under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. The value of any subsidy must be subtracted and the remainder used to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(6) of this section. 5. A new section 416.974a is added to read as follows:

§ 416.974a When and how we will average your earnings.

(a) To determine your initial eligibility for benefits, we will average any earnings you make during the month you file for benefits and any succeeding months to determine if you are doing substantial gainful activity. If your work as an employee or as a selfemployed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if you have done substantial gainful activity.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

6. Section 416.975 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 416.975 Evaluation guides if you are selfemployed.

(a) If you are a self-employed person. We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend upon a number of different factors, such as capital investment and profit sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of

whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, tests two and three must be considered. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) Test Three: You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing. (b) * * *

(c) What we mean by substantial income. Your normal business expenses are deducted from your gross income to determine net income. Once net income is determined, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties which ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 416.976. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the

amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in §§ 416.974(b)(2) and 416.974(b)(3). See § 416.974a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in \$416.974(b)(2); or

(2) It averages less than the amounts described in § 416.974(b)(2) but it is either comparable to what it was before you became severely impaired or is comparable to that of unimpaired selfemployed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.* (1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d) (2), (3), (4), and (5) of this section.

(2) Event that must precede an unsuccessful work attempt. There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. Your work must have been discontinued or reduced below substantial gainful activity because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be discontinued if you were out of work at least 30 consecutive days, or if, because of your impairment, you were forced to change to another type of work.

(3) If you worked 3 months or less. We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions related to the impairment which permitted you to work.

(4) If you work between 3 and 6 months. We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial

12176