1019 Quick disability determination process.

* * * * *

(b) If we refer a claim to the State agency for a quick disability determination, a designated quick disability determination examiner must do all of the following:

(1) Subject to the provisions in paragraph (c) of this section, make the disability determination after consulting with a State agency medical or psychological consultant if the State agency disability examiner determines consultation is appropriate or if consultation is required under § 416.926(c). The State agency may certify the disability determination forms to us without the signature of the medical or psychological consultant.

(2) Make the quick disability determination based only on the

medical and nonmedical evidence in the file.

* * * * *

(c) If the quick disability determination examiner cannot make a determination that is fully favorable, or if there is an unresolved disagreement between the disability examiner and the medical or psychological consultant (except when a disability examiner makes the determination alone under § 416.1015(c)(3)), the State agency will adjudicate the claim using the regularly applicable procedures in this subpart.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****45 CFR Part 162**

[CMS–0009–N]

RIN 0938–AM50

**Health Insurance Reform;
Announcement of Maintenance
Changes to Electronic Data
Transaction Standards Adopted Under
the Health Insurance Portability and
Accountability Act of 1996**

AGENCY: Office of the Secretary, HHS.

ACTION: Notification.

SUMMARY: This document announces maintenance changes to some of the Health Insurance Portability and Accountability Act of 1996 standards made by the Designated Standard Maintenance Organizations. The maintenance changes are non-substantive changes to correct minor errors, such as typographical errors, or to provide clarifications of the standards adopted in our regulations entitled “Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards,” published in the **Federal Register** on January 16, 2009. This document also instructs interested persons on how to obtain the corrections.

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SUPPLEMENTARY INFORMATION:**I. Background**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated the adoption of standards for electronically conducting certain health

care administrative transactions between certain entities. Through subtitle F of title II of HIPAA, the Congress added to title XI of the Social Security Act (the Act) a new Part C, entitled “Administrative Simplification.” Part C of title XI of the Act consists of sections 1171 through 1180. These sections define various terms and impose several requirements on the Department of Health & Human Services (HHS), health plans, health care clearinghouses, and certain health care providers concerning the electronic transmission of health information.

On August 17, 2000, we published a final rule in the **Federal Register** (65 FR 50312) entitled “Health Insurance Reform: Standards for Electronic Transactions” (hereinafter referred to as the Transactions and Code Sets rule). That rule implemented some of the HIPAA Administrative Simplification requirements by adopting standards developed by standard setting organizations (SSOs) for eight electronic transactions, and code sets to be used in those transactions. The SSOs are organizations that are accredited by the American National Standards Institute (ANSI), and that develop industry standards for, among others, the HIPAA transactions. We adopted standards developed by the Accredited Standards Committee X12 (hereinafter referred to as ASC X12) and the National Council for Prescription Drug Programs (NCPDP). We defined those transactions and specified the adopted standards at 45 CFR part 162, subparts I and K through R. Designated Standard Maintenance Organizations (DSMOs) receive, manage, and process requested changes to the adopted standards in accordance with the process identified in the HIPAA regulations at § 162.900. A description of the DSMO process can be found in the May 31, 2002 proposed rule (67 FR 38050). Both ASC X12 and NCPDP are DSMOs.

On August 22, 2008, we published a proposed rule in the **Federal Register** (73 FR 49742) entitled “Health Insurance Reform: Modifications to Electronic Data Transactions Standards and Code Sets” (hereinafter referred to as the Modifications proposed rule) proposing to modify the HIPAA transaction standards by adopting updated versions of the standards. On January 16, 2009, we published a final rule in the **Federal Register** (74 FR 3296) entitled Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards (hereinafter referred to as the Modifications final rule), that adopted updated versions of the standards for