definition of ''agency'' contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

This rule was published as a proposed rule on December 18, 2002 (67 FR 77447). The proposed rule invited the public and interested parties to comment on the proposed rule. No comments were received.

List of Subjects in 20 CFR Part 206

Railroad retirement.

■ For the reasons set out in the preamble, the Railroad Retirement Board adds a new Part 206 to Title 20, chapter II of the Code of Federal Regulations to read as follows:

PART 206—ACCOUNT BENEFITS RATIO

Sec.
206.1 Definitions.
206.2 Computations.

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

§ 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

Account benefits ratio means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefit Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

Administrative expenses paid means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund. Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

Assets means the market value of cash and investments in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account).

Average account benefits ratio means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before such calendar year. If the amount computed is not a multiple of 0.1, such amount shall be increased to the next highest 0.1.

Total benefits paid means the total amount of benefits paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust in a fiscal year minus any benefit overpayments actually recovered during that fiscal year.

§ 206.2 Computation.

(a) On or before November 1, 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratios for each of the most recent 10 preceding fiscal years; and

(2) Certify the account benefits ratio for each such fiscal year to the Secretary of the Treasury.

(b) On or before November 1 of each year after 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratio for the fiscal year ending in such year; and

(2) Certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) No later than May 1 of each year, beginning 2003, the Board shall compute its projection of the account benefits ratio and the average account benefits ratios for each of the next succeeding 5 fiscal years.

Dated: August 19, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–21738 Filed 8–25–03; 8:45 am]

BILLING CODE 7905–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF37

Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of ''Special Profile'' Into Regulations

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: For purposes of this document, ''we,'' ''our,'' and ''SSA'' refer to the Social Security Administration and State agencies that make disability determinations for the Social Security Administration. ''You'' and ''your'' refer to individuals who claim benefits from the Social Security Administration based on ''disability.''

In this final rule we clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. This includes our rules about when we assess your residual functional capacity (RFC) and how we use this RFC assessment when we decide whether you can do your past relevant work or other work. These clarifications address issues of responsibility raised by some courts in recent cases; clarify that we may use vocational experts (VEs), vocational specialists (VSs), or other resources to obtain evidence we need to help us determine whether your impairment(s) prevents you from doing your past relevant work; add a special provision to our rules stating that, if you are at least 55 years old, and specific other circumstances are present, we will find that you are disabled; and make a number of minor editorial changes to clarify and update the language of our rules, and to use simpler language in keeping with our goal of using plain language in our regulations.

DATES: These rules will be effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–1767 or TTY 800–966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 800–772–1213 or TTY 800–325–0778, or visit our Internet Web site,

Social Security Online, at *http://www.socialsecurity.gov.*

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site Social Security Online, *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

What Programs Do These Regulations Affect?

These regulations affect disability determinations and decisions we make for you under title II and title XVI of the Social Security Act (the Act). In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these regulations also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

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

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you have limited income and resources.

How Do We Define ''Disability''?

Under both the title II and title XVI programs, disability means the inability to ''* * * engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' (Sections 223(d)(1)(A) and 1614(a)(3)(A) of the Act.) This definition applies if you file a claim under title II or if you file a claim as an adult under title XVI. (There is a different definition of disability for children filing under title XVI. See section 1614(a)(3)(C) of the Act.)

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, or whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the Act.) However, when we decide whether you are disabled (or whether you continue to be disabled), we will develop a complete medical history of at least the preceding twelve months for any case in which we decide that you are not disabled. (See sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act.)

Who Makes the Rules, Regulations, and Procedures for Providing Evidence of Disability?

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

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

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under this statutory definition, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we find that you are not disabled regardless of your medical condition or your age, education, and work experience. If you are not, we go on to step 2 of the sequence.

2. Do you have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities? If you do not, we find that you are not disabled. If you do, we go on to step 3 of the sequence.

3. Do you have an impairment(s) that meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If you do, and the impairment(s) meets the duration requirement, we find you disabled. If you do not, we go on to step 4 of the sequence.

4. Considering your RFC and the physical and mental demands of the work you have done in the past, does your impairment(s) prevent you from doing your past relevant work? If not, we find that you are not disabled. If so, we go on to step 5 of the sequence.

5. Considering your RFC and your age, education, and past work experience, does your impairment(s) prevent you from doing any other work? If it does, and your impairment(s) meets the duration requirement, we find that you are disabled. If it does not, we find that you are not disabled.

We use different sequential evaluation processes if we are deciding whether your disability continues. (See §§ 404.1594 and 416.994 of our regulations.) However, these different processes also include steps that consider your RFC and past relevant work, and your ability to adjust to other work considering your RFC, age, education, and work experience.

What Revisions Are We Making, and Why?

We are changing several sections in subpart P of part 404 and subpart I of part 416 to clarify our longstanding rules about how we make determinations and decisions for initial applications at steps 4 and 5 of the sequential evaluation process. The changes will also apply to steps 7 and 8 of the sequential evaluation processes for determining continuing disability in § 404.1594(f), and steps 6 and 7 in § 416.994(b)(5). However, for clarity we will refer in this preamble only to the steps of the sequential evaluation process for initial applications.

Several of the revisions clarify our longstanding interpretation of our rules that we assess your RFC once, after we have found that you have a severe impairment(s) that does not meet or equal a listing; *i.e.*, after step 3 but before we consider step 4. We use this RFC assessment first to determine, at step 4, whether you are able to do any of your past relevant work. If we determine that you cannot perform your past relevant work, or you have no past relevant work, we use the same RFC assessment at step 5 to determine whether you are able to make an adjustment to other work, given your RFC, age, education, and work experience.

Under the Act and §§ 404.1512 and 416.912 of our regulations, you

generally have the burden of proving your disability. You must furnish medical and other evidence we can use to reach conclusions about your impairment(s) and its effect on your ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop your complete medical history. That includes arranging for consultative examinations, if necessary, and making every reasonable effort to get medical reports from your own medical sources. We are responsible for helping you produce evidence that shows whether you are disabled.

Our administrative process was designed to be nonadversarial. (*See* §§ 404.900(b) and 416.1400(b) of our regulations; *Richardson* v. *Perales,* 402 U.S. 389, 403 (1971); *Sims* v. *Apfel,* 120 S. Ct. 2080, 2083–85, 2086 (2000).) In addressing burdens of proof, it is critical to keep in mind that we are using a term in our nonadversarial administrative process that describes a process normally used in adversarial litigation. ''Burdens of proof'' operate differently in the disability determination process than in a traditional lawsuit.

In the administrative process, the burden of proof generally encompasses both a burden of production of evidence and a burden of persuasion about what the evidence shows. (*Director, OWCP* v. *Greenwich Collieries,* 512 U.S. 267, 273 (1994) (citing *Powers* v. *Russell,* 30 Mass. 69, 76 (1833).) You shoulder the dual burdens of production and persuasion through step 4 of the sequential evaluation process. (*See Bowen* v. *Yuckert,* 482 U.S. 137, 146 n.5 (1987).)

Although you generally bear the burden of proving disability throughout the sequential evaluation process, there is a limited shift in the burden of proof to us ''only if the sequential evaluation process proceeds to the fifth step * * *.'' *Bowen* v. *Yuckert, id.* When the process proceeds to the fifth step, this means that you have demonstrated the existence of a severe impairment(s) resulting in an RFC that prevents the performance of past relevant work. When we decide that you are not disabled at step 5, this means that we have determined that there is other work you can do. To make this finding, we must provide evidence that demonstrates that jobs exist in significant numbers in the national economy that you can do, given your RFC, age, education, and work experience. In legal terms, this is a burden of production of evidence.

This burden shifts to us because, once you establish that you are unable to do any past relevant work, it would be unreasonable to require you to produce vocational evidence showing that there are no jobs in the national economy that you can perform, given your RFC. However, as stated by the Supreme Court, ''It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so.'' *Bowen* v. *Yuckert, id.* Thus, the only burden shift that occurs at step 5 is that we are required to prove that there is other work that you can do, given your RFC, age, education, and work experience. That shift does not place on us the burden of proving RFC.

When the burden of production of evidence shifts to us at step 5, our role is to obtain evidence to assist in impartially determining whether there is a significant number of jobs in the national economy you can do. Thus, we have a burden of proof even though our primary interest in the outcome of the claim is that it be decided correctly. As required by the Act, the ultimate burden of persuasion to prove disability, however, remains with you.

What Specific Changes Are We Making?

Sections 404.1501 and 416.901—Scope of Subpart

The second sentence of §§ 404.1501(g) and 416.901(j) is very long, and it includes a number of clauses. We are clarifying this sentence by numbering and listing the clauses and by revising some language. This includes clarifying, in new paragraphs (g)(2) and (j)(2), that assessment of RFC is our responsibility (''our residual functional capacity assessment'') and that we use this assessment at steps 4 and 5 of the sequential evaluation process.

Sections 404.1505—Basic Definition of Disability, and 416.905—Basic Definition of Disability for Adults

We are revising the second sentence, deleting the third sentence in §§ 404.1505(a) and 416.905(a), redesignating the fourth sentence as the last sentence in § 404.1505(a) and adding four new sentences after the second sentence. The revisions in the second sentence clarify our longstanding policy that, when we consider your ''previous work,'' we consider only work that was ''past relevant work.'' Past relevant work is work that you performed within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. (See Social Security Ruling (SSR) 82–62, ''Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General,'' Social Security Rulings, Cumulative Edition, 1982, p. 158.)

The previous third sentence explained that we consider your RFC, age, education, and work experience when we determine whether you can do other work; *i.e.,* at step 5 of the sequential evaluation process. We are replacing this sentence (and the fourth sentence in § 404.1505(a)) with four new sentences that provide more detail about this policy, including cross-references to our rules on the sequential evaluation process and RFC. They also clarify that we assess RFC once, and that we use this assessment at both step 4 and step 5 of the sequential evaluation process.

Sections 404.1512 and 416.912—Evidence of Your Impairment

We are making several revisions in these sections to clarify both your responsibility and our responsibility. We are changing the heading of these sections from ''Evidence of your impairment'' to ''Evidence'' because, as we discuss below, we are adding a provision that is not about evidence of your impairment; *i.e.,* a provision that is about our responsibility, at step 5 of the sequential evaluation process, to provide evidence of the existence of jobs.

We are making two changes in paragraph (c) to make it clearer. These are not substantive changes. First, we are adding a new second sentence to paragraph (c) to clarify, consistent with the remainder of the paragraph, that we may ask for non-medical information about functioning or about other non-medical issues in addition to medical information. Second, we are making a slight modification to the previous second sentence (now the third sentence) to make it clearer.

We also are adding a new paragraph (g), ''Other work'' explaining our burden at step 5. It explains that, in order to determine that you can make an adjustment to other work, we must provide evidence of the existence of work in the national economy that you can do, given your RFC and vocational factors. The new paragraph includes cross-references to regulations that explain how we evaluate your ability to do other work (§§ 404.1560 through 404.1569a and 416.960 through 416.969a, as appropriate).

The new paragraph also clarifies, by including the phrase ''make an adjustment to other work,'' our longstanding interpretation of the statutory requirement that we consider your age, education, and work experience as well as your impairment(s) when we determine the ability to do other work at step 5.

Our use of the phrase ''make an adjustment to other work'' is not new. We used the phrase when we originally published proposed rules on the medical/vocational guidelines in appendix 2, subpart P of regulations part 404 (the grid rules) in 1978:

> If an individual cannot perform his or her past relevant work, but the individual's physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy, and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed, it will be determined that such an individual is not under a disability. However, if such an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that such an individual is under a disability.

(See 43 FR 9284, 9288 (March 7, 1978).) We used the same language in the preamble when we published the final rules for the medical/vocational guidelines (see 43 FR 55349, 55352 (November 28, 1978)) and have used similar language in our Policy Interpretation Rulings (see, *e.g.,* SSR 83–11, ''Titles II and XVI: Capability To Do Other Work—The Exertionally Based Medical-Vocational Rules Met,'' Social Security Rulings, Cumulative Edition, 1983, p. 184). More recently, we have used the same or similar language in publications that we use to help the public better understand whether they may qualify for disability benefits under the Act and our regulations. Therefore, we are now using this language in our regulations.

Sections 404.1520—Evaluation of Disability in General, and 416.920—Evaluation of Disability of Adults, in General

We are revising the language in paragraph (a) of these sections to make it clearer. We are dividing it into five separate paragraphs ((a)(1) through (a)(5)) with headings. We also are modifying the previous language to explain more clearly what the five steps of the sequential evaluation process are, and to reflect the provisions of new paragraph (e), which we discuss below.

We are adding a new paragraph (e) to this section to explain that, after we decide that you are not working and have a severe impairment(s) that does not meet or equal any listing, we will assess your RFC. We then use this RFC assessment at step 4 to determine whether you are able to do any past relevant work and, if we make a determination at step 5, we use the same RFC assessment in determining whether you can do any other work.

Because we are adding a new paragraph (e), we are redesignating previous paragraphs (e) and (f) as paragraphs (f) and (g). We are also revising these paragraphs to make changes consistent with the changes we are making to other rules already described. For example, they now refer to ''our residual functional capacity assessment,'' to ''past relevant work'' (instead of ''work you have done in the past'' or ''past work experience''), and to making ''an adjustment to other work.'' Likewise, new paragraph (g) (previous paragraph (f)) clarifies that, at step 5, we consider ''the same residual functional capacity assessment'' we used at step 4. In new paragraph (f) (previous paragraph (e)), we are changing the phrase, ''[i]f we cannot make a decision based on your current work activity or on medical facts alone,'' to ''[i]f we cannot make a determination or decision at the first three steps of the sequential evaluation process,'' in order to make it clear that this language has always referred to determinations or decisions at steps 1, 2 and 3 of the sequential evaluation process. We are also making a comparable conforming change to §§ 404.1560(a) and 416.960(a). In the final rules we are adding new cross-references that were not in the proposed rules. These references are in §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv) (referencing new §§ 404.1560(b) and 416.960(b)), and in §§ 404.1520(a)(4)(v) and 416.920(a)(4)(v) and §§ 404.1520(g) and 416.920(g) (referencing new §§ 404.1560(c) and 416.960(c)).

We are also revising the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to reflect that we are adding a second special medical-vocational profile under which we may find you disabled without referring to our grid rules. When we discuss changes we are making to §§ 404.1562 and 416.962 later in this document, we explain the second profile and our reasons for including it in the regulations. We are also modifying the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to delete the partial description of the first special medical-vocational profile because it was duplicative of information already contained in §§ 404.1562 and 416.962.

Finally, we are making a number of minor editorial changes to language that was in previous paragraphs (e) and (f) (new paragraphs (f) and (g)).

Sections 404.1545 and 416.945—Your Residual Functional Capacity

To make paragraph (a) easier to understand, we are revising the paragraph by breaking it into five numbered paragraphs ((a)(1) through (a)(5)) with headings. We also are reorganizing and clarifying some of the text.

In new paragraph (a)(3), ''Evidence we use to assess your residual functional capacity,'' we are including a reference to §§ 404.1512(c) or 416.912(c) (as appropriate), which explains your burden to provide evidence of the existence and severity of your impairment(s) and how it affects your functioning, and our responsibility to develop a complete medical history and to arrange for a consultative examination(s) if necessary.

In new paragraph (a)(5), ''How we will use our residual functional capacity assessment,'' we are explaining that we first use our RFC assessment to decide if you can do past relevant work and to explain that, if you cannot do past relevant work, or do not have any past relevant work, we use the same assessment to decide, at step 5, if you can make an adjustment to other work.

In addition, we are making other changes in paragraph (a) to clarify our rules. In new paragraph (a)(1), ''Residual functional capacity assessment,'' we are adding a sentence to explain that RFC is the most you can do despite your limitations. This incorporates into our regulations a clarification that we currently provide in SSR 96–8p, ''Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims,'' 61 FR 34474 (July 2, 1996). We are also making a minor change to the language that appeared in proposed paragraph (a)(2) to incorporate another clarification provided in that SSR. The new paragraph explains that, when we assess RFC, we will consider all medically determinable impairments of which we are aware, including impairments that are not ''severe.''

New paragraph (a)(3) clarifies the fifth, sixth, and seventh sentences of previous paragraph (a), which discusses the evidence we consider when assessing RFC. Our intent is to clarify three points about how we consider evidence of pain and other symptoms in our RFC assessments. First, we make clear that the phrase ''observations by your treating and examining physicians or psychologists'', that had appeared in previous paragraph (a), includes ''statements about what you can still do,'' as discussed in §§ 404.1513 and 416.913. Second, we clarify that we consider descriptions and observations

of your impairment-related limitations from both medical and non-medical sources. Third, by removing the phrase ''that are important in the diagnosis and treatment of your medical condition'' from the fifth sentence of previous paragraph (a), we make clear that we consider all limitations that result from your medically determinable impairments, not just those that are important in the diagnosis and treatment of a medical condition. We also are deleting the entire eighth sentence of previous paragraph (a), which could have been misinterpreted to mean that we may or may not consider evidence that we already have. Because that is not our intent, and because these final rules make clear that we consider all relevant medical and nonmedical evidence in the case record, we believe this sentence is unnecessary.

We are revising the last sentence of previous paragraph (a) (now the last sentence of new (a)(5)(ii)) to remove the language that discusses our rules on RFC assessment in deciding whether your disability continues or ends. Those rules are already discussed in §§ 404.1594 and 416.994, and the new language simply directs you to those sections.

We made a minor editorial change to proposed §§ 404.1545(a)(5)(ii) and 416.945(a)(5)(ii) to clarify that we consider if you can make an adjustment to ''any'' other work. This change retains language from §§ 404.1561 and 416.961, being deleted by these rules. In § 416.945(a)(5)(ii), we also made a minor change to the next to the last sentence of the proposed rule by adding the word ''assessment'' to conform it to the language in proposed (and new) § 404.1545(a)(5)(ii).

We are making a number of other editorial changes to the previous rule. These changes are intended only to clarify the previous language and to reorganize the provisions into a more logical order.

Sections 404.1546 and 416.946—Responsibility for Assessing and Determining Your Residual Functional Capacity

We are revising the heading of these sections, which were previously titled ''Responsibility for assessing and determining residual functional capacity.'' to ''Responsibility for assessing your residual functional capacity.'' The two words ''and determining'' are superfluous. Our assessment is our determination about RFC.

Because of agency reorganizations, we are changing the title in the existing regulations in paragraph (b) of these sections, ''Director of the Office of Disability Hearings'' and in the proposed regulations in paragraph (b) of these section, ''Associate Commissioner for Disability'' to ''Associate Commissioner for Disability Determinations'' because this individual or his or her delegate is now responsible for assessing residual functional capacity in the disability hearing process.

The other changes we are making in this section are editorial. To make the section easier to understand, we are breaking up the previous single paragraph into three separate paragraphs that address the responsibilities of:

- State agency medical and psychological consultants (new paragraph (a)),
- State agency disability hearing officers (new paragraph (b)), and
- Administrative law judges and Appeals Council administrative appeals judges (new paragraph (c)).

We are making minor editorial changes to the wording in proposed paragraph (c) to make it clearer.

Sections 404.1560 and 416.960—When Your Vocational Background Will Be Considered

We are changing the previous heading, putting it into active voice, to make the meaning clearer.

We are also making changes in paragraphs (a) ''General,'' (b) ''Past relevant work,'' and (c) ''Other work,'' consistent with the changes we are making in other sections, already noted above.

For clarity, we are revising paragraph (b) by dividing it into three paragraphs with headings, designated (b)(1) through (b)(3). We are adding a new sentence in new paragraph (b)(1), ''Definition of past relevant work,'' defining ''past relevant work'' as work you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. This definition is based on our longstanding interpretation in SSR 82–62, already noted above. We also are adding a cross-reference to § 404.1565(a) or 416.965(a), as appropriate, because these paragraphs explain how we determine the 15-year period.

In paragraph (b)(2), ''Determining whether you can do your past relevant work,'' we are adding new language to explain how we obtain information that we need to determine, at step 4 of the sequential evaluation process, whether your impairment(s) prevents you from doing your past relevant work. The new language indicates that we ask you for information about work you have done in the past, and that we may ask other people who know about your past work. This is consistent with the provisions in §§ 404.1565(b) and 416.965(b), and we are including a cross-reference to each of those sections, as appropriate, in new paragraph(b)(2).

We also are explaining in new paragraph(b)(2) that we may use the services of VEs or VSs, or other resources such as the ''Dictionary of Occupational Titles,'' to obtain evidence that we need to help us determine whether you can do your past relevant work. This is a longstanding policy interpretation set out in SSR 82–61, ''Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation As Generally Performed,'' Social Security Rulings, Cumulative Edition, 1982, p. 185.

In response to a public comment, we are making changes to the language that appeared in proposed paragraph (b)(2) to clarify the role of a VE at step 4 and to clarify that, if we obtain additional evidence at step 4, that evidence is used to help our adjudicators decide if an individual can do his or her past relevant work.

We are editing the second sentence of previous paragraph (b), making it into two sentences for clarity, and redesignating it as new paragraph (b)(3), ''If you can do your past relevant work.'' Based on a public comment we received in response to the notice of proposed rulemaking, we are also revising proposed paragraph (b)(3) to clarify that, in determining whether you have the RFC to do your past relevant work, we do not consider whether the past relevant work exists in significant numbers in the national economy. In response to this comment, we are also making related clarifying changes to proposed paragraphs (b)(3) and (c) and to §§ 404.1569a and 416.969a.

We are modifying previous paragraph (c) to make clear that, if we decide at step 5 that you are not disabled, we are responsible for providing evidence of other work you can do (consistent with new §§ 404.1512(g) and 416.912(g)). The modified paragraph also makes clear that we are not responsible for providing additional evidence of RFC or for making another RFC assessment at step 5. This is because we use the same RFC assessment at step 5 that we made before we considered whether you have the RFC to do past relevant work at step 4, a point in our process at which you have the burdens of production and persuasion.

We are also making minor changes to the language that appeared in proposed paragraph (c) to conform it with the new language in §§ 404.1520 and 416.920

which explains that at step 5 we consider whether you are able to ''adjust to'' any other work.

Sections 404.1561 and 416.961—Your Ability To Do Work Depends Upon Your Residual Functional Capacity

We are removing these sections because their provisions are incorporated into other new and existing rules. We are making additional revisions to the language that appeared in proposed rules in §§ 404.1520(g) and 416.920(g), 404.1545(a)(5)(ii) and 416.945(a)(5)(ii), and 404.1560(c)(1) and 416.960(c)(1) to better reflect the provisions of deleted §§ 404.1561 and 416.961.

Sections 404.1562 and 416.962—If You Have Done Only Arduous Unskilled Physical Labor

We are revising and updating the headings of these sections in order to reflect changes we are making to their content.

First Medical-Vocational Profile

Previously, §§ 404.1562 and 416.962 described one special medical-vocational profile. Under that profile, if you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled labor, and you are not working and are no longer able to do this kind of work because of a severe impairment, we will find that you are disabled. We consider this special medical-vocational profile at step 5 of the sequential evaluation process, before we consider the grid rules. We do this because we have decided that, if you match this profile, you do not have the ability to adjust to other work (*i.e.,* you are disabled)—regardless of your age. If you meet this profile, and are age 60 or over, we would usually find you disabled using our grid rules. However, if you are under age 60, you might not qualify without this special rule.

Although we have changed the language somewhat over the years, this medical-vocational profile has been in our regulations since 1960 (when it was at § 404.1502(c)). However, the language in previous §§ 404.1562 and 416.962 needed to be updated to be consistent with our current rules and policies. For example, the last sentence of the paragraph before the example spoke about the ability to do other work ''on a full-time or reasonably regular part-time basis.'' However, in SSR 96–8p, we explain that at step 5 we consider only full-time work when we consider other work you are able to do. (See 61 FR 34474, 34475 (July 2, 1996).) Other provisions in the medical-vocational profile have been made obsolete or been superseded by more recent regulations, such as our rules on doing substantial gainful activity at step 1 of the sequential evaluation process, and our rules on transferability of skills in §§ 404.1568(d)(4) and 416.968(d)(4).

We therefore are deleting the second and third sentences of the previous sections and revising the example. These changes only make the rule more consistent with our current policies and will not affect anyone whom we would have found disabled under the previous rule. We are also changing the occupation title that appeared in the proposed example to paragraph (a) from ''miner'' to ''miner's helper'' because there are some highly skilled mining occupations that would not meet the qualifications for this medical-vocational profile.

We are designating all the language discussing this first medical-vocational profile as paragraph (a) of revised §§ 404.1562 and 416.962 in order to distinguish it from the second medical-vocational profile in new paragraph (b), discussed below. We also are making a conforming change to the third sentence of section 203.00(b) in appendix 2 to subpart P of part 404, to reflect these changes.

Second Medical-Vocational Profile

We are adding to §§ 404.1562 and 416.962 a second special medical-vocational profile that we have been using since 1975, but that has not been in our regulations. We are designating the language discussing the second medical-vocational profile as paragraph (b). Under this profile, we will find you disabled if you:

- Are of ''advanced age'' (*i.e.,* are at least 55 years old);
- Have a ''limited'' education or less (*i.e.,* generally, an 11th grade education or less—see §§ 404.1564(b)(3) and 916.964(b)(3));
- Have no past relevant work (*i.e.,* either no work experience or no work experience that satisfies our definition of ''past relevant work''); and
- Have a ''severe,'' medically determinable impairment(s).

If you have these characteristics, we would usually find you disabled using our grid rules. However, if you have solely ''nonexertional'' limitations (see § 200.00(e) of appendix 2 to subpart p of part 404), you might not qualify without this special profile.

The original instruction for this profile dates back to a policy decision of July 7, 1975. In 1982, we incorporated this profile into SSR 82–63, ''Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work'' (see Social Security Rulings, Cumulative Edition, 1982, page 205). Therefore, the new rule incorporates our longstanding policy interpretation into our regulations.

We also are clarifying in paragraph (b) and other related rules that, if you meet the second medical-vocational profile, we do not have to assess RFC. This is because, once we have determined that you have a ''severe'' impairment(s) and that you meet the other criteria in the profile, we will find you disabled, and we will not need an RFC assessment. We recognize that, in most cases, our normal sequential evaluation process would require us to do an RFC assessment before we determine that you have no past relevant work. However, because you must only have a ''severe'' impairment(s) under this profile, and your advanced age, limited education, and lack of past relevant work should be readily apparent from the case record, an RFC assessment is unnecessary.

Sections 404.1563 and 416.963—Your Age as a Vocational Factor.

We are making only editorial changes to the second sentence of paragraph (a).

Sections 404.1569a and 416.969a—Exertional and Nonexertional Limitations

We are deleting the seventh sentence of paragraph (a), ''General,'' and adding three new sentences in its place. These changes are consistent with other changes discussed above.

We are making a minor change to proposed §§ 404.1569a and 416.969a at the end of the third new sentence to refer to, ''any other work which exists in the national economy.'' We believe that this revision, which retains more of the language from these sections prior to these amendments, helps clarify that ''other work'', as distinguished from a claimant's previous work, must exist in significant numbers in the national economy.

Sections 404.1594—How We Will Determine Whether Your Disability Continues or Ends, and 416.994—How We Will Determine Whether Your Disability Continues or Ends, Disabled Adults

We are revising the first sentence of § 404.1594(f)(7) and § 416.994(b)(5)(vi), which contain essentially the same language, in order to update the cross-references. This is necessary due to the changes we are making to §§ 404.1560 and 416.960 and the removal of §§ 404.1561 and 416.961.

Section 203.00, Appendix 2 to Subpart P of Part 404

As already noted, we are revising the third sentence of section 203.00(b) to conform to the changes in new §§ 404.1562(a) and 416.962(a).

Public Comments: We published these regulatory provisions in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 11, 2002 (67 FR 39904). We provided the public a 60-day comment period. The comment period closed on August 12, 2002. We heard from eight commenters in response to this notice. The commenters included attorneys, an organization whose members include attorneys and others who represent the interest of disabled persons, a State agency that makes disability determinations on our behalf, and individuals who did not identify a particular affiliation. A summary of the comments we received and our responses to the comments are set out below.

Because some of the comments were detailed and lengthy, we have condensed, summarized, or paraphrased them. We have, however, tried to summarize the commenters'' views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of these rules.

Comment: One commenter expressed concerns about whether the proposed revisions would apply to all cases or if they would only apply to cases filed after the effective date of the revisions. This commenter stated that it would be preferable to apply the new rules only to cases filed after the effective date of the revisions.

Response: These new rules, as stated in **DATES**, above, will be effective 30 days after the date published in the **Federal Register**. As is our usual practice when we amend our regulations, the new rules will apply to all administrative determinations and decisions made on or after that effective date, regardless of the date on which an application was filed.

Comment: This same commenter stated that although the burden is on the claimant to produce evidence to show disability, the 5th Circuit Court of Appeals has ruled that the Commissioner has the burden of ensuring that evidentiary gaps are filled and the record is complete. The commenter stated that, if an administrative law judge (ALJ) is not satisfied with the development of the record, he or she should ''reset the case'' to complete the record if possible, rather than issue an unfavorable decision.

Response: We believe that our existing regulations (§§ 404.1512(d) and 416.912(d)) and the new rules at §§ 404.1545(a)(3) and 416.945(a)(3) address the commenter's concerns, and clearly explain our responsibility to develop the record and to assist claimants in obtaining evidence. Before making a determination that an individual is not disabled, our adjudicators, including ALJs, will develop the individual's complete medical history.

Comment: One commenter stated that the proposed rules should clarify at § 404.1560 that past relevant work must exist in the national economy in order to be considered as past relevant work for the purpose of denying benefits under the sequential evaluation process. He stated that finding an individual can perform past work that no longer exists is not in conformity with the Social Security Act's requirement that, to be considered gainful employment, work must exist in the national economy.

Response: We do not agree with the commenter's interpretation of the Social Security Act. Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act provide that:

> An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence * * *, ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

In this excerpt, the phrase ''which exists in the national economy'' relates to ''any other kind of substantial gainful activity'' (*i.e.*, work other than an individual's previous work). It does not relate to ''previous work.'' Thus, the Act does not require that an individual's previous work exist in significant numbers in the national economy. (*See* SSR 82–40, ''Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country.'') Consequently, we do not consider job prevalence at step 4 of sequential evaluation. Neither do we consider an individual's age, education, and work experience. The issue at step 4 is whether or not an individual's impairment(s) prevents him or her from being able to perform the job duties of his or her past relevant work. If he or she has the residual functional capacity to still do his or her past relevant work, we will make a finding of not disabled at step 4 and deny the claim whether or not that previous work exists in significant numbers in the national economy. In response to this comment, we are making additional changes in §§ 404.1560 and 416.960 to ensure that other members of the public do not misunderstand this.

Comment: One commenter stated that the proposed rules would not be a clarification of our rules, but a change. He stated that the proposed rules would force claimants to prove at step 4 that they cannot do other work (their past job, as performed in the national economy) against testimony from a trained VE. He stated that it is not fair that the claimant would have the burden of proof at step 4, yet have no ability to rebut testimony from a trained expert, and that VE testimony and all opinion evidence regarding other work should be limited to step 5 where the Commissioner has the burden of proof.

Response: We do not agree that these new rules represent a change in policy. Our longstanding policy is that evaluation of ability to do past relevant work at step 4 involves two aspects. We will find that a claimant is not disabled at this step if he or she retains the physical and mental capacity to perform either the functional demands and job duties of a particular past relevant job (*i.e.*, the job as the individual actually performed it) or the functional demands and job duties of the occupation as generally required by employers throughout the national economy. (*See* SSR 82–61: ''Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation as Generally Performed.'') Thus, evaluation of capacity to do past relevant work as generally performed in the national economy is not, as the commenter suggests, an assessment of ability to do ''other work'' (*i.e.*, step 5 of sequential evaluation). In addition, allowing for expert testimony on the issue of how work is generally performed in the national economy is not unfair. VE testimony can be examined and rebutted at any step of sequential evaluation.

Comment: One commenter, who generally supported the proposed rules, recommended that the new rules clarify that adjudicators may obtain VE testimony about past relevant work, but that such testimony is not required. The commenter also suggested that we clarify that the VE's role at step 4 should be limited to explaining how the claimant's past relevant work is normally performed in the national economy. The commenter stated that the VE should not determine whether

the claimant's description of past relevant work is credible or whether the claimant can perform past relevant work, either as it is normally performed in the national economy or as he or she actually previously performed it. According to the commenter, it is the administrative law judge's, not the VE's, duty to determine whether a claimant can continue to perform past work. The commenter also suggested that we include a cross-reference to §§ 404.1560(c) and 416.960(c) in several sections of the regulations that address the concept of ''other work.''

Response: We agree with the suggestion about adding cross-references and have added them to new § 404.1520(a)(4)(iv) and (v) and § 416.920(a)(4)(iv) and (v). We also agree that VE testimony is not a requirement at step 4, but that VE testimony may be obtained at step 4 to provide evidence to help us determine whether or not an individual can do his or her past relevant work. We do not agree that the VE is or should be limited to testifying about how an individual's past relevant work is normally performed in the national economy. Although we agree that the ultimate responsibility for making the necessary findings at step 4 rests with our adjudicators, we believe that it is appropriate for our adjudicators to consider evidence from a VE, VS, or other vocational resource (along with the other evidence in the case record) on a broad range of step 4 issues to help them decide if an individual can do his or her past relevant work. A VE or VS may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, as he or she actually performed it or as it is generally performed. Such testimony may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a VE or VS may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations (as determined by our adjudicator) imposed by the claimant's medical impairments can meet the demands of the claimant's previous work, either as the claimant actually performed it in the past or as that work is generally performed. In response to this comment about the role of the VE at step 4, we are making additional revisions to §§ 404.1560(b)(2) and 416.960(b)(2) to clarify our policy in this regard.

Comment: One commenter stated that a VE should not play any role at all in the disability process.

Response: The commenter did not explain why she stated that VEs should play no role in the disability claims adjudication process. We do not agree, and we made no changes in our longstanding policy based on this comment.

Several of the comments we received were outside the scope of the proposed rules. Two commenters asked us to provide additional clarification about aspects of step 5 of sequential evaluation that are not within the scope of these rules. Another commenter asked about claimants being able to record hearings before an ALJ. One commenter provided observations relating to her own claim for benefits. Because these comments were outside the scope of these rules, we are not addressing them.

Regulatory Procedures

Executive Order 12866

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

These final rules contain amended reporting requirements at §§ 404.1560 and 416.960 of the final regulation. The public reporting burden is accounted for in the Information Collection Request for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the form.

SSA solicited public comment in the notice of proposed rulemaking and subsequently received and incorporated suggestions from the public that have resulted in revision to these two sections of the regulation. As a result, SSA is soliciting comments in the final rule 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. While these rules will be effective September 25, 2003, these burdens will not be effective until cleared by OMB.

An Information Collection Request has been submitted to OMB for clearance. Comments may be mailed or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer for SSA, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503, Fax No. 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax No. 410–965–6400.

Comments can be received up to 30 days after publication of this notice. 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: May 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

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

Subpart P—[Amended]

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

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 2. Amend § 404.1501 by revising paragraph (g) to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(g) Our rules on vocational considerations are in §§ 404.1560 through 404.1569a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by ''work which exists in the national economy'';

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of this subpart.

* * * * *

■ 3. Amend § 404.1505(a), by revising the second sentence, removing the third sentence, redesignating the fourth sentence as the last sentence, and adding four new sentences after the second sentence to read as follows:

§ 404.1505 Basic definition of disability.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (*see* § 404.1560(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1, we will assess your residual functional capacity as provided in §§ 404.1520(e) and 404.1545. (*See* §§ 404.1520(g)(2) and 404.1562 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work. * * *

* * * * *

■ 4. Amend § 404.1512 by revising the section heading, revising paragraph (c), and adding a new paragraph (g) to read as follows:

§ 404.1512 Evidence.

* * * * *

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. If we ask you, you must provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work. In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

(g) *Other work.* In order to determine under § 404.1520(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (*see* §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as described in § 404.1520(e)), age, education, and work experience.

■ 5. Amend § 404.1520 as follows:

■ a. By revising paragraph (a),

■ b. By redesignating paragraphs (e) and (f) as paragraphs (f) and (g),

■ c. By adding a new paragraph (e) and

■ d. By revising newly redesignated paragraphs (f) and (g).

The revisions and additions read as follows:

§ 404.1520 Evaluation of disability in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 404.1505.

(2) *Applicability of these rules.* These rules apply to you if you file an application for a period of disability or disability insurance benefits (or both) or for child's insurance benefits based on disability. They also apply if you file an application for widow's or widower's benefits based on disability for months after December 1990. (*See* § 404.1505(a).)

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five ''steps'' that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (*See* paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (*See* paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (*See* paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled. (*See* paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (*See* paragraph (f) of this section and § 404.1560(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to

other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (*See* paragraph (g) of this section and § 404.1560(c).)

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 404.1594(f).

* * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 404.1545. (See paragraph (g)(2) of this section and § 404.1562 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. (See § 404.1560(b).) If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to any other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. (See § 404.1560(c).) If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 404.1562. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

■ 6. Amend § 404.1545 by revising paragraph (a) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. (See § 404.1546.)

(2) *If you have more than one impairment.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not ''severe,'' as explained in §§ 404.1520(c), 404.1521, and 404.1523, when we assess your residual functional capacity. (See paragraph (e) of this section.)

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. (*See* § 404.1512(c).) However, before we make a determination that you are not disabled, we are responsible for developing your complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help you get medical reports from your own medical sources. (*See* §§ 404.1512(d) through (f).) We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. (*See* § 404.1513.) We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. (*See* paragraph (e) of this section and § 404.1529.)

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.*

(i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. (*See* §§ 404.1520(f) and 404.1560(b).)

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to any other work that exists in the national economy. (*See* §§ 404.1520(g) and 404.1566.) At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 404.1560 through 404.1569a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, *see* § 404.1594.

* * * * *

■ 7. Revise § 404.1546 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 makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 404.914, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 404.918, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level under § 404.929 or at the Appeals Council review level under § 404.967, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible

for assessing your residual functional capacity.

■ 8. Revise § 404.1560 to read as follows:

§ 404.1560 When we will consider your vocational background.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (*see* § 404.1520), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (*See* § 404.1565(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (*See* § 404.1565(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the ''Dictionary of Occupational Titles'' and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity is not enough to enable you to do any of your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 404.1561 [Removed]

■ 9. Remove § 404.1561.

■ 10. Revise § 404.1562 to read as follows:

§ 404.1562 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (*see* § 404.1564) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (*see* §§ 404.1520(c), 404.1521, and 404.1523), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a ''severe'' combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 404.1520(c), 404.1521, and 404.1523), are of advanced age (age 55 or older, *see* § 404.1563), have a limited education or less (*see* § 404.1564), and have no past relevant work experience (*see* § 404.1565), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to this subpart.

■ 11. Amend § 404.1563 by revising the second sentence of paragraph (a) and adding a new sentence after the revised second sentence to read as follows:

§ 404.1563 Your age as a vocational factor.

(a) *General.* * * * When we decide whether you are disabled under § 404.1520(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

■ 12. Amend § 404.1569a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 404.1569a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (*see* §§ 404.1520(f) and 404.1594(f)(7)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (*See* §§ 404.1520(g) and 404.1594(f)(8).)

* * *

* * * * *

■ 13. Amend § 404.1594 by revising the first sentence of paragraph (f)(7) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(f) * * *

(7) If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 404.1560. * * *

* * * * *

■ 14. Amend § 203.00 in appendix 2 to subpart P of part 404 by revising the section heading, revising the third sentence of paragraph (b), and adding a new fourth sentence to read as follows:

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

* * * * *

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

* * * * *

(b) * * * However, we will find that an individual who (1) has a marginal education, (2) has work experience of 35 years or more during which he or she did only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the individual is able to do medium work. (*See* § 404.1562(a) in this subpart and § 416.962(a) in subpart I of part 416.)

* * * * *

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

Subpart I—[Amended]

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

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), 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, 1382h note).

■ 16. Amend § 416.901 by revising paragraph (j) to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(j) Our rules on vocational considerations are in §§ 416.960 through 416.969a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by ''work which exists in the national economy'';

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.

* * * * *

■ 17. Amend § 416.905(a), by revising the second sentence, removing the third sentence, and adding four new sentences after the second sentence to read as follows:

§ 416.905 Basic definition of disability for adults.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in §§ 416.920(e) and 416.945. (*See* § 416.920(g)(2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work.

* * * * *

■ 18. Amend § 416.912 by revising the section heading, revising paragraph (c), and adding a new paragraph (g) to read as follows:

§ 416.912 Evidence.

* * * * *

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. If we ask you, you must provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work, or, if you are a child, your functioning. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

(g) *Other work.* In order to determine under § 416.920(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (*see* §§ 416.960 through 416.969a), given your residual functional capacity (which we have already assessed, as described in § 416.920(e)), age, education, and work experience.

■ 19. Amend § 416.920 as follows:

■ a. By revising paragraph (a),

■ b. By redesignating paragraphs (e) and (f) as paragraphs (f) and (g),

■ c. By adding a new paragraph (e) and

■ d. By revising newly redesignated paragraphs (f) and (g).

The revisions and addition read as follows:

§ 416.920 Evaluation of disability of adults, in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 416.905.

(2) *Applicability of these rules.* These rules apply to you if you are age 18 or older and you file an application for Supplemental Security Income disability benefits.

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five ''steps'' that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (*See* paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and at step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (*See* paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a

severe medically determinable physical or mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (*See* paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. (*See* paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and § 416.960(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and § 416.960(c).)

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 416.994(b)(5).

* * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 416.945. (See paragraph (g)(2) of this section and § 416.962 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. (*See* § 416.960(b).) If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to any other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. (*See* § 416.960(c).) If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 416.962. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

■ 20. Amend § 416.945 by revising paragraph (a) to read as follows:

§ 416.945 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. (*See* § 416.946.)

(2) *If you have more than one impairment.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not ''severe,'' as explained in §§ 416.920(c), 416.921, and 416.923, when we assess your residual functional capacity. (*See* paragraph (e) of this section.)

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. (*See* § 416.912(c).) However, before we make a determination that you are not disabled, we are responsible for developing your complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help you get medical reports from your own medical sources. (*See* §§ 416.912(d) through (f).) We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. (*See* § 416.913.) We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. (*See* paragraph (e) of this section and § 416.929.)

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.* (i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. (*See* §§ 416.920(f) and 416.960(b).)

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to any other work that exists in the national economy. (*See* §§ 416.920(g) and 416.966.) At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 416.960 through 416.969a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, *see* § 416.994.

* * * * *

■ 21. Revise § 416.946 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 makes the disability determination, a State agency medical or psychological consultant(s)

is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 416.1414, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 416.1418, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level under § 416.1429 or at the Appeals Council review level under § 416.1467, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

■ 22. Revise § 416.960 to read as follows:

§ 416.960 When we will consider your vocational background.

(a) *General.* If you are age 18 or older and applying for supplemental security income benefits based on disability, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (*see* § 416.920), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (*See* § 416.965(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (*See* § 416.965(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the ''Dictionary of Occupational Titles'' and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity is not enough to enable you to do any of your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 416.961 [Removed]

■ 23. Remove § 416.961.

■ 24. Revise § 416.962 to read as follows:

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (*see* § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a ''severe'' combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, *see* § 416.963), have a limited education or less (*see* § 416.964), and have no past relevant work experience (*see* § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

■ 25. Amend § 416.963 by revising the second sentence of paragraph (a) and adding a new sentence after the newly revised second sentence to read as follows:

§ 416.963 Your age as a vocational factor.

(a) General. * * * When we decide whether you are disabled under § 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

* * * * *

■ 26. Amend § 416.969a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 416.969a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (*see* §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (*See* §§ 416.920(g) and 416.994(b)(5)(vii).)

* * *

* * * * *

■ 27. Amend § 416.994 by revising the first sentence of paragraph (b)(5)(vi) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) * * *

(vi) *Step 6.* your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 416.960. * * *

* * * * *

[FR Doc. 03–21610 Filed 8–25–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 1980N–0050]

RIN 0910–AA01

Anorectal Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) drug product containing a combination of hydrocortisone and pramoxine hydrochloride (HCl) for anorectal use is not generally recognized as safe and effective and is misbranded. This combination product is not currently marketed OTC. This final rule discusses data on the combination of hydrocortisone and pramoxine HCl that were still under review when an earlier final rule on OTC anorectal drug products was issued. This rule is part of FDA's ongoing review of OTC drug products.

DATES: This rule is effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (the Hemorrhoidal Panel), which was the advisory review panel responsible for evaluating the data on the active ingredients in this class of drugs. The agency's tentative final monograph (TFM) on OTC anorectal drug products was published in the **Federal Register** of August 15, 1988 (53 FR 30756). Hydrocortisone as a single ingredient or in combination with pramoxine HCl was not discussed in the TFM. In response to the TFM, the agency received a submission, containing data, information, analyses, views, legal arguments, and a hearing request, to support monograph status for a combination OTC drug product containing hydrocortisone and pramoxine HCl for use as an anti-inflammatory, antipruritic, anesthetic agent (Ref. 1). The requester asked that: (1) The definition section of the proposed anorectal monograph (§ 346.3 (21 CFR 346.3)) be amended to provide for a drug that has anti-inflammatory properties, such as hydrocortisone, (2) hydrocortisone be allowed to be combined with other appropriate ingredients at OTC strengths, including a topical anesthetic such as pramoxine HCl and, (3) a combination of hydrocortisone 0.5 percent and 1 percent pramoxine HCl be generally recognized as safe and effective.

When the OTC anorectal drug products final monograph was published on August 3, 1990 (55 FR 31776 at 31779), the hearing request relating to hydrocortisone individually and in combination had not been evaluated and, therefore, was not addressed in that document. After publication of the final rule, the agency responded to the submission (Ref. 1) and stated that: (1) It does not provide sufficient evidence to demonstrate that each of the active ingredients in the combination product contributes to the claimed effects and (2) it has not been shown that the combination is generally recognized as safe and effective, whether under the TFM for OTC external analgesic drug products (48 FR 5852, February 8, 1983), the TFM or FM for OTC anorectal drug products, current regulations, or the agency's OTC combination drug product guidelines. The agency's detailed comments are on file in the Division of Dockets Management (Ref. 2).

Subsequently, the requester submitted additional information (Ref. 3). In this final rule, the agency responds to the additional information and includes the combination of hydrocortisone with pramoxine HCl as a nonmonograph (not generally recognized as safe and effective) anorectal drug product in new § 310.545(a)(26)(xi) (21 CFR 310.545(a)(26)(xi)). Any such product marketed OTC would be subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule.

II. The Agency's Final Conclusions on Hydrocortisone Individually and in Combination With Pramoxine HCl for Anorectal Use

The requester contended (Ref. 3) that the proposed combination meets, both from a scientific and legal perspective, the agency's OTC combination drug product policy in that a combination of hydrocortisone (0.25 to 1 percent) and pramoxine HCl 1 percent, is generally recognized as safe and effective for use in OTC drug products to relieve symptoms associated with idiopathic pruritus ani, such as anorectal swelling, pain, itching, and burning. The requester asked the agency to amend the OTC external analgesic drug products TFM and the anorectal drug products FM to include an external analgesic-anorectal OTC drug product containing the active ingredients hydrocortisone and pramoxine HCl. In the alternative, the requester asked for an oral hearing.

The requester's arguments and the agency's responses follow:

(Comment 1) Hydrocortisone is a proposed Category I ingredient and; therefore, FDA considers it safe and effective for OTC use. The ingredient is included in the OTC external analgesic drug products TFM (55 FR 6932 at 6951, February 27, 1990). FDA considers hydrocortisone safe and effective to relieve swelling and itching associated with various skin conditions, including anal itching (55 FR 6932 at 6933).

(Agency response) The agency agrees that hydrocortisone as a single ingredient is safe and effective for OTC use for the claims proposed in