production representing a significantly important segment of the Area No. 2 potato crop, the Committee also believes that the addition of a certified seed producer position will add a fresh perspective to its membership and will provide better representation for the San Luis Valley potato industry. Authority for this action is provided in § 948.53 of the order.

This rule will cause a small increase in the Committee's cost of administering the order. For example, overall costs associated with Committee members' travel to attend meetings will increase due to the additional members requiring compensation. The increased cost, however, should be offset by the non-economic benefits derived by providing a greater number of producers the chance to participate as members of the Committee, as well as the service the increased Committee expertise and diversity will provide to the San Luis Valley potato industry. Regardless, the costs associated with this rule are not expected to be disproportionately greater or less for small producers and handlers than for larger entities.

The Committee discussed alternatives to this change. In considering its goals of providing additional representation in response to the greater production in Saguache County and the significant certified seed potato production throughout the San Luis Valley, the Committee looked at various alternatives to the current method of representation. For example, the Committee considered combining the counties in Area No. 2 into fewer subdivisions, or districts, in order to keep the Committee the same size while providing for greater representation to certain districts. After considerable discussion, however, the Committee determined that the only equitable method of handling the representation problem was to add additional members and leave the current subdivisions unchanged.

This final rule increases the number of member and alternate member positions on the Committee. Since the two-year Committee terms are arranged so that approximately one-half terminate each year, this action will increase by four the number of background statements requiring completion in a two-year period. It is estimated that the time needed to complete the forms by producers who are nominated to serve in the two additional member and two additional alternate member positions will be less than two minutes per response, or a total of 8 minutes, which will not substantially impact the total burden hours. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), these additional information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

The Committee's meeting was widely publicized throughout the San Luis Valley and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 20, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 30, 2003 (68 FR 32432). Copies of the rule were mailed or sent via facsimile to all Committee members. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending June 16, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be in place promptly so that the Committee can nominate members and alternate members for the two new producer positions as soon as possible. Further, handlers and producers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 948.150, paragraph (a) is revised to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(a) Area No. 2 (San Luis Valley): Nine producers and five handlers selected as follows:

(1) Two (2) producers from Rio Grande County;
(2) Two (2) producers from either Saguache County or Chaffee County;
(3) One (1) producer from Conejos County;
(4) Two (2) producers from Alamosa County;
(5) One (1) producer from all other counties in Area No. 2;
(6) One (1) producer representing certified seed producers in Area No. 2;
(7) Two (2) handlers representing bulk handlers in Area No. 2;
(8) Three (3) handlers representing handlers in Area No. 2 other than bulk handlers.

* * * * *

Dated: June 30, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–17040 Filed 7–3–03; 8:45 am]

BILLING CODE 3410–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF81

Elimination of Sanctions for Refusal of Vocational Rehabilitation Services Without Good Cause

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are amending our regulations to remove provisions

relating to the imposition of benefit sanctions on account of a beneficiary's refusal of rehabilitation services. We are making these changes to reflect the repeal of sections 222(b) and 1615(c) of the Social Security Act (the Act). Prior to their repeal, these sections of the Act authorized the Commissioner of Social Security to impose sanctions against the benefits of a disabled or blind beneficiary who refused, without good cause, to accept rehabilitation services made available by a State vocational rehabilitation (VR) agency. The Ticket to Work and Work Incentives Improvement Act of 1999 repealed these sections of the Act, effective January 1, 2001. We are amending our regulations by removing rules and related provisions that are obsolete as a result of the repeal of these sections of the Act to conform our regulations to the changes in the statute.

EFFECTIVE DATE: These rules are effective July 7, 2003.

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

FOR FURTHER INFORMATION CONTACT: Melvin Winer, Social Insurance Specialist, Office of Employment Support Programs, 107 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, e-mail to *regulations@ssa.gov,* or telephone (410) 965–9175 or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *ssa.gov.*

SUPPLEMENTARY INFORMATION: These regulations reflect amendments to the Act which affect the payment of Social Security benefits under title II of the Act and Supplemental Security Income (SSI) benefits based on disability or blindness under title XVI of the Act, as well as payments to State VR agencies and alternate participants under the VR reimbursement programs under titles II and XVI of the Act.

Background

Sections 222 and 1615 of the Social Security Act

In general, sections 222(a) and 1615(a) of the Act require us to refer Social Security disability beneficiaries, as well as disabled or blind SSI beneficiaries ages 16–64, to the State VR agency (*i.e.*, a State agency operating under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended) for necessary VR services. Sections 222(d) and 1615(d) and (e) of the Act authorize us to reimburse a State VR agency for the reasonable and necessary costs of VR services furnished beneficiaries in certain categories of cases. Based on authority provided under sections 222(d)(2), 1615 and 1633 of the Act, our regulations on the VR reimbursement programs provide that if a State VR agency is unwilling to participate with respect to a beneficiary whom we referred to that agency (or if the State does not have an approved State plan for VR services), we may refer the beneficiary to an alternate participant for appropriate VR services, and may pay the alternate participant for the costs of services under the same conditions that would apply to a State VR agency.

Prior to January 1, 2001, sections 222(b) and 1615(c) of the Act required that certain sanctions be imposed against benefits (*i.e.*, deductions against Social Security benefits or a suspension of SSI benefits) if a beneficiary refused VR services without good cause. Section 222(b) of the Act required us to make deductions from the Social Security benefits of a disability beneficiary (as well as deductions from the benefits of family members in certain circumstances) for any month in which such beneficiary refuses without good cause to accept rehabilitation services available to him or her from a State VR agency. In general, section 1615(c) of the Act provided that an individual shall not be eligible for SSI benefits if the individual refuses without good cause to accept VR services for which he or she is referred under section 1615(a) of the Act. Sections 222(b) and 1615(c) of the Act were repealed, effective January 1, 2001, by amendments to the Act made by the Ticket to Work and Work Incentives Improvement Act of 1999.

The Ticket To Work and Work Incentives Improvement Act of 1999 (Public Law 106–170)

On December 17, 1999, Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, became law. Section 101(a) of Public Law 106–170 added section 1148 of the Act to establish the Ticket to Work and Self-Sufficiency Program (Ticket to Work program). The purpose of the Ticket to Work program is to expand the universe of service providers available to beneficiaries with disabilities who are seeking employment services, VR services, and other support services to assist them in obtaining, regaining, and maintaining self-supporting employment.

Under the Ticket to Work program, the Commissioner of Social Security may issue a ticket to Social Security disability beneficiaries and disabled or blind SSI beneficiaries for participation in the program. A beneficiary's participation in the program is voluntary. Each beneficiary has the option of using his or her ticket to obtain services from a provider known as an employment network or from a State VR agency. The beneficiary will choose the employment network or State VR agency, and the employment network or State VR agency will provide services. Employment networks will also be able to choose whom they serve. Our regulations implementing the Ticket to Work program are contained in 20 CFR part 411.

Section 101(b) of Public Law 106–170 made certain conforming amendments to the provisions of sections 222 and 1615 of the Act. Sections 101(b)(1)(C) and (b)(2)(B) of this law eliminated the sanctions for refusal of VR services by repealing sections 222(b) and 1615(c) of the Act, respectively. The repeal of these sections of the Act was effective January 1, 2001.

Section 101(b)(1)(B) of Public Law 106–170 eliminated the requirement for referral of Social Security disability beneficiaries to State VR agencies by repealing section 222(a) of the Act. Section 101(b)(2)(A) of this law amended section 1615(a) of the Act to eliminate the similar requirement that disabled or blind SSI beneficiaries ages 16–64 be referred to State VR agencies. These amendments to the Act take effect in a State when the Ticket to Work program is implemented in that State.

We will publish at a later date in the **Federal Register** rules to reflect the amendments eliminating the requirements for the referral of beneficiaries to State VR agencies in those States in which the Ticket to Work program is implemented, as provided in sections 101(b), (c) and (d) of Public Law 106–170. Additionally, the use of alternate participants under the title II and title XVI VR reimbursement programs will be phased out in the States as the Ticket to Work program is implemented, as authorized under section 101(d)(5) of Public Law 106–170. Under section 1148(d)(4)(B) of the Act and our regulations at 20 CFR part 411, subpart J, alternate participants in the VR reimbursement programs may qualify to serve as employment networks under the Ticket to Work program when that program is implemented in their State.

Purpose and Scope of Changes to the Regulations

In these final rules, we are amending our regulations to remove those rules and related provisions which are obsolete as a result of the repeal of sections 222(b) and 1615(c) of the Act. We are removing the provisions of our regulations which provide for the imposition of benefit sanctions for a beneficiary's refusal of VR services without good cause.

In addition, we are amending our regulations on the VR reimbursement programs to remove the provisions which provide for payment to a State VR agency or alternate participant for services provided a beneficiary in a case where benefit sanctions are imposed because the beneficiary, without good cause, refused to continue to accept VR services or failed to cooperate in such a manner as to preclude his or her successful rehabilitation. As a result of the repeal of sections 222(b) and 1615(c) of the Act, the benefit sanctions no longer apply, and we have ceased making determinations as to whether a beneficiary had good cause for refusing to continue or cooperate in a VR program, effective January 1, 2001. Consequently, we are removing the rules providing for payments to State VR agencies or alternate participants under the VR reimbursement programs in cases where a beneficiary refuses to continue or cooperate in a VR program without good cause and benefit sanctions are imposed, since such cases can no longer occur after December 2000.

These final rules only remove those provisions of our regulations which are obsolete as a result of the repeal of sections 222(b) and 1615(c) of the Act. Some of the sections of our regulations affected by these final rules contain other provisions which require revision because of other amendments to the Act. For example, §§ 404.402(a), 416.1701 and 416.2040(b) contain provisions relating to benefit sanctions for refusal of VR services as well as provisions relating to the suspension of benefit payments for noncompliance with treatment for drug addiction or alcoholism. These latter provisions no longer apply as a result of amendments to the Act made by section 105 of Public Law 104–121, the Contract with America Advancement Act of 1996. While we are removing provisions relating to benefit sanctions for refusal of VR services, we are not, at this time, making other changes to conform our regulations to other amendments to the Act. We plan to publish in the **Federal Register** at a later date proposed rules to take account of the amendments to the Act made by section 105 of Public Law 104–121, relating to drug addiction and alcoholism, and will address the need for changes to §§ 404.402(a), 416.1701 and 416.2040(b) resulting from those amendments as a part of that regulatory initiative.

Several provisions of the regulations which we are revising in order to remove references to a deduction from Social Security benefits on account of a beneficiary's refusal of VR services, also contain certain outdated, gender-specific references to a woman's failure to have a child in her care as another event causing a deduction to be made from Social Security benefits. In these final rules, we are making changes to update the latter provisions to eliminate the gender-specific wording that refers only to a beneficiary who is a woman. We are making these changes to conform to § 404.421 of our regulations which explains the conditions under which a deduction will be made from a person's wife's, husband's, mother's or father's benefits because he or she does not have a child in his or her care.

Changes to the Regulations

In 20 CFR part 404, subpart E, we are removing § 404.422, which contained the basic rules for making deductions from Social Security benefits because of a disability beneficiary's refusal to accept VR services without good cause. In addition, we are amending other sections of our regulations in 20 CFR part 404, subpart E, to remove references to section 222(b) of the Act or § 404.422, or to remove language or paragraphs relating to deductions from Social Security benefits on account of a beneficiary's refusal of VR services without good cause. We are making these changes to §§ 404.401(b), 404.402(a), (b)(2) and (d)(4), 404.412(a)(1), 404.421(d), 404.423, 404.425, 404.435(a)(2), 404.436, 404.437(a), and 404.458. In §§ 404.402(a), 404.436(b) and 404.437(a), we also are making changes to certain provisions to remove outdated, gender-specific references to a woman's failure to have care of a child as a cause for a deduction from benefits, to update and make these provisions consistent with § 404.421.

In § 404.902, we are removing and reserving paragraph (g), relating to determinations about a deduction from Social Security benefits because of a beneficiary's refusal to accept rehabilitation services. In addition, we are amending § 404.1596(b)(2) to remove the provision providing for a suspension of Social Security benefits if a beneficiary refuses to accept VR services without a good reason.

Sections 416.213, 416.1328, and 416.1715 set out the basic rules on ineligibility for, or the suspension of, SSI benefits because of a disabled or blind SSI beneficiary's refusal to accept VR services without good cause. We are removing these sections from our regulations.

In § 416.708, we are removing and reserving paragraph (i), relating to an SSI beneficiary's responsibility to report to us his or her refusal to accept VR services. We also are amending § 416.1701 to remove the references to a refusal of VR services. In addition, we are amending § 416.2040(b) to remove the language discussing a refusal of VR services under section 1615 of the Act.

In 20 CFR part 404, subpart V, and part 416, subpart V, we are removing §§ 404.2113 and 416.2213, respectively, relating to payment for VR services provided a beneficiary in a case where benefit sanctions are imposed because the beneficiary, without good cause, refused to continue or cooperate in a VR program. We also are making conforming changes to §§ 404.2101, 404.2102, 404.2103, 404.2109, 404.2116 and 404.2117 to reflect the removal of § 404.2113, and to §§ 416.2201, 416.2202, 416.2203, 416.2209, 416.2216 and 416.2217 to reflect the removal of § 416.2213.

Regulatory Procedures

Proceeding Directly to Final Rules

Under section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B).

We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for the changes to the regulations described above. The changes merely conform our regulations to current law by removing rules and related provisions which are obsolete as a result of the repeal of sections 222(b) and 1615(c) of the Act concerning sanctions for refusing rehabilitation services without good cause. These sections of the Act were repealed by sections 101(b)(1)(C) and (b)(2)(B) of Public Law 106–170, effective January 1, 2001. Because the removal of obsolete

provisions from our regulations to reflect the repeal of these sections of the Act does not involve the exercise of discretionary rulemaking authority, we find that it is unnecessary to publish proposed rules and offer the public the opportunity to comment before we publish final rules. Moreover, because our existing regulations are inconsistent with current law and could mislead the public, we also find that further delay in amending these regulations, to allow for public comment, would be contrary to the public interest.

Making the Final Rules Effective Upon Publication

Section 553(d) of 5 U.S.C. provides that, with certain exceptions, the effective date of a ''substantive rule'' shall not be less than 30 days after its publication. We find that good cause exists for an exception for these final rules. As noted above, these final rules merely reflect the statutory changes made by sections 101(b)(1)(C) and (b)(2)(B) of Public Law 106–170. For the reasons discussed in the section above entitled ''Proceeding Directly to Final Rules,'' we find that delaying the effective date for 30 days after publication would also be unnecessary and contrary to the public interest. *See* 5 U.S.C. 553(d).

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they primarily affect only individuals, and those entities that voluntarily entered into a contractual agreement with us. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations impose no reporting or recordkeeping requirements that require OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Vocational rehabilitation.

Dated: April 9, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts E, J, P, and V of part 404 and subparts B, G, M, Q, T, and V 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 E—[Amended]

■ 1. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 223(e), 224, 225, 702(a)(5), 1129A and 1147 of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 423(e), 424a, 425, 902(a)(5), 1320a-8a and 1320b-17).

■ 2. Amend § 404.401 by revising paragraph (b)(5), removing paragraph (b)(6), and redesignating paragraph (b)(7) as paragraph (b)(6) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(b) * * *

(5) Failure to report within the prescribed period earnings from work in employment or self-employment (*see* § 404.453); or

* * * * *

■ 3. Amend § 404.402 by revising paragraph (a) introductory text, and paragraphs (b)(2) and (d)(4) to read as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

(a) *Deductions, reductions, adjustment.* Deductions because of earnings or work (*see* §§ 404.415 and 404.417); failure to have a child ''in his or her care'' (*see* § 404.421); as a penalty for failure to timely report noncovered work outside the United States, failure to report that he or she no longer has a child ''in his or her care,'' or failure to timely report earnings (*see* §§ 404.451 and 404.453); because of unpaid maritime taxes (*see* § 404.457); or nonpayments because of drug addiction and alcoholism to individuals other than an insured individual who are entitled to benefits on the insured individual's earnings record are made:

* * * * *

(b) * * *

(2) Reduction of benefits because of entitlement to certain public disability benefits (*see* § 404.408) is made before deduction under section 203 of the Act relating to work (*see* §§ 404.415, 404.417, 404.451, and 404.453) and failure to have care of a child (*see* §§ 404.421 and 404.451).

* * * * *

(d) * * *

(4) Current deductions under §§ 404.417 and 404.421;

* * * * *

■ 4. Amend § 404.412 by revising the title of the section and paragraph (a)(1) to read as follows:

§ 404.412 After my benefits are reduced for age when and how will adjustments to that reduction be made?

(a) * * *

(1) Months subject to deduction under § 404.415 or § 404.417;

* * * * *

■ 5. Amend § 404.421 by revising the title of the section and paragraph (d) to read as follows:

§ 404.421 How are deductions made when a beneficiary fails to have a child in his or her care?

* * * * *

(d) *When a child is considered not entitled to benefits.* For purposes of paragraphs (a) and (b) of this section, a person is considered not entitled to child's benefits for any month in which she or he is age 18 or over and is entitled to child's benefits because she or he is a full-time student at an educational institution. This paragraph applies to benefits for months after December 1964.

§ 404.222 [Removed]

■ 6. Remove § 404.422.

■ 7. Amend § 404.423 by revising the first sentence to read as follows:

§ 404.423 Manner of making deductions.

Deductions provided for in §§ 404.415, 404.417, and 404.421 (as modified in § 404.458) are made by withholding benefits (in whole or in part, depending upon the amount to be withheld) for each month in which an event causing a deduction occurred.

* * *

■ 8. Revise § 404.425 to read as follows:

§ 404.425 Total amount of deductions where deduction events occur in more than 1 month.

If a deduction event described in §§ 404.415, 404.417, and 404.421 occurs in more than 1 month, the total amount deducted from an individual's benefits is equal to the sum of the deductions for all months in which any such event occurred.

■ 9. Amend § 404.435 by revising paragraph (a)(2) to read as follows:

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) * * *

(2) In which he or she was considered not entitled to benefits (due to noncovered work outside the United States or no child in care as described in § 404.436);

* * * * *

■ 10. In § 404.436, revise paragraph (b) and remove paragraphs (c), (d) and (e) to read as follows:

§ 404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.

* * * * *

(b) Failure to have a child in his or her care (as described in § 404.421).

■ 11. Amend § 404.437 by revising paragraph (a) to read as follows:

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

* * * * *

(a) After reduction for the *maximum* (*see* §§ 404.403 and 404.404). The rate as reduced for the maximum as referred to in this paragraph is the one applicable to remaining entitled beneficiaries after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in noncovered remunerative activity outside the United States or failure to have a child in his or her care);

* * * * *

■ 12. Amend § 404.458 by revising the first sentence to read as follows:

§ 404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.

Notwithstanding the provisions described in §§ 404.415, 404.417, 404.421, 404.451, and 404.453 about the amount of the deduction to be imposed for a month, no such deduction is imposed for a month when the benefits payable for that month to all persons entitled to benefits on the same earnings record and living in the same household remain equal to the maximum benefits payable to them on that earnings record.

* * *

Subpart J—[Amended]

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

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)-(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)-(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 *note*); secs. 5, 6(c)-(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 *note*).

§ 404.902 [Amended]

■ 14. In § 404.902, remove and reserve paragraph (g).

Subpart P—[Amended]

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

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

■ 16. Amend § 404.1596 by revising paragraphs (b)(2)(i) and (b)(2)(ii) and removing paragraph (b)(2)(iii) to read as follows:

§ 404.1596 Circumstances under which we may suspend your benefits before we make a determination.

* * * * *

(b) * * *

(2) * * *

(i) You have failed to respond to our request for additional medical or other evidence and we are satisfied that you received our request and our records show that you should be able to respond; or

(ii) We are unable to locate you and your checks have been returned by the Post Office as undeliverable.

* * * * *

Subpart V—[Amended]

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

Authority: Secs. 205(a), 222, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 422, and 902(a)(5)).

■ 18. Revise § 404.2101 to read as follows:

§ 404.2101 General.

Section 222(d) of the Social Security Act authorizes the transfer from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of such sums as may be necessary to pay for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled individuals entitled under section 223, 225(b), 202(d), 202(e) or 202(f) of the Social Security Act. The purpose of this provision is to make VR services more readily available to disabled individuals and ensure that savings accrue to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

(a) The furnishing of the VR services results in the individual's completion of a continuous 9-month period of substantial gainful activity (SGA) as specified in §§ 404.2110 through 404.2111; or

(b) The individual continues to receive disability payments from us, even though his or her disability has ceased, because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls (*see* § 404.2112).

■ 19. Amend § 404.2102 by revising the second sentence of the introductory text and paragraph (f) to read as follows:

§ 404.2102 Purpose and scope.

* * * Payment will be provided for VR services provided on behalf of disabled individuals under one or more of the provisions discussed in § 404.2101.

* * * * *

(f) Section 404.2112 describes when payment will be made to a VR agency or alternate participant because an individual's disability benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls.

* * * * *

§ 404.2103 [Amended]

■ 20. Amend § 404.2103 by removing the definition of *Good cause for VR refusal.*

§ 404.2109 [Amended]

■ 21. Amend § 404.2109 by removing paragraph (c) and redesignating paragraphs (d) through (h) as paragraphs (c) through (g).

§ 404.2113 [Removed]

■ 22. Remove § 404.2113.

§ 404.2116 [Amended]

■ 23. In § 404.2116, remove paragraph (c).

■ 24. Amend § 404.2117 by revising the introductory text and paragraph (f) to read as follows:

§ 404.2117 What costs will be paid.

In accordance with section 222(d) of the Social Security Act, the Commissioner will pay the State VR agency or alternate participant for the VR services described in § 404.2114 which were provided during the period described in § 404.2115 and which meet the criteria in § 404.2111 or § 404.2112, but subject to the following limitations:

* * * * *

(f) Payment for VR services or costs may be made under more than one of the VR payment provisions described in §§ 404.2111 and 404.2112 of this subpart and similar provisions in §§ 416.2211 and 416.2212 of subpart V of part 416. However, payment will not be made more than once for the same VR service or cost; and

* * * * *

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

Subpart B—[AMENDED]

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

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h *note*).

§ 416.213 [Removed]

■ 26. Remove § 416.213.

Subpart G—[Amended]

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

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

§ 416.1328 [Amended]

■ 28. In § 416.708, remove and reserve paragraph (i).

Subpart M—[Amended]

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

Authority: Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

§ 416.1328 [Removed]

■ 30. Remove § 416.1328.

Subpart Q—[Amended]

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

Authority: Secs. 702(a)(5), 1611(e)(3), 1615, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(e)(3), 1382d, and 1383).

■ 32. In § 416.1701, revise the third and fourth sentences to read as follows:

§ 416.1701 Scope of subpart.

* * * This subpart also describes the conditions under which you can refuse treatment after we have referred you. If these conditions are not met, this subpart describes how your benefits are affected when you refuse treatment.

§ 416.1715 [Removed]

■ 33. Remove § 416.1715.

Subpart T—[Amended]

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

Authority: Secs. 702(a)(5), 1616, 1618, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382e, 1382g, and 1383); sec. 212, Pub. L. 93–66, 87 Stat. 155 (42 U.S.C. 1382 *note*); sec. 8(a), (b)(1)–(b)(3), Pub. L. 93–233, 87 Stat. 956 (7 U.S.C. 612c *note*, 1431 *note* and 42 U.S.C. 1382e *note*); secs. 1(a)–(c) and 2(a), 2(b)(1), 2(b)(2), Pub. L. 93–335, 88 Stat. 291 (42 U.S.C. 1382 *note*, 1382e *note*).

■ 35. Amend § 416.2040 by revising paragraph (b) to read as follows:

§ 416.2040 Limitations on eligibility.

* * * * *

(b) *Ineligible persons.* No person who is ineligible for a Federal benefit for any month under sections 1611(e)(1)(A), (2), (3), or (f) of the Act (failure to file; refuses treatment for drug addiction or alcoholism; outside the United States) or other reasons (other than the amount of income) shall be eligible for such State supplementation for such month.

* * * * *

Subpart V—[Amended]

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

Authority: Secs. 702(a)(5), 1615, 1631(d)(1) and (e), and 1633(a) of the Social Security Act (42 U.S.C. 902(a)(5), 1382d, 1383(d)(1) and (e), and 1383b(a)).

■ 37. Revise § 416.2201 to read as follows:

§ 416.2201 General.

In general, sections 1615(d) and (e) of the Social Security Act (the Act) authorize payment from the general fund for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled or blind individuals who are eligible for supplemental security income (SSI) benefits, special SSI eligibility status, or federally administered State supplementary payments. In this subpart, such benefits, status, or payments are referred to as disability or blindness benefits (*see* § 416.2203). Subject to the provisions of this subpart, payment may be made for VR services provided an individual during a month(s) for which the individual is eligible for disability or blindness benefits, including the continuation of such benefits under section 1631(a)(6) of the Act, or for which the individual's disability or blindness benefits are suspended (*see* § 416.2215). Paragraphs (a) and (b) of this section describe the cases in which the State VR agencies and alternate participants can be paid for the VR services provided such an individual under this subpart. The purpose of sections 1615(d) and (e) of the Act is to make VR services more readily available to disabled or blind individuals and ensure that savings accrue to the general fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

(a) The furnishing of the VR services results in the individual's completion of a continuous 9-month period of substantial gainful activity (SGA) as specified in §§ 416.2210 through 416.2211; or

(b) The individual continues to receive disability or blindness benefits, even though his or her disability or blindness has ceased, under section 1631(a)(6) of the Act because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability or blindness rolls (*see* § 416.2212).

■ 38. Amend § 416.2202 by revising the second sentence of the introductory text and paragraph (f) to read as follows:

§ 416.2202 Purpose and scope.

* * * Payment will be provided for VR services provided on behalf of disabled or blind individuals under one or more of the provisions discussed in § 416.2201.

* * * * *

(f) Section 416.2212 describes when payment will be made to a VR agency

or alternate participant because an individual's disability or blindness benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls.

* * * * *

§ 416.2203 [Amended]

■ 39. Amend § 416.2203 by removing the definition of *Good cause for VR refusal.*

§ 416.2209 [Amended]

■ 40. Amend § 416.2209 by removing paragraph (c) and redesignating paragraphs (d) through (h) as paragraphs (c) through (g).

§ 416.2213 [Removed]

■ 41. Remove § 416.2213.

§ 416.2216 [Amended]

■ 42. In § 416.2216, remove paragraph (c).

■ 43. Amend § 416.2217 by revising the introductory text and paragraph (f) to read as follows:

§ 416.2217 What costs will be paid.

In accordance with section 1615(d) and (e) of the Social Security Act, the Commissioner will pay the State VR agency or alternate participant for the VR services described in § 416.2214 which were provided during the period described in § 416.2215 and which meet the criteria in § 416.2211 or § 416.2212, but subject to the following limitations:

* * * * *

(f) Payment for VR services or costs may be made under more than one of the VR payment provisions described in §§ 416.2211 and 416.2212 of this subpart and similar provisions in §§ 404.2111 and 404.2112 of subpart V of part 404. However, payment will not be made more than once for the same VR service or cost; and

* * * * *

[FR Doc. 03–16858 Filed 7–3–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 2003D–0209]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Breath Nitric Oxide Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the breath nitric oxide test system into class II (special controls). The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for the device.

DATES: This rule is effective August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jean Cooper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after issuing an order classifying the device, FDA must publish a notice in the **Federal Register** announcing the classification.

On March 17, 2003, FDA received a petition submitted under section 513(f)(2) of the act by Aerocrine AB, through Certified Software Solutions, Inc., seeking an evaluation of the automatic class III designation of its NIOX BREATH NITRIC OXIDE TEST SYSTEM. In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the NIOX BREATH NITRIC OXIDE TEST SYSTEM in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the NIOX BREATH NITRIC OXIDE TEST SYSTEM can be classified in class II with the establishment of special controls. This device is intended to aid in evaluating an asthma patient's response to anti-inflammatory therapy by measuring changes in fractional exhaled nitric oxide concentration in asthma patients, as an adjunct to established clinical and laboratory assessments of asthma. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the risk to health associated specifically with this type of device as improper patient management. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System.''

The class II special controls guidance provides information on how to meet