

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory

Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000-11-04 Commander Aircraft

Company: Amendment 39-11752; Docket No. 99-CE-81-AD.

(a) *What airplanes are affected by this AD?* Model 114TC airplanes, serial numbers 20001 through 20027, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions required by this AD are intended to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. This could result in the release of high temperature gases inside the engine compartment with a consequent airplane cabin fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Replace the Aeroquip V-band exhaust clamp (Aeroquip part number 00624-55677-340M or Lycoming alternate part number 40D21162-340M) with a part of improved design (Aeroquip part number NH1009399-10).	Accomplish this action within the next 25 hours time-in-service after June 23, 2000 (the effective date of this AD).	Perform this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of commander Aircraft Company Service Bulletin No. SB-114-33A, dated May 9, 2000.
(2) Do NOT install an Aeroquip V-band exhaust clamp (Aeroquip part number 00624-55677-340M or Lycoming alternate part number 40D21162-340M) on any affected airplane.	As of June 23, 2000 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

- (1) Your alternative method of compliance provides an equivalent level of safety; and
- (2) The Manager, Fort Worth Airplane Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150;

telephone: (817) 222-5147; facsimile: (817) 222-5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Commander Aircraft Company Service Bulletin No. SB-114-33A, dated May 9, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from the Commander Aircraft Company, Wiley Post Airport Hangar 8, 7200 NW 63rd Street, Bethany, Oklahoma 73008. You may look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on June 23, 2000.

Issued in Kansas City, Missouri, on May 22, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-13444 Filed 5-31-00; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 760

[Docket No. 000424111-0111-01]

RIN 0694-AA11

Restrictive Trade Practices or Boycotts

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) to make certain editorial revisions and

clarifications to the antiboycott provisions of the EAR.

DATES: This rule is effective June 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Robert A. Diamond, Director, Compliance Policy Division, Office of Antiboycott Compliance, Bureau of Export Administration, Telephone: (202) 482-2381.

SUPPLEMENTARY INFORMATION: The Bureau of Export Administration's (BXA) Office of Antiboycott Compliance is responsible for the enforcement of the antiboycott provisions of the Export Administration Act (the Act), as amended. The Act encourages, and in some cases requires, U.S. persons to refuse to participate in foreign boycotts that the United States does not sanction. U.S. persons are also required to report receipt of boycott-related requests. The antiboycott provisions of the Act are implemented in part 760 of the Export Administration Regulations (EAR). Examples accompany the text of the regulations to aid in their interpretation.

The antiboycott provisions of the EAR became effective on January 18, 1978 and provided for a six-month grace period ending June 21, 1978, when enforcement of certain of the sections of the regulations commenced. The purpose of the delayed effective date, which was provided by Section 4A(a)(2)(B) of the Export Administration Act of 1977, as amended, was to allow the regulated public time to adjust their practices to the new regulations.

This rule removes all references to the 1978 grace period, including deletions of language in the text of the regulations and the interpretative examples that no longer apply. In some cases, new text has been added to preserve the substantive meaning of the regulation or example. The rule also removes the phrase "effective date of this part" and replaces it with the January 18, 1978 date of publication of the original rule. In addition, this rule corrects paragraph references, particularly in the interpretative Supplements. It also provides clarifying language in instances where the original text was unclear, as well as making typographical corrections, as appropriate.

This rule also addresses issues raised by a proposed rule published by the Department on September 26, 1989 (54 FR 39415). The proposed rule contained revisions and clarifications to the antiboycott provisions of the EAR that, at the time, the Department found "[were] still debated or confusing."

Since 1989, the Department has had an additional ten years of experience in

implementing the antiboycott provisions of the EAR and has concluded that some of the changes proposed in 1989 rule remain useful. These have been incorporated into the final rule. In some cases, proposed changes are incorporated with additional revisions or clarifying language as appropriate. Other proposed changes addressed issues which the Department no longer considers "debated or confusing" and have not been adopted in the final rule.

The 1989 Proposed Rule addressed the following issues:

- (1) The intent provision to the reporting requirement;
- (2) The jurisdictional requirements relating to the implementation of letters of credit;
- (3) The furnishing information prohibitions about the nationality of directors and blacklisted persons;
- (4) The shipping requirement exception to refusals to use blacklisted vessels; and
- (5) The import and shipping document exception to information about the nationality of carriers and residence of manufacturers or suppliers.

At the end of the 30-day comment period, three comments were received. Two additional comments were received after the comment period closed. All five comments were taken into account in developing this final rule. Having reviewed the comments received on this proposed rule, BXA is now issuing this rule in final form.

Readers should note that part 769 was redesignated as part 760 on March 25, 1996. All comments were received prior to that date refer to part 769. Accordingly, in the following discussion, all references by commenters to part 769 have been changed to part 760 and its corresponding sections.

The Intent Provision to the Reporting Requirement

One commenter contended that the two proposed changes to the intent provisions fail to clarify the applicable standards of intent. The Department's proposal removed example (ix) and the accompanying Note following example (x) to § 760.1(e). The commenter believed that elimination of this example would expand the scope of the prohibitions, because the example is an illustration of situations where the prohibitions of § 760.2(d) may not apply because either there is no intent to violate the regulations, or the information supplied is of a type generally used for a legitimate business purpose.

Example (ix) would permit U.S. company A to furnish information "demonstrat[ing] that A does at least as much business in [boycotted country] Y and other countries engaged in a boycott of [boycotted country X] as it does in X." By furnishing this information relating to country X, A would be violating § 760.2(d)(1) which prohibits a U.S. person from furnishing information concerning "his . . . past, present or proposed business relationships . . . with or in a boycotted country. . . ." By stating that A could furnish this information, the example can lead to unnecessary confusion concerning the meaning of the intent requirement. The commenter's suggestion was not adopted, and example (ix) and the accompanying Note following example (x) were deleted.

The commenter also contended that the Department's proposed revision to § 760.1(e)(3), which would remove the intent as an element of the reporting requirement, implied that a failure to comply with the reporting requirements would be a strict liability offense.

The intent requirement is set forth in section 8(a) of the Export Administration Act (Act). The obligation to report, however, arises from section 8(b)(2). In addition, § 760.1(e)(3) of the regulations was adopted when part 760 included only the prohibitions in § 760.2. When the reporting requirements in § 760.5 were later revised to reflect the requirements of the 1977 amendments to the Export Administration Act, the language of § 760.1(e)(3) was apparently overlooked and not changed. The proposed rule would revise the general statement in paragraph (e)(3) to make it clear that intent is an element only of a violation of the prohibitions set forth in § 760.2 of the regulations.

Furthermore, § 760.5(a)(2) provides that requests are reportable if the U.S. person "knows or has reason to know" that the purpose of the request is to further a boycott or restrictive trade practice. Thus, it is clear that failure to report is not a strict liability violation, and the proposed rule is adopted by incorporating the change proposed to be made in § 760.1(e)(3).

Jurisdictional Requirements Relating to the Implementation of Letters of Credit

One commenter opposed the proposed revision of § 760.1(d)(20), which replaced the language "by this part" with the phrase "by the prohibition of § 760.2(f)." The commenter contended that the effect of this revision would be to subject the implementation of letters of credit to the other prohibitions contained in part

760, not only to the prohibition of § 760.2(f), which specifically addresses the implementation of letters of credit. The final rule makes no change to § 760.1(d)(20) because the Department has concluded that the issue is no longer debated or confusing.

One commenter suggested that an additional example be included in the regulations concerning a contract with a form of a letter of credit that contains a number of preprinted provisions. These provisions would include a stipulation that documents covering goods of Israeli origin are not acceptable. However, the letter of credit would simultaneously contain a provision imposing the requirement that the documents must certify that the goods are 100 percent of U.S. origin. This additional example was not adopted because the Department believes it is not of general interest.

Furnishing Information About the Nationality of Directors and About Blacklisted Persons

The proposed rule would have changed example (vii) to § 760.2(c), relating to Furnishing Information about Race, Religion, Sex or National Origin. The proposed revision stated that furnishing permissible information about the nationalities of directors or corporate officers would not violate § 760.2(c) but "would violate § 760.2(d)—the prohibition on furnishing information about business relationships." Two commenters pointed out that the proposed revision to example (vii) is in conflict with other provisions of the regulations and with the Act's legislative history.

One of the two commenters further contended that furnishing information on the nationality of officers, directors, or employees should be presumed to be normal commercial information sought for legitimate business purposes, unless there are reasons or facts available to the exporter indicating otherwise. Information sought about an employment relationship should not be considered to be information about a business relationship as that term is commonly understood.

The final rule makes no change to example (vii) because the Department has concluded after ten years of additional experience that furnishing information concerning nationalities of officers, directors, or employees has not been confused with violations of § 760.2(d), furnishing information about business relationships.

The Shipping Requirement Exception to Refusals To Use Blacklisted Vessels

The proposed rule added example (vi) to § 760.3(b) relating to Examples of Compliance with the Shipping Requirements of a Boycotting Country. The Department received no comments on example (vi), and the final rule adopts this example.

Import and Shipping Document Exception to Information About the Nationality of Carriers and Residence of Manufacturers or Suppliers

The proposed rule revised subparagraphs (ii), (iv), and (v) of the text of § 760.3(c)(1) by adding a reference to the "nationality" of the carrier, and a reference to the "residence" of the supplier of the shipment and the provider of other services, with respect to compliance with import and shipping document requirements. No comments were received on these revisions. The final rule adopts the proposed revision to subparagraph (ii), and adds the word "address" to subparagraphs (iv) and (v). The Department believes that "address" is a more commonly used term than "residence" in import and shipping documents.

One commenter suggested that § 760.3(c)(2) be revised to provide that not only the names, but the nationalities, "of carriers or routes of shipments" may be stated "in negative terms in conjunction with shipments to a boycotting country. . . ." The final rule adopts this suggestion. The Department has long taken the position that furnishing information about the nationality of a carrier may be supplied in negative terms. This information relates to requirements protecting against war risks or confiscation.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121) and August 13, 1999 (64 FR 44101).

Rule Making Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty

for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This rule involves collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0012. There are neither additions nor subtractions to this collection due to this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects in 15 CFR Part 760

Boycotts, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 760 of the Export Administration Regulations (15 CFR Parts 730 through 799) is amended as follows:

1. The authority citation for 15 CFR Part 760 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

PART 760—[AMENDED]**§ 760.1 [Amended]**

2. Section 760.1 is amended:

- a. By revising the phrase “of any violation of this part” to read “of any violation of any of the prohibitions under § 760.2” in paragraph (e)(3);
- b. By removing example (ix) and the Note that follows example (x) in paragraph (e)(7) under the heading “Examples of ‘Intent’”;
- c. By redesignating example (x) as example (ix) in paragraph (e)(7) under the heading “Examples of ‘Intent’”; and
- d. By revising the phrase “would betaken” to read “would be taken” in the newly designated example (ix) in paragraph (e)(7) under the heading “Examples of ‘Intent’”.

3. Section 760.2 is amended:

- a. By revising the phrase “see § 760.3(c) of this part” to read “see § 760.3(d)” in paragraph (a)(7);
- b. By revising examples (xii), (xviii), and (xxi) in paragraph (a)(10) under the heading “Refusals To Do Business”;
- c. By revising examples (ii), (v), and (vi) in paragraph (a)(10) under the heading “Agreements To Refuse To Do Business”;
- d. By revising example (xviii) in paragraph (d)(5) under the heading “Examples Concerning Furnishing of Information”;
- e. By revising example (v) in paragraph (f)(10) under the heading “Implementation of Letters of Credit in United States Commerce”; and
- f. By revising examples (iv), (vi), and (x), and removing and reserving example (vii), in paragraph (f)(10) under the heading “Prohibition Against Implementing Letters of Credit”, as follows:

§ 760.2 Prohibitions.

- (a) * * *
- (10) * * *

Refusals To Do Business

(xii) Company A, a U.S. oil company, purchases drill bits from U.S. suppliers for export to boycotting country Y. In its purchase orders, A includes a provision requiring the supplier to make delivery to A's facilities in Y and providing that title to the goods does not pass until delivery has been made. As is customary under such an arrangement, the supplier bears all risks of loss, including loss from fire, theft, perils of the sea, and inability to clear customs, until title passes.

Insistence on such an arrangement does not constitute a refusal to do business, because this requirement is imposed on all suppliers whether they

are blacklisted or not. (But see § 760.4 on “Evasion”).

* * * * *

(xviii) A, a U.S. engineering firm under contract to construct a dam in boycotting country Y, compiles, on a non-boycott basis, a list of potential heavy equipment suppliers, including information on their qualifications and prior experience. A then solicits bids from the top three firms on its list—B, C, and D—because they are the best qualified. None of them happens to be blacklisted. A does not solicit bids from E, F, or G, the next three firms on the list, one of whom is on Y's blacklist.

A's decision to solicit bids from only B, C, and D, is not a refusal to do business with any person, because the solicited bidders were not selected for boycott reasons.

* * * * *

(xxi) U.S. bank A receives a letter of credit from a bank in boycotting country Y in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is eligible to enter the ports in Y. B seeks payment from A and meets all other conditions of the letter of credit. A refuses to pay B solely because B cannot or will not provide the certification.

A has neither refused, nor required another person to refuse, to do business with another person pursuant to a boycott requirement or request because a request for a vessel eligibility certificate to be furnished by the steamship line is not a prohibited condition. (See Supplement No. 1 to this part, paragraph (I)(B), “Shipping Certificate”).

* * * * *

Agreements To Refuse To Do Business

* * * * *

(ii) A, a U.S. manufacturer of commercial refrigerators and freezers, receives an invitation to bid from boycotting country Y. The tender states that the bidder must agree not to deal with companies on Y's blacklist. A does not know which companies are on the blacklist; however, A submits a bid without taking exception to the boycott conditions. A's bid makes no commitment regarding not dealing with certain companies.

At the point when A submits its bid without taking exception to the boycott request in Y's tender, A has agreed to refuse to do business with blacklisted persons, because the terms of Y's tender require A to agree to refuse to do business.

* * * * *

(v) Same as (iv), except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y, “including boycott laws.”

A's agreeing, without qualification, to comply with local boycott laws constitutes an agreement to refuse to do business.

(vi) Same as (v), except that A inserts a proviso “except insofar as Y's laws conflict with U.S. laws,” or words to that effect.

Such an agreement is not an agreement to refuse to do business.

* * * * *

(d) * * *

(5) * * *

Examples Concerning Furnishing of Information

* * * * *

(xviii) U.S. company A is asked by boycotting country Y to certify that it is not the mother company, sister company, subsidiary, or branch of any blacklisted company, and that it is not in any way affiliated with any blacklisted company.

A may not furnish the certification, because it is information about whether A has a business relationship with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

* * * * *

(f) * * *

(10) * * *

Implementation of Letters of Credit in United States Commerce

* * * * *

(v) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary with a U.S. address. The letter of credit calls for documents indicating shipment of foreign-origin goods.

The letter of credit is presumed to be in favor of a U.S. beneficiary but to apply to a transaction outside U.S. commerce, because it calls for documents indicating shipment of foreign-origin goods. The presumption of non-U.S. commerce may be rebutted by facts showing that A could reasonably conclude that the underlying transaction involves shipment of U.S.-origin goods or goods from the United States.

* * * * *

Prohibition Against Implementing Letters of Credit

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(iv) Same as (iii), except that U.S. company B, based in part on

information received from U.S. bank A, desires to obtain an amendment to the letter of credit which would eliminate or nullify the language in the letter of credit which prevents A from paying or otherwise implementing it.

Either company B or bank A may undertake, and the other may cooperate and assist in, this endeavor. A could then pay or otherwise implement the revised letter of credit, so long as the original prohibited boycott condition is of no force or effect.

* * * * *

(vi) Boycotting country Y orders goods from U.S. company B. U.S. bank A is asked to implement, for the benefit of B, a letter of credit which contains a clause requiring documentation that the goods shipped are not of boycotted country X origin.

A may not implement the letter of credit with a prohibited condition, and may accept only a positive certificate of origin as satisfactory documentation. (See § 760.3(c) on "Import and Shipping Document Requirements.")

(vii) [Reserved]

* * * * *

(x) Boycotting country Y orders goods from U.S. exporter B and requests a foreign bank in Y to open a letter of credit in favor of B to cover the cost. The letter of credit contains a prohibited boycott clause. The foreign bank asks U.S. bank A to advise and confirm the letter of credit. Through inadvertence, A does not notice the prohibited clause and confirms the letter of credit. A thereafter notices the clause and then refuses to honor B's draft against the letter of credit. B sues bank A for payment.

A has an absolute defense against the obligation to make payment under this letter of credit. (Note: Examples (ix) and (x) do not alter any other obligations or liabilities of the parties under appropriate law.)

* * * * *

4. Section 760.3 is amended:

a. By revising examples (i), (ii), and (iii) in paragraph (a)(3) under the heading "Examples of Compliance with Import Requirements of a Boycotting Country";

b. By adding example (vi) in paragraph (b)(3) under the heading "Examples of Compliance with the Shipping Requirements of a Boycotting Country";

c. By revising paragraphs (c)(1)(ii), (iv) and (v);

d. By revising paragraph (c)(2) introductory text;

e. By revising examples (i), (iv), (v), and (vi), and by removing and reserving example (iii), and removing example

(xiii), in paragraph (c)(2) under the heading "Examples of Compliance With Import and Shipping Document Requirements";

f. By revising paragraph heading (d) and paragraph (d)(1);

g. By revising the last example heading "Examples of Discrimination on Basis of Race, Religion, Sex or National Origin" in paragraph (d)(18) to read "Example of Discrimination on Basis of Race, Religion, Sex or National Origin";

h. By revising example (vii) in paragraph (f)(4) under the heading "Examples of Compliance With Immigration, Passport, Visa, or Employment Requirements of a Boycotting Country";

i. By revising examples (iv) and (vi) in paragraph (g)(3) under the heading "Examples of Bona Fide Residency";

j. By revising paragraph (i)(4);

k. By revising the example heading "Imports for U.S. Person's Own Use" in paragraph (i)(10) to read "Imports for U.S. Person's Own Use Within Boycotting Country"; and

l. By removing the example heading "For Use Within Boycotting Country" in paragraph (i)(10) and by designating the example following this newly removed heading as (xii), as follows:

§ 760.3 Exceptions to prohibitions.

(a) * * *

(3) * * *

Examples of Compliance With Import Requirements of a Boycotting Country

(i) A, a U.S. manufacturer, receives an order from boycotting country Y for its products. Country X is boycotted by country Y, and the import laws of Y prohibit the importation of goods produced or manufactured in X. In filling this type of order, A would usually include some component parts produced in X.

For the purpose of filling this order, A may substitute comparable component parts in place of parts produced in X, because the import laws of Y prohibit the importation of goods manufactured in X.

(ii) Same as (i), except that A's contract with Y expressly provides that in fulfilling the contract A "may not include parts or components produced or manufactured in boycotted country X."

A may agree to and comply with this contract provision, because Y prohibits the importation of goods from X. However, A may not furnish negative certifications regarding the origin of components in response to import and shipping document requirements.

(iii) A, a U.S. building contractor, is awarded a contract to construct a plant

in boycotting country Y. A accepts bids on goods required under the contract, and the lowest bid is made by B, a business concern organized under the laws of X, a country boycotted by Y. Y prohibits the import of goods produced by companies organized under the laws of X.

For purposes of this contract, A may reject B's bid and accept another, because B's goods would be refused entry into Y because of Y's boycott against X.

* * * * *

(b) * * *
(3) * * *

Examples of Compliance With the Shipping Requirements of a Boycotting Country

* * * * *

(vi) Boycotting country Y orders goods from A, a U.S. manufacturer. The order specifies that goods shipped by A "must not be shipped on vessels blacklisted by country Y".

A may not agree to comply with this condition because it is not a restriction limited to the use of carriers of the boycotted country.

(c) * * *

(1) * * *

(ii) The name and nationality of the carrier;

(iii) * * *

(iv) The name, residence, or address of the supplier of the shipment;

(v) The name, residence, or address of the provider of other services.

(2) Such information must be stated in positive, non-blacklisting, non-exclusionary terms except for information with respect to the names or nationalities of carriers or routes of shipment, which may continue to be stated in negative terms in conjunction with shipments to a boycotting country, in order to comply with precautionary requirements protecting against war risks or confiscation.

Examples of Compliance With Import and Shipping Document Requirements

(i) Boycotting country Y contracts with A, a U.S. petroleum equipment manufacturer, for certain equipment. Y requires that goods being imported into Y must be accompanied by a certification that the goods being supplied did not originate in boycotted country X.

A may not supply such a certification in negative terms but may identify instead the country of origin of the goods in positive terms only.

* * * * *

(iii) [Reserved]

(iv) A, a U.S. apparel manufacturer, has contracted to sell certain of its

products to B, a national of boycotting country Y. The form that must be submitted to customs officials of Y requires the shipper to certify that the goods contained in the shipment have not been supplied by "blacklisted" persons.

A may not furnish the information in negative terms but may certify, in positive terms only, the name of the supplier of the goods.

(v) Same as (iv), except the customs form requires certification that the insurer and freight forwarder used are not "blacklisted."

A may not comply with the request but may supply a certification stating, in positive terms only, the names of the insurer and freight forwarder.

(vi) A, a U.S. petrochemical manufacturer, executes a sales contract with B, a resident of boycotting country Y. A provision of A's contract with B requires that the bill of lading and other shipping documents contain certifications that the goods have not been shipped on a "blacklisted" carrier.

A may not agree to supply a certification that the carrier is not "blacklisted" but may certify the name of the carrier in positive terms only.

* * * * *

(d) *Unilateral and specific selection.*

Compliance with Unilateral and Specific Selection

(1) A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country, a national of a boycotting country, or a resident of a boycotting country (including a United States person who is a bona fide resident of a boycotting country) of carriers, insurers, suppliers of services to be performed within the boycotting country, or specific goods, provided that with respect to services, it is necessary and customary that a not insignificant part of the services be performed within the boycotting country. With respect to goods, the items, in the normal course of business, must be identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

* * * * *

(f) * * *

(4) * * *

(vii) A, a U.S. contractor, selects U.S. subcontractor B to perform certain engineering services in connection with A's project in boycotting country Y. The work visa application submitted by the

employee whom B has proposed as chief engineer of this project is rejected by Y because his national origin is of boycotted country X. Subcontractor B thereupon withdraws.

A may continue with the project and select another subcontractor, because A is not acting in contravention of any prohibition of this part.

(g) * * *

(3) * * *

Examples of Bona Fide Residency

* * * * *

(iv) Same as (iii), except A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to establish a branch in Y.

In these limited circumstances, A's personnel may furnish the non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before January 18, 1978.

* * * * *

(vi) Same as (v), except that A is considering establishing an office in boycotting country Y. A's personnel visit Y in order to register A to do business in that country. A intends to establish ongoing construction operations in Y. A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to register A to do business or incorporate a subsidiary in Y.

In these limited circumstances, A's personnel may furnish non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before January 18, 1978.

* * * * *

(i) * * *

(4) For purposes of this exception, the test that governs whether goods or components of goods are specifically identifiable is identical to the test applied in paragraph (d) of this section on "Compliance With Unilateral and Specific Selection" to determine whether they are identifiable as to their source or origin in the normal course of business.

* * * * *

5. Section 760.4 is amended:

a. By revising the phrase "\$ 760.3(a) through (g) of this part" to read "\$ 760.3(a) through (i)" in paragraph (b);

b. By revising the phrase "January 21, 1978" to read "January 18, 1978" in paragraph (d); and

c. By revising examples (iii), (iv), (x), (xi), (xii), (xv), and (xvi) in paragraph (e) under the heading "Examples", as follows:

\$ 760.4 Evasion.

* * * * *

(e) * * *

Examples

* * * * *

(iii) A, a U.S. company, has been selling sewing machines to boycotting country Y for a number of years. A receives a request for a negative certificate of origin from a new customer. A is aware that furnishing such certificates are prohibited; therefore, A arranges to have all future shipments run through a foreign corporation in a third country which will affix the necessary negative certificate before forwarding the machines on to Y.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(iv) A, a U.S. company, has been selling calculators to distributor B in country C for a number of years and routinely supplies positive certificates of origin. A receives an order from country Y which requires negative certificates of origin. A arranges to make all future sales to distributor B in country C. A knows B will step in and make the sales to Y which A would otherwise have made directly. B will make the necessary negative certifications. A's warranty, which it will continue to honor, runs to the purchaser in Y.

A's action constitutes evasion, because the diverting of orders to B is a device to mask prohibited activity carried out on A's behalf.

* * * * *

(x) Same as (ix), except that shortly after January 18, 1978, A, a U.S. company, insists that its suppliers sign contracts which provide that even after title passes from the supplier to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into Y for boycott reasons.

A's action constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted persons because of Y's boycott.

(xi) Same as (x), except that A customarily insisted on such an arrangement with its supplier prior to January 18, 1978.

A's action is presumed not to constitute evasion, because use of this contractual arrangement was customary for A prior to January 18, 1978.

(xii) A, a U.S. company, has a contract to supply automobile sub-assembly units to boycotting country Y. Shortly after January 18, 1978, A insists that its suppliers sign contracts which provide that even after title passes to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into boycotting country Y for any reason.

A's insistence on this arrangement is presumed to constitute evasion, because it is a device which is intended to place a special burden on blacklisted firms because of Y's boycott. The presumption may be rebutted by competent evidence showing that use of such an arrangement is customary without regard to the boycotting or non-boycotting character of the country to which it relates and that there is a legitimate non-boycott business reason for its use.

* * * * *

(xv) U.S. bank A is contacted by U.S. company B to finance B's transaction with boycotting country Y. Payment will be effected through a letter of credit in favor of B at its U.S. address. A knows that the letter of credit will contain restrictive boycott conditions which would bar its implementation by A if the beneficiary were a U.S. person. A advises B of the boycott condition and suggests to B that the beneficiary should be changed to C, a shell corporation in non-boycotting country M. The beneficiary is changed accordingly.

The actions of both A and B constitute evasion of this part, because the arrangement is a device to mask prohibited activities.

(xvi) Same as (xv), except that U.S. company B, the beneficiary of the letter of credit, arranges to change the beneficiary to B's foreign subsidiary so that A can implement the letter of credit. A knows that this has been done.

A's implementation of the letter of credit in the face of its knowledge of B's action constitutes evasion of this part, because A's action is part of a device to mask prohibited activity by both parties.

* * * * *

6. Section 760.5 is amended:

a. By revising the phrase "Room 6099C" in paragraph (b)(4) to read "Room 6098";

b. By revising paragraphs (b)(4)(i) and (b)(4)(ii); and

c. By revising examples (xxix), (xxx), (xxxiv), and (xxxv) in paragraph (c)(4) under the heading "Examples", to read as follows:

§ 760.5 Reporting requirements.

* * * * *

(b) * * *

(4) * * *

(i) Where the person receiving the request is a United States person located in the United States, each report of requests must be postmarked by the last day of the month following the calendar quarter in which the request was received (e.g., April 30 for the quarter consisting of January, February, and March).

(ii) Where the person receiving the request is a United States person located outside the United States, each report of requests must be postmarked by the last day of the second month following the calendar quarter in which the request was received (e.g., May 31 for the quarter consisting of January, February, and March).

* * * * *

(c) * * *

(4) * * *

Examples

* * * * *

(xxix) A, a U.S. manufacturer, is engaged from time-to-time in supplying drilling rigs to company B in boycotting country Y. B insists that its suppliers sign contracts which provide that, even after title passes from the supplier to B, the supplier will bear the risk of loss and indemnify B if goods which the supplier has furnished are denied entry into Y for whatever reason. A knows or has reason to know that this contractual provision is required by B because of Y's boycott, and that B has been using the provision since 1977. A receives an order from B which contains such a clause.

B's request is not reportable by A, because the request is deemed to be not reportable by these regulations if the provision was in use by B prior to January 18, 1978.

(xxx) Same as (xxix), except that A does not know when B began using the provision.

Unless A receives information from B that B introduced the term prior to January 18, 1978, A must report receipt of the request.

* * * * *

(xxxiv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to state on the bill of lading that the vessel is allowed to enter Y's ports. The request further states that a certificate from the

owner or master of the vessel to that effect is acceptable.

The request A received from his customer in Y is not reportable because it is a request of a type deemed to be not reportable by these regulations. (A may not make such a statement on the bill of lading himself, if he knows or has reason to know it is requested for a boycott purpose.)

(xxxv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the owner of the vessel that the vessel is permitted to call at Y's ports.

The request A received from his customer in Y is not reportable because it is a request of a type deemed to be not reportable by these regulations.

* * * * *

7. Supplement No. 1 to Part 760 is amended:

a. By revising the "Interpretation" under the heading "B. *Shipping certificate*." in section "I. Certifications";

b. By revising the "Interpretation" under the heading "C. *Insurance certificate*." in section "I. Certifications"; and

c. By revising the "Interpretation" under the heading "A. *Contractual clause regarding import laws of boycotting country*." in section "II. Contractual Clauses", as follows:

Supplement No. 1 to Part 760— Interpretations

* * * * *

I. Certifications

* * * * *

B. *Shipping certificate* * * *

Interpretation

It is the Department's position that furnishing a certificate, such as the one set out above, stating: (1) The name of the vessel, (2) The nationality of the vessel, and (3) The owner of the vessel and further declaring that the vessel: (a) Is not registered in a boycotted country, (b) Is not owned by nationals or residents of a boycotted country, and (c) Will not call at or pass through a boycotted country port enroute to its destination in a boycotting country falls within the exception contained in § 760.3(c) for compliance with the import and shipping document requirements of a boycotting country. See § 760.3(c) and examples (vii), (viii), and (ix) thereunder.

It is also the Department's position that the owner, charterer, or master of a vessel may certify that the vessel is "eligible" or "otherwise eligible" to enter into the ports of a boycotting country in conformity with its laws and regulations. Furnishing such a statement pertaining to one's own eligibility offends no prohibition under this part 760. See § 760.2(f), example (xiv).

On the other hand, where a boycott is in force, a declaration that a vessel is "eligible"

or "otherwise eligible" to enter the ports of the boycotting country necessarily conveys the information that the vessel is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See § 760.3(c) examples (vi), (xi), and (xii). Where a person other than the vessel's owner, charterer, or master furnishes such a statement, that is tantamount to his furnishing a statement that he is not doing business with a blacklisted person or is doing business only with non-blacklisted persons. Therefore, it is the Department's position that furnishing such a certification (which does not reflect customary international commercial practice) by anyone other than the owner, charterer, or master of a vessel would fall within the prohibition set forth in § 760.2(d) unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See § 760.2(d)(3) and (4). See also part A., "Permissible Furnishing of Information," of Supplement No. 5 to this part.

C. Insurance certificate. * * *

Interpretation

It is the Department's position that furnishing the name of the insurance company falls within the exception contained in § 760.3(c) for compliance with the import and shipping document requirements of a boycotting country. See § 760.3(c)(1)(v) and examples (v) and (x) thereunder. In addition, it is the Department's position that furnishing a certificate, such as the one set out above, stating the address of the insurance company's principal office and its country of incorporation offends no prohibition under this part 760 unless the U.S. person furnishing the certificate knows or has reason to know that the information is sought for the purpose of determining that the insurance company is neither headquartered nor incorporated in a boycotted country. See § 760.2(d)(1)(i).

It is also the Department's position that the insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative. Furnishing such a statement pertaining to one's own status offends no prohibition under this part 760. See § 760.2(f), example (xiv).

On the other hand, where a boycott is in force, a declaration that an insurer "has a duly qualified and appointed agent or representative" in the boycotting country necessarily conveys the information that the insurer is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See § 760.3(c), example (v). Therefore, it is the Department's position that furnishing such a certification by anyone other than the insurer would fall within the prohibition set forth in § 760.2(d) unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See § 760.2(d)(3) and (4).

* * * * *

II. Contractual Clauses

* * * * *

A. Contractual clause regarding import laws of boycotting country. * * *

Interpretation

It is the Department's position that an agreement, such as the one set out in the first sentence above, that the import and customs requirements of a boycotting country shall apply to the performance of a contract does not, in and of itself, offend any prohibition under this part 760. See § 760.2(a)(5) and example (iii) under "Examples of Agreements To Refuse To Do Business." It is also the Department's position that an agreement to comply generally with the import and customs requirements of a boycotting country does not, in and of itself, offend any prohibition under this part 760. See § 760.2(a)(5) and examples (iv) and (v) under "Examples of Agreements To Refuse To Do Business." In addition, it is the Department's position that an agreement, such as the one set out in the second sentence above, to comply with the boycotting country's import and customs requirements prohibiting the importation of products or components: (1) Originating in the boycotted country; (2) Manufactured, produced, or furnished by companies organized under the laws of the boycotted country; or (3) Manufactured, produced, or furnished by nationals or residents of the boycotted country falls within the exception contained in § 760.3(a) for compliance with the import requirements of a boycotting country. See § 760.3(a) and example (ii) thereunder.

The Department notes that a United States person may not furnish a negative certification regarding the origin of goods or their components even though the certification is furnished in response to the import and shipping document requirements of the boycotting country. See § 760.3(c) and examples (i) and (ii) thereunder, and § 760.3(a) and example (ii) thereunder.

* * * * *

8. Supplement No. 2 to Part 760 is amended:

a. By revising the phrase "receipt of requests for such shipping and insurance certificates from Saudi Arabia is not reportable" to read "receipts of requests for such shipping and insurance certificates from Saudi Arabia are not reportable" in the undesignated paragraph which begins with the phrase "On the basis of this clarification"; and

b. By revising the phrase "receipt of requests for such certifications is reportable" to read "receipts of requests for such certifications are reportable" in the undesignated paragraph which begins with the phrase "It is still the Department's position".

9. Supplement No. 4 to Part 760 is amended by revising the second undesignated paragraph as follows:

Supplement No. 4 to Part 760— Interpretation

* * * * *

Section 760.1(d)(12) provides the general guidelines for determining when U.S.-origin

goods shipped from a controlled in fact foreign subsidiary are outside U.S. commerce. The two key tests of that provision are that the goods were "(i) * * * acquired without reference to a specific order from or transaction with a person outside the United States; and (ii) * * * further manufactured, incorporated into, refined into, or reprocessed into another product." Because the application of these two tests to spare parts does not conclusively answer the U.S. commerce question, the Department is presenting this clarification.

* * * * *

10. Supplement No. 5 to part 760 is amended by revising the phrase "Section 760.3(f) of this part" to read "Section 760.3(g)" in the undesignated paragraph following the heading "B. Availability of the Compliance with Local Law Exception to Establish a Foreign Branch".

11. Supplement No. 6 to part 760 is amended by revising paragraph (a) as follows:

Supplement No. 6 to Part 760— Interpretation

* * * * *

(a) * * *

This term is very common in letters of credit from Kuwait and may also appear from time-to-time in invitations to bid, contracts, or other trade documents. It imposes a condition or requirement compliance with which is prohibited, but permitted by an exception under the Regulations (see § 760.2(a) and § 760.3(a)). It is reportable by those parties to the letter of credit or other transaction that are required to take or refrain from taking some boycott related action by the request. Thus the bank must report the request because it is a term or condition of the letter of credit that it is handling, and the exporter-beneficiary must report the request because the exporter determines the origin of the goods. The freight forwarder does not have to report this request because the forwarder has no role or obligation in selecting the goods. However, the freight forwarder would have to report a request to furnish a certificate that the goods do not originate in or contain components from a boycotted country. See § 760.5, examples (xii)–(xvii).

* * * * *

12. Supplement No. 7 to part 760 is amended:

a. By revising the phrase "§ 760.3(c) of this part" to read "§ 760.3(d)" in the second undesignated paragraph; and

b. By revising the third undesignated paragraph as follows:

Supplement No. 7 to Part 760— Interpretation

* * * * *

"A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country * * * of * * * specific goods, * * * provided that * * * with respect to goods, the items, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging."

* * * * *

13. Supplement No. 8 to part 760 is amended by revising the phrase "\$ 760.1(d)(13) of this part" to read "\$ 760.1(d)(3)" in the third undesignated paragraph.

14. Supplement No. 9 to part 760 is amended by revising the phrase "\$ 760.3(f) of this part" to read "\$ 760.3(g)" the first undesignated paragraph.

15. Supplement No. 10 to part 760 is amended by revising the phrase "non exclusionary, non blacklisting statement" to read "non-exclusionary, non-blacklisting statement" in the undesignated paragraph that follows paragraph heading (b).

16. Supplement No. 11 to part 760 is amended:

a. By placing quotation marks around the undesignated paragraph that follows the phrase "\$ 760.5(a)(4) of this part status in part"; and

b. By revising the parenthetical phrase "(\$ 760.5(a)(6) of this part)" to read "(\$ 760.5(b)(6))" in the last undesignated paragraph.

17. Supplement No. 12 to part 760 is amended:

a. By placing beginning and ending quotation marks around the first and second undesignated paragraphs, respectively, that follow the phrase "Example (v) under \$ 760.4 of this part (Evasion) provides:"

b. By revising the phrase "recently imposed by the government" to read "imposed by the government" in the undesignated paragraph that begins with the phrase "This interpretation deals with"; and

c. By placing quotation marks around the undesignated paragraph that begins with the phrase "Declaration: I, the undersigned".

18. Supplement No. 13 to part 760 is amended:

a. By revising the phrase "\$ 760.3(c) of this part" to read "\$ 760.3(d)" in the undesignated paragraph following the heading "Summary";

b. By placing quotation marks around the third undesignated paragraph following the heading "Regulatory Background";

c. By revising the phrase "\$ 760.3(c)" part" to read "\$ 760.3(d)" in the fourth undesignated paragraph following the heading "Regulatory Background";

d. By revising the heading "Analysis of the New Contractual Language" to read "Analysis of Additional Contractual Language";

e. By revising the phrase "of a new contractual clause" to read "of a contractual clause" in the undesignated paragraph following the newly revised heading "Analysis of the New Contractual Language";

f. By revising the heading "Boycott of Boycotted Country" to read "Boycott of [Name of Boycotted Country]";

g. By revising the phrase "\$ 760.3(c) of this part" to read "\$ 760.3(d)" in the last undesignated paragraph of this supplement.

19. Supplement No. 14 to part 760 is amended:

a. By placing beginning and ending quotation marks around the first and second undesignated paragraphs, respectively, following the sentence "The following language has appeared in tender documents issued by a boycotting country:" in paragraph (a);

b. By revising the phrase "Agreement to Refuse to Do Business" to read "Agreements to Refuse to Do Business" in the last sentence of the third undesignated paragraph following the sentence "The following language has appeared in tender documents issued by a boycotting country:" in paragraph (a);

c. By revising the phrase "\$ 760.6(a)(1) of this part" to read "\$ 760.5(a)(1) of this part" in the last undesignated paragraph following the sentence "The following language has appeared in tender documents issued by a boycotting country:" in paragraph (a); and

d. By placing beginning and ending quotation marks around the first and second undesignated paragraphs, respectively, that follow the sentence "The following terms frequently appear on letters of credit covering shipment to Iraq:" in paragraph (b).

Dated: May 18, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00-13251 Filed 5-31-00; 8:45 am]

BILLING CODE 3510-33-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AD91

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Medical and Other Evidence of Your Impairment(s) and Definition of Medical Consultant

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the Social Security and Supplemental Security Income (SSI) disability regulations regarding sources of evidence for establishing the existence of a medically determinable impairment under title II and title XVI of the Social Security Act (the Act). We are doing this to clarify and expand the list of acceptable medical sources and to revise the definition of the term "medical consultant" to include additional acceptable medical sources.

DATES: These rules are effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT:

Georgia E. Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, 1-410-965-3632 or TTY 1-800-966-5609. For information about eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of disability benefits to persons insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured persons. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs (including persons claiming child's insurance benefits based on disability under title II), "disability" means the inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) causes "marked and severe functional limitations." (Our regulations at § 416.902 explain that, "[m]arked and severe functional