

TABLE 1—RELATED SERVICE INFORMATION

| Document  | Revision | Date              |
|---|----------|-------------------|
| EMBRAER Service Bulletin 170–36–0004 .....  | 01       | March 10, 2008.   |
| EMBRAER Service Bulletin 170–36–0011 .....  | 02       | July 19, 2007.    |
| EMBRAER Service Bulletin 190–36–0006 .....  | 01       | July 19, 2007.    |
| EMBRAER Service Bulletin 190–36–0014 .....  | 01       | January 14, 2009. |
| Task 36–11–02–002 (Low Stage Bleed Check Valve) in Section 1 of the EMBRAER 170 Maintenance Review Board Report MRB–1621. | 5        | November 5, 2008. |

Issued in Renton, Washington, on February 24, 2010.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–4505 Filed 3–3–10; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA–2008–0041]

RIN 0960–AG87

#### Disability Determinations by State Agency Disability Examiners

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to amend our rules to permit disability examiners in the State agencies to make fully favorable determinations in certain claims for disability benefits under titles II and XVI of the Social Security Act (Act) without the approval of a medical or psychological consultant. The proposed changes would apply on a temporary basis only to claims we consider under our rules for Quick Disability Determinations (QDD) or under our compassionate allowance initiative.

**DATES:** To be sure that we consider your comments, we must receive them no later than April 5, 2010.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2008–0041 so that we may associate your comments with the correct regulation.

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function of the webpage to find docket number SSA–2008–0041, then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately as we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Nancy Schoenberg, Office of Compassionate Allowances and Disability Outreach, Social Security Administration, 4692 Annex, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–9408, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

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

##### What Do Our Current Rules Provide?

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

review process for adjudicating disability claims under titles II and XVI of the Act.<sup>1</sup> The members of the team are jointly responsible for the determination.<sup>2</sup> A State agency disability examiner can make the disability determination alone only when there is no medical evidence to evaluate and the claimant fails or refuses, without a good reason, to go to a consultative examination.<sup>3</sup>

Although we evaluate all disability claims using the same criteria, we have developed two methods for expediting certain claims where there is a high probability that we will find the claimant disabled. In the QDD process, we use a computer-based predictive model to analyze specific elements of data in electronic claim files. The predictive model identifies claims in which there is a high potential that the claimant is disabled and in which we can quickly and easily obtain evidence supporting the claimant's allegations.<sup>4</sup> In the compassionate allowance initiative, we use a list of conditions to quickly identify diseases and other medical conditions that invariably qualify under the Listing of Impairments

<sup>1</sup> Sections 404.900 and 416.1400.

<sup>2</sup> Sections 404.1615(c)(1) and 416.1015(c)(1).

<sup>3</sup> Sections 404.1615(c)(2) and 416.1015(c)(2). In some States, we are testing a modification to the disability determination procedures that allows State agency disability examiners called "single decisionmakers" (SDM) to make both favorable and unfavorable determinations alone in some cases; that is, without working in a team with a medical or psychological consultant. Sections 404.906(b)(2) and 416.1406(b)(2). We expect to continue that testing even if we adopt these proposed rules as final rules. However, if we adopt these proposed rules as final rules, the changes would apply in all States, including SDM States. They would allow SDMs and other disability examiners to make fully favorable determinations alone in QDD and compassionate allowance claims.

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

(“listings”) in our regulations<sup>5</sup> based on minimal, but sufficient, objective medical information.<sup>6</sup>

### What Changes Are We Proposing, and Why?

We propose to redesignate current §§ 404.1615(c)(3) and 416.1015(c)(3) as (c)(4) and to add new paragraph (c)(3) to allow disability examiners to make fully favorable determinations under our QDD rules or under our compassionate allowance initiative without the approval of a medical or psychological consultant. This proposal is consistent with our goal to allow cases that should be allowed as quickly as possible.<sup>7</sup> It would also help us to process cases more efficiently because it would give State agency medical and psychological consultants more time to work on those complex cases for which we need their expertise.

This proposal is a change from our prior position. When we published final rules extending the QDD process to all States,<sup>8</sup> we declined to adopt a comment to allow disability examiners to make determinations without a medical or psychological consultant’s involvement.<sup>9</sup> However, we now have about 2 years of experience using the QDD process nationally, and even longer experience in our Boston region. In light of our experience adjudicating QDD and compassionate allowance cases and our quality assurance reviews of determinations made in States that use single decisionmakers (SDMs), we believe it is appropriate to allow disability examiners to make some fully favorable determinations without a medical or psychological consultation. Our quality assurance reviews for the past 2 fiscal years show that the accuracy rates in the States that use SDMs is comparable to, if not higher than, the accuracy rates in those States that do not use SDMs. Moreover, many of the determinations included in our quality assurance reviews are more

complex than QDD and compassionate allowance determinations.

For these reasons, we expect that the accuracy rate of QDD and compassionate allowance determinations made by State agency disability examiners would be comparable to the accuracy rate of the determinations now made by a team. We also have other measures in place that will provide us with information about the quality of QDD and compassionate allowance determinations, including quality assurance reviews. Therefore, we would be monitoring determinations made by State agency disability examiners. If we proceed with final rules, we plan to include a “sunset date”—a date after which the final rules would no longer be effective—of three years after the final rules become effective, subject to further extensions. The sunset date would apply only to the final rules on determinations by State agency disability examiners on QDD and compassionate allowance cases.

State agency disability examiners who make fully favorable determinations under these proposed rules would still have the option of consulting with State agency medical and psychological consultants when they deem it necessary. We would also require State agency disability examiners to consult with State agency medical or psychological consultants before they make a fully favorable determination based on medical equivalence to a listing at step 3 or based on a finding of inability to do other work at step 5 of our sequential evaluation process.<sup>10</sup> Our current rules require adjudicators to consider the opinion of one or more medical or psychological consultants when they determine whether an impairment(s) medically equals a listing at step 3.<sup>11</sup> Further, in order to make a fully favorable determination at step 5, adjudicators must first determine that a claimant does not have an impairment(s) that meets or medically equals a listing; therefore, they will have had to consult with a medical or psychological consultant to determine that there were no impairments that medically equaled a listing.<sup>12</sup> Regardless of whether the State agency disability examiner chooses to consult with a State agency medical or psychological consultant or is required to do so, the disability examiner would

be solely responsible for the determination under the proposed rules.

We would not apply these proposed changes to claims for supplemental security income payments under title XVI for individuals under age 18. The Social Security Act requires us to make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child’s impairment(s) evaluates the child’s case.<sup>13</sup> We interpret this statutory requirement to mean that a medical or psychological consultant must participate as part of a team in all State agency determinations of childhood disability under title XVI, including fully favorable determinations.

### What Other Changes Are We Proposing?

The change we are proposing would apply only to claims adjudicated under the QDD process or the compassionate allowance initiative. Our current regulations explain the QDD process, but not the compassionate allowance initiative. Therefore, we propose to add a short definition of compassionate allowance in §§ 404.1602 and 416.1002, the sections of subpart Q of part 404 and subpart J of part 416 that provide definitions of terms.

We also propose a number of conforming changes throughout subparts P and Q of part 404 and subparts I and J of part 416 of our regulations to reflect the provisions in proposed new §§ 404.1615(c)(3) and 416.1015(c)(3). For example, we propose revisions to §§ 404.1546 and 416.946 to recognize that it would be possible in some cases for a State agency disability examiner to be responsible for assessing a claimant’s residual functional capacity. We also propose revisions to §§ 404.1512, 404.1527, 416.912, and 416.927 to account for situations in which State agency disability examiners would weigh State agency medical or psychological consultant input as opinion evidence; these rules are similar to rules we already have for administrative law judges and the Appeals Council (when the Appeals Council makes a decision). We show all of the proposed changes in the proposed rules section following this preamble.

While the QDD process applies only to the initial level of the administrative review process under §§ 404.1602 and 416.1002 of our regulations, these proposed rules include provisions that apply to both the initial and reconsideration levels. We have two

<sup>5</sup> 20 CFR part 404, subpart P, appendix 1, which also applies to title XVI per § 416.925.

<sup>6</sup> See generally <http://www.socialsecurity.gov/compassionateallowances/>. In October 2008, we issued an initial list of 50 conditions that we consider for compassionate allowance. See <http://www.socialsecurity.gov/compassionateallowances/conditions.htm>. We created this list based on input from a variety of sources, including the public. See, e.g., 72 FR 41649 (2007), 73 FR 10715 (2008), and 73 FR 66563 (2008). We plan to obtain more public input in order to determine whether and how to expand the list over time.

<sup>7</sup> See Social Security Administration Strategic Plan 2008–2013, Strategic Goal 2, <http://www.ssa.gov/asp/StrategicGoal2.pdf>.

<sup>8</sup> 72 FR 51173.

<sup>9</sup> *Id.* at 51175.

<sup>10</sup> Sections 404.1520 and 416.920. Fully favorable determinations based on medical equivalence or at step 5 are only a relatively small fraction of the QDD and compassionate allowance determinations we have made so far.

<sup>11</sup> Sections 404.1526(c) and 416.926(c).

<sup>12</sup> Sections 404.1520(a)(4) and 416.920(a)(4).

<sup>13</sup> Section 1614(a)(3)(I) of the Act and §§ 416.903(f) and 416.1015(e) of our regulations.

major reasons for including references to the reconsideration level:

- The compassionate allowance initiative is not limited to the initial level of administrative review; and,
- Any claimant who is dissatisfied with our determination—even a determination that is fully favorable—may request a reconsideration.<sup>14</sup>

Finally, we are proposing minor editorial changes to several rules to recognize that State agency medical consultants are not always physicians. These changes would conform these rules to the provisions of §§ 404.1616 and 416.1016 of our current rules. We also would correct a grammatical error in §§ 404.1619(b)(2) and 416.1019(b)(2) and make other minor editorial changes throughout the proposed rules.

**Clarity of These Proposed Rules**

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

For example:

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

**What Is Our Authority To Make Rules and Set Procedures for Determining Whether a Person is Disabled Under the Statutory Definition?**

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

**When Will We Start To Use These Rules?**

We will not use these rules until we evaluate public comments and publish

final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of the significant comments we received, along with responses and an explanation of how we will apply the new rules.

**Regulatory Procedures**

*Executive Order 12866*

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

The Office of the Chief Actuary provided two estimates of the effects of the proposed rule change, due to uncertainty over the extent to which the predictive models underlying the QDD process and the compassionate allowance initiative are expanded. The first estimate assumes the percent of cases designated QDD or compassionate allowance remains at the recent level (3.8%). The second estimate assumes that we will adjudicate 6% of all cases under the QDD or compassionate allowance models by the end of FY 2012. The following table presents the year-by-year estimates of the effect of the proposed change on OASDI benefit payments and Federal SSI payments for the fiscal year period 2010–19 under these two sets of assumptions. All estimates are based on the assumptions underlying the President's FY 2010 Budget, assuming the proposed changes become effective July 1, 2010. The estimates reflect projected costs should the changes be extended through 2019.

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

[In millions]

| Fiscal year   | OASDI | SSI | Total |
|---------------|-------|-----|-------|
| 2010 .....    | *     | *   | *     |
| 2011 .....    | *     | *   | *     |
| 2012 .....    | \$1   | *   | \$1   |
| 2013 .....    | 1     | *   | 1     |
| 2014 .....    | 1     | *   | 1     |
| 2015 .....    | 1     | *   | 1     |
| 2016 .....    | 1     | *   | 1     |
| 2017 .....    | 1     | *   | 1     |
| 2018 .....    | 1     | *   | 2     |
| 2019 .....    | 2     | *   | 2     |
| <b>Totals</b> |       |     |       |
| 2010–14 ..... | 2     | *   | 3     |

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

[In millions]

| Fiscal year   | OASDI | SSI | Total |
|---------------|-------|-----|-------|
| 2010–19 ..... | 9     | 1   | 10    |

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

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

[In millions]

| Fiscal year   | OASDI | SSI | Total |
|---------------|-------|-----|-------|
| 2011 .....    | *     | *   | *     |
| 2011 .....    | *     | *   | \$1   |
| 2012 .....    | \$1   | *   | 1     |
| 2013 .....    | 2     | *   | 2     |
| 2014 .....    | 2     | *   | 2     |
| 2015 .....    | 2     | *   | 3     |
| 2016 .....    | 3     | *   | 3     |
| 2017 .....    | 3     | *   | 3     |
| 2018 .....    | 3     | *   | 4     |
| 2019 .....    | 4     | \$1 | 4     |
| <b>Totals</b> |       |     |       |
| 2010–14 ..... | 5     | 1   | 6     |
| 2010–19 ..... | 20    | 3   | 23    |

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

*Regulatory Flexibility Act*

We certify that these proposed rules, if published in final, would not have a significant economic impact on a substantial number of small entities as they affect only States and individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

This rule does not create any new, or affect any existing, collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act. (Catalog of Federal Domestic Assistance Program No 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

<sup>14</sup> Sections 404.907 and 416.1407.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: November 10, 2009.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts P and Q of part 404 and subparts I and J of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

Subpart P—[Amended]

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

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 422(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

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

§ 404.1512 Evidence.

\* \* \* \* \*

(b) \* \* \*

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

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

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

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

\* \* \* \* \*

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

§ 404.1527 Evaluating opinion evidence.

\* \* \* \* \*

(f) \* \* \*

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

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

(ii) When a State agency disability examiner makes the initial determination alone as provided in § 404.1615(c)(3), he or she may obtain the opinion of a State agency medical or psychological consultant about one or more of the medical issues listed in paragraph (f)(1)(i) of this section. In these cases, the State agency disability examiner will consider the opinion of the State agency medical or psychological consultant as opinion evidence and weigh this evidence using the relevant factors in paragraphs (a) through (e) of this section.

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

(2) \* \* \*

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

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

State agency medical or psychological consultant or other program physician, psychologist, or other medical specialist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and other nonexamining sources who do not work for us.

\* \* \* \* \*

4. Amend § 404.1529 by revising the third sentence of paragraph (b) to read as follows:

**§ 404.1529 How we evaluate symptoms, including pain.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 404.1546 Responsibility for assessing your residual functional capacity.**

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

\* \* \* \* \*

**Subpart Q—[Amended]**

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

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

7. Amend § 404.1602 by adding the definition “Compassionate allowance” in alphabetical order to read as follows:

**§ 404.1602 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 404.1615 Making disability determinations.**

\* \* \* \* \*

(c) Disability determinations will be made by:

\* \* \* \* \*

(3) A State agency disability examiner alone if the claim is adjudicated under the quick disability determination process (see § 404.1619) or as a compassionate allowance (see § 404.1602), and the initial or reconsidered determination is fully favorable to you. This paragraph will no longer be effective on [INSERT DATE THREE YEARS AFTER EFFECTIVE DATE OF FINAL RULES] unless we terminate it earlier or extend it beyond that date by notice of a final rule in the **Federal Register**; or

\* \* \* \* \*

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

**§ 404.1619 Quick disability determination process.**

\* \* \* \* \*

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

(1) Subject to the provisions in paragraph (c) of this section, make the disability determination after consulting with a State agency medical or psychological consultant if the State agency disability examiner determines consultation is appropriate or if consultation is required under § 404.1526(c). The State agency may

certify the disability determination forms to us without the signature of the medical or psychological consultant.

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

\* \* \* \* \*

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

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

**Subpart I—[Amended]**

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

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

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

**§ 416.912 Evidence.**

\* \* \* \* \*

(b) \* \* \*

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

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

the administrative review process, and other opinions they provide based on their review of the evidence in your case record at the initial and reconsideration levels (see § 416.927(f)(1)(iii)); and

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

\* \* \* \* \*

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

**§ 416.927 Evaluating opinion evidence.**

\* \* \* \* \*

(f) \* \* \*

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

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

(ii) When a State agency disability examiner makes the initial

determination alone as provided in § 416.1015(c)(3), he or she may obtain the opinion of a State agency medical or psychological consultant about one or more of the medical issues listed in paragraph (f)(1)(i) of this section. In these cases, the State agency disability examiner will consider the opinion of the State agency medical or psychological consultant as opinion evidence and weigh this evidence using the relevant factors in paragraphs (a) through (e) of this section.

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

(2) \* \* \*

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

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

psychologist, or other medical specialist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and other nonexamining sources who do not work for us.

\* \* \* \* \*

13. Amend § 416.929 by revising the third sentence of paragraph (b) to read as follows:

**§ 416.929 How we evaluate symptoms, including pain.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 416.946 Responsibility for assessing your residual functional capacity.**

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

\* \* \* \* \*

**Subpart J—[Amended]**

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

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

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

**§ 416.1002 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 416.1015 Making disability determinations.**

\* \* \* \* \*

(c) Disability determinations will be made by:

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 416.1019 Quick disability determination process.**

\* \* \* \* \*

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

(1) Subject to the provisions in paragraph (c) of this section, make the disability determination after consulting with a State agency medical or psychological consultant if the State agency disability examiner determines consultation is appropriate or if consultation is required under § 416.926(c). The State agency may certify the disability determination

forms to us without the signature of the medical or psychological consultant.

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

\* \* \* \* \*

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

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**BILLING CODE 4191-02-P**

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 9**

[Docket No. TTB-2010-0001; Notice No. 103]

**RIN 1513-AB31**

**Proposed Expansion of the Santa Maria Valley Viticultural Area (2008R-287P)**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes to expand the Santa Maria Valley viticultural area in Santa Barbara and San Luis Obispo Counties, California, by 18,790 acres. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed change to our regulations.

**DATES:** We must receive your comments on or before May 3, 2010.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB-2010-0001 at “Regulations.gov,” the Federal e-rulemaking portal);
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and

Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal at <http://www.regulations.gov> within Docket No. TTB-2010-0001. A direct link to this docket is posted on the TTB Web site at [http://www.ttb.gov/wine/wine\\_rulemaking.shtml](http://www.ttb.gov/wine/wine_rulemaking.shtml) under Notice No. 103. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202-453-2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415-271-1254.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations