to section 4 of Pub. L. 99-643, the trial work period and the reentitlement period no longer apply in title XVI disability cases, and we are accordingly proposing to delete §§ 416.973(f), 416.976(f)(2), 416.992, 416.992a, and 416.994(b)(3)(v), (b)(5)(i), the first paragraph of (b)(6)(i), (b)(6)(i)(D), and (b)(6)(ii) from the regulations and to amend §§ 416.901(m), 416.991, and 416.1331(a) by removing references to the trial work period and reentitlement period. A substantial gainful activity test is still necessary to establish an individual's initial eligibility for SSI benefits based on disability under title

#### **Regulatory Procedures**

#### Paperwork Reduction Act

These regulations contain reporting requirements in §§ 404.1574(a)(3) and 416.974(a)(3). We would normally seek approval of these requirements (under the Paperwork Reduction Act) from the Office of Management and Budget (OMB). We are not doing so in this situation because we already have clearance from the OMB to collect this information using form SSA–3033 (OMB No. 0960–0483).

The public reporting burden for this collection of information is estimated to average 15 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and provide the information. We expect approximately 12,500 employers to complete form SSA-3033 annually, and estimate the total burden to be 3,125 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, Maryland 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960-0483), Washington, DC 20503.

#### Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II or title XVI benefits because of disability or blindness.

## Executive Order 12866

OMB has reviewed these rules and determined they do not meet the criteria for a significant regulatory action under E.O. 12866.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; No. 93.807, Supplemental Security Income.)

### List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

#### **List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Supplemental security income.

Dated: September 6, 1994.

#### Shirley S. Chater,

Commissioner of Social Security.

Approved: November 22, 1994.

#### Donna E. Shalala,

Secretary of Health and Human Services.

Parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as follows:

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

1. The authority citation for subpart D of Part 404 continues to read as follows:

**Authority:** Secs. 202, 203(a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. Section 404.321 is amended by revising paragraph (c)(3) to read as follows:

# § 404.321 When a period of disability begins and ends.

\* \* \* \* \* \* (c) \* \* \*

- (3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.
- 3. Section 404.325 is revised to read as follows:

#### § 404.325 The termination month.

If you do not have a disabling impairment, your termination month is the third month following the month in which your impairment is not disabling even if it occurs during the trial work period or the reentitlement period. If you continue to have a disabling impairment and complete 9 months of trial work, your termination month will be the third month following the earliest month you perform substantial gainful activity or are determined able to perform substantial gainful activity; however, in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a.

*Example:* You complete your trial work period in December 1988. You are then

working at the substantial gainful activity level and continue to do so throughout the 36 months following completion of your trial work period and thereafter. Your termination month will be January 1992, which is the 37th month—that is, the first month in which you performed substantial gainful activity after the 36th month following your trial work period.

Example: You complete your trial work period in December 1988 but you are not able to work at the substantial gainful activity level until March 1992, 3 months after the last month of your reentitlement period. Your termination month will be June 1992—that is, the third month after the earliest month you performed substantial gainful activity.

4. 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 1102 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 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808; sec. 10103 of Pub. L. 101–239, 103 Stat. 2472.

5. Section 404.1573 is amended by revising paragraph (c) to read as follows:

# § 404.1573 General information about work activity.

(c) If your work is done under special conditions. Even though the work you are doing is done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. Examples of the special conditions that may relate to your impairment include situations in which-

- (1) You required and received special assistance from other employees in performing your work;
- (2) You were allowed to work irregular hours or take frequent rest periods;
- (3) You were provided with special equipment or were assigned work especially suited to your impairment;
- (4) You were able to work only because of specially arranged circumstances, for example, other persons helped you prepare for or get to and from your work;
- (5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or