

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming in the rudder control system, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection to determine if the rigging bushings of the rudder control system protrude above the surface of the flange in which they are installed, in accordance with Dornier Alert Service Bulletin ASB-328-27-003, dated July 13, 1994. If any bushing protrudes by any amount above the surface of the flange, prior to further flight, replace the bushing with a new bushing, in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 96-176, dated June 6, 1996.

Issued in Renton, Washington, on September 19, 1997.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-25417 Filed 9-24-97; 8:45 am]

BILLING CODE 4910-13-U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960-AE53

Administrative Review Process; Identification and Referral of Cases for Quality Review Under the Appeals Council's Authority To Review Cases on Its Own Motion

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to amend our regulations to include the rules under which a decision or order of dismissal that is issued after the filing of a request for a hearing by an administrative law judge (ALJ) will be referred to the Appeals Council for possible review under the Appeals Council's existing authority to review cases on its own motion. The proposed rules concern identification and referral procedures that we currently follow to ensure the accuracy of decisions at the ALJ-hearing step (hearing level) of the administrative review process, and new quality assurance procedures that we are proposing under the Plan for a New Disability Claim Process approved by the Commissioner of Social Security in September 1994 (59 FR 47887). The procedures set forth in the proposed rules apply to dispositions at the hearing level of the administrative review process that are made by ALJs, and also to dispositions at the hearing level that are not made by ALJs but are subject to review under the Appeals Council's own-motion authority. The latter type of dispositions currently consist of wholly favorable decisions issued by attorney advisors and adjudication officers.

DATES: To be sure that your comments are considered, we must receive them no later than November 24, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966-2830; sent by E-mail to "regulations@ssa.gov"; or, delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION:

Background

Under procedures set forth in §§ 404.967 ff. and 416.1467 ff., and pursuant to a direct delegation of authority from the Commissioner of

Social Security (see 61 FR 35844, 35852, July 8, 1996), the Appeals Council, a component in our Office of Hearings and Appeals (OHA), reviews hearing decisions and orders of dismissal issued by ALJs of the Social Security Administration (SSA). The Appeals Council may review a decision or dismissal action of an ALJ at the request of a party to the action or, under authority provided in §§ 404.969 and 416.1469, on its own motion. Through the exercise of its authority to review cases, the Appeals Council is responsible for ensuring that the final decisions of the Commissioner of Social Security under titles II and XVI of the Social Security Act (the Act), as amended, are proper and in accordance with the law, regulations, and binding agency policy.

The Appeals Council's authority to review cases on its own motion also applies, at present, to two types of hearing-level cases that do not result in decisions by ALJs. Under §§ 404.942 and 416.1442, attorney advisors of OHA are temporarily authorized to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.942 (e)(2) and (f)(3) and 416.1442 (e)(2) and (f)(3), such decisions are subject to review under the own-motion authority of the Appeals Council established in §§ 404.969 and 416.1469. In addition, under §§ 404.943 and 416.1443, adjudication officers are authorized, for test purposes, to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.943(c)(2)(ii) and 416.1443(c)(2)(ii), such decisions are also subject to review on the Appeals Council's own motion.

Under our regulations on the Appeals Council's procedures, if the Appeals Council decides to review a case in response to a request for review or on its own motion, it may issue a decision or remand the case to an ALJ. The Appeals Council may also dismiss a request for hearing for any reason that the ALJ could have dismissed the request.

A decision by the Appeals Council "to review" a hearing-level decision means that the Appeals Council assumes jurisdiction to cause that decision not to be the final decision of the Commissioner of Social Security. A decision that the Appeals Council "reviews" will be replaced by a new final action in the case, either by a decision or dismissal order of the

Appeals Council or, if a hearing or other hearing-level proceedings are required, by a decision or dismissal order issued following remand of the case from the Council to an ALJ.

A decision by the Appeals Council to review a case is made when, following a preliminary consideration of all aspects of the case to determine if review is appropriate, the Council issues a notice announcing a decision to review. The Council's standard notice of review advises the parties of the reasons for the review and (unless the Council issues a wholly favorable decision upon taking review) the issues to be considered in proceedings before the Council or before an ALJ on remand. In instances in which the Council reviews a hearing level decision that has been issued based on the documentary evidence without the holding of an oral hearing by an ALJ, the parties have the right to such a hearing, except where the parties waive that right in writing.

The existing provisions in §§ 404.969 and 416.1469 on the Appeals Council's authority to review cases on its own motion provide that the Appeals Council itself may decide to review a case within 60 days after the date of the hearing decision or dismissal and that, if the Council does review a case under this authority, it will provide notice to the parties to the hearing decision or dismissal action. Sections 404.969 and 416.1469 do not currently address the procedures we use in identifying and referring cases to the Appeals Council for it to consider for possible review on its own motion.

The Appeals Council has broad authority to review any case on its own motion pursuant to §§ 404.969 and 416.1469. The conditions under which the Appeals Council will review a case, on request for review or on its own motion, are set forth in §§ 404.970 and 416.1470. Those sections provide that the Council will review a case if: (1) There appears to be an abuse of discretion by the ALJ; (2) there is an error of law; (3) the action, findings or conclusions of the ALJ are not supported by substantial evidence; or (4) there is a broad policy or procedural issue that may affect the general public interest. Sections 404.970 and 416.1470 further provide that the Council will also review a case if new and material evidence is submitted that relates to the period on or before the date of the ALJ's decision and the Council finds, upon evaluating the evidence of record and the additional evidence, that an action, a finding or a conclusion of the ALJ is contrary to the weight of the evidence currently of record as a whole.

In fiscal year 1996 (FY '96), the Appeals Council received 99,735 requests for review filed by parties to the actions of ALJs. Most of the requests were for review of unfavorable decisions and dismissal actions; some concerned partially favorable decisions. In FY '96, the Council also considered 8,602 cases for possible review on its own motion. Almost all of these cases involved favorable hearing-level decisions that were referred to the Appeals Council under one of two types of identification and referral procedures we currently use—random sample procedures, which generated the majority of this workload in FY '96, and "protest" procedures.

Existing Identification and Referral Procedures

Section 304(g) of Public Law 96-265 (1980) required SSA to implement a program for initiating review of ALJ decisions in disability claims. Under section 304(g), the Appeals Council considers, for possible review on its own motion, a national random sample of favorable ALJ decisions that have not been implemented, and, as resources permit, a random sample of unappealed denial decisions and dismissals. (See Social Security Ruling 82-13.)

The Appeals Council also considers, for possible review on its own motion, a random sample of wholly favorable decisions issued by attorney advisors under the time-limited provisions of §§ 404.942 and 416.1442. Wholly favorable decisions issued by adjudication officers under the testing provisions of §§ 404.943 and 416.1443 are also identified by random sampling for referral to the Appeals Council for possible own-motion review. These procedures have been established in accordance with commitments we made, in publishing the final rules for the attorney advisor and adjudication officer provisions, to assess carefully the quality of the decisions issued by the attorney advisors and the adjudication officers (see 60 FR 34127 and 60 FR 47471, respectively).

Our existing identification and referral procedures also include those under which the SSA components responsible for implementing hearing-level decisions—SSA Processing Centers (PCs) and Field Offices (FOs)—refer ("protest") certain cases to the Appeals Council for possible review under its own motion authority. The PCs, which include our Program Service Centers and the Office of Disability and International Operations, refer cases directly to the Appeals Council; FOs forward cases to a PC or an SSA Regional Office, which decides if the PC

or the Regional Commissioner should make a referral to the Council.

The decisions of ALJs and the decisions currently issued by attorney advisors and adjudication officers are subject to referral to the Appeals Council under our protest procedures. Almost all protested decisions are favorable decisions because almost all of the ALJ decisions that require implementation are wholly or partially favorable decisions under which benefit payments are to be effectuated (initiated or continued), and because all decisions issued by attorney advisors and adjudication officers are favorable. In protesting a decision, an effectuating component may recommend that the decision be made more or less favorable or unfavorable.

Effectuating components refer a case if the need for referral is believed to be clear (not dependent on a judgment factor) because of one of the following circumstances: (1) The decision contains a clerical error which affects the outcome of the claim; (2) the decision is clearly contrary to the Act, regulations or rulings; or (3) the decision cannot be effectuated because its intent is unclear as to an issue affecting the claim's outcome.

Effectuating components refer cases to the Appeals Council by written memoranda. If the Council decides to review a referred case, it provides the parties a copy of the effectuating component's referral memorandum with the notice by which it advises the parties that it will review the case.

We are proposing to amend our regulations to include rules on the existing random sample and protest procedures discussed above. We have decided to propose rules setting forth these procedures in connection with our decision to propose, in furtherance of the Plan for a New Disability Claim Process, that the Appeals Council's own-motion functions be strengthened by establishment of a new process for identifying and referring cases for possible review under the Council's existing own-motion authority.

New Identification and Referral Procedures

The Appeals Council currently considers only a small percentage of all favorable decisions issued at the hearing level for possible review under its own-motion authority. (In FY '96, the Council's workload in this area represented fewer than 3 percent of such decisions in that year.) In addition, the processes we currently use to select decisions for possible review on the Appeals Council's own motion are generally not designed to identify, in

any systematic way, hearing-level decisions that are likely to be incorrect. The random sample processes bringing cases before the Appeals Council do not identify cases other than by techniques designed to assure randomness of selection within broadly identified categories (i.e., allowances, unappealed denials, and dismissals). The identification of "protest" cases that occurs in the effectuation process is a secondary function of a process that is principally focused on the prompt payment of benefits.

Based on the above considerations, we are proposing to establish procedures under which our Office of Program and Integrity Reviews (OPIR), the SSA component that oversees the review of State agency determinations made under section 221(c) of the Act, will examine certain allowance decisions at the hearing level and refer to the Appeals Council the decisions that may not be supported by the record. Decisions that have been issued at the hearing level will be included in the OPIR-conducted examination process by random sampling and, as we develop the computer systems and other technical capacities needed to support this function, selective sampling that will rely on case profiling and other sampling techniques to identify cases that involve problematic issues or fact patterns that increase the likelihood of error.

Under the proposed process, upon referral of a case by OPIR, the Appeals Council would consider the case and OPIR's reasons for believing the decision is not supported by the record and decide whether to review the case in accordance with §§ 404.969–404.970 and/or 416.1469–416.1470. If the Appeals Council decides to review an OPIR-referred case, it would provide the parties a copy of OPIR's referral with its notice of review. The 60-day time limit for the Appeals Council to initiate review of a case under the authority and standards provided in §§ 404.969–404.970 and 416.1469–416.1470 would apply to cases the Council considers for review in response to referrals from OPIR.

Section 304(g) of Public Law 96–265 (see above) does not specify the kind of identification and referral procedures that SSA should use in implementing a program for initiating review of ALJ decisions in disability cases. We believe that use of the new procedures we are proposing, in combination with the existing identification and referral procedures that we are proposing to regulate, would be consistent with the kind of review contemplated by section 304.

An important purpose of the new procedures we are proposing is to increase our ability to identify policy issues that should be clarified through publication of regulations or rulings. We plan to monitor how our policies are understood and implemented by post-adjudicative evaluation of cases that are shown, as a result of their referral to the Appeals Council, to pose significant policy or program issues.

Proposed Regulations

We propose to revise §§ 404.969 and 416.1469, the regulations that set forth the Appeals Council's authority to review cases on its own motion, to state that we refer cases to the Appeals Council for it to consider reviewing on its own motion. As proposed for revision, §§ 404.969 and 416.1469 describe the identification and referral procedures we will follow and the action of the Appeals Council in cases it considers for possible review on its own motion.

Sections 404.969 and 416.1469 as proposed will apply to all cases that our regulations make subject to review on the Appeals Council's own motion. These currently include, in addition to cases involving ALJ decisions and dismissals, cases involving wholly favorable decisions issued by attorney advisors under the time-limited provisions of §§ 404.942 and 416.1442, and cases involving wholly favorable decisions issued by adjudication officers under the test procedures set out in §§ 404.943 and 416.1443.

Proposed §§ 404.969(b) and 416.1469(b) specify that we will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. These sections also provide that we will identify cases for referral through random and selective sampling techniques, that we may use these techniques in association with examination of the cases identified by sampling, and that we will also identify cases for referral through the evaluation of cases we conduct in order to effectuate decisions.

Under §§ 404.969(b)(1) and 416.1469(b)(1) as proposed, we may conduct random and selective sampling of cases involving all types of actions that occur at the hearing level of the administrative review process (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of title II or title XVI benefits (i.e., different types of benefits based on disability and benefits not based on disability). Our decision to propose these rules rests on our

conclusion that we should increase the number of favorable disability decisions the Appeals Council considers for possible review on its own motion to better balance review of favorable and unfavorable decisions. However, the Council's existing authority to review cases on its own motion covers all types of title II and title XVI cases adjudicated at the hearing level, and these proposed rules will allow use of the identification and referral procedures being set forth with respect to all such cases.

Sections 404.969(b)(1) and 416.1469(b)(1) as proposed specify that we will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Under the provisions as proposed, the factors considered in selective sampling will not include the identity of the decisionmaker or the identity of the office issuing the decision.

Proposed §§ 404.969(b)(1) and 416.1469(b)(1) also authorize but do not require that we examine cases that have been identified through random or selective sampling. Cases may be identified for referral by random or selective sampling. The purpose of the examination of cases that we may conduct is to refine the identification of cases in which the action that has been taken is not supported.

Proposed §§ 404.969(b)(2) and 416.1469(b)(2) provide that effectuating components will identify cases for referral under criteria presently used to identify clear error and circumstances preventing effectuation of a decision. Any type of decision requiring effectuation may be identified for referral under these provisions.

Under §§ 404.969(c) and 416.1469(c), as proposed, we will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Sections 404.969(c) and 416.1469(c) as proposed also provide that referrals resulting from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral, and that referrals resulting from random sampling without a case examination will only identify the case as a random sample case. A statement of the issue(s) or fact pattern identified in selective sampling may be computer generated.

Proposed §§ 404.969(d) and 416.1469(d) specify that the Appeals Council's notice of review will include a copy of any written referral provided

to the Appeals Council. These provisions also include language to state clearly our long-standing policy that issuance of the notice of review establishes when a decision to conduct a review occurs.

We are also proposing to include in §§ 404.969(d) and 416.1469(d) a statement specifying our policy that, when the Appeals Council is unable to decide whether to review a case on its own motion within the 60-day period in which it may do so, it may consider whether the decision should be reopened under the provisions of §§ 404.987 and/or 416.1487, which authorize the Council to reopen a final decision on its own initiative or at the request of a party to the decision, if a condition for reopening stated in §§ 404.988 and/or 416.1488 is present. We are including this statement in the regulations to clarify our long-standing policy that the Appeals Council may also reopen final decisions in accordance with §§ 404.987 and 416.1487 after the 60 days for initiating review under §§ 404.969 and 416.1469 have expired.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do meet the criteria for a significant regulatory action under Executive Order 12866. They were therefore submitted to OMB for review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or record keeping requirements requiring OMB clearance. (Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-

Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: September 12, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as set forth below.

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

20 CFR part 404, subpart J, is amended as follows:

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

Authority: Secs. 201(j), 205 (a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405 (a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 304(g), Pub. L. 96–265, 94 Stat. 456 (42 U.S.C. 421 note); 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).

2. Section 404.969 is revised to read as follows:

§ 404.969 Appeals Council initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Appeals Council may decide on its own motion to review the action that was taken in your case. We may refer your case to the Appeals Council for it to consider reviewing under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. We will identify cases for referral to the

Appeals Council through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We will also identify cases for referral to the Appeals Council through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Our selective sampling procedures will not identify cases based on the identity of the decisionmaker or the identity of the office issuing the decision. We may examine cases that have been identified through random or selective sampling to refine the identification of cases in which the action taken may not be supported by the record.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Appeals Council if the decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim; the decision is clearly inconsistent with the Social Security Act, the regulations, or a published ruling; or the decision is unclear regarding a matter that affects the claim's outcome.

(c) *Referral of cases.* We will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral based on the results of such a case examination or the effectuation process will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 404.973. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision

to review a case is established by its issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or a dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to § 404.987.

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

20 CFR part 416, subpart N, is amended as follows:

1. The authority citation for subpart N is revised to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 304(g), Pub. L. 96-265, 94 Stat. 456 (42 U.S.C. 421 note).

2. Section 416.1469 is revised to read as follows:

§ 416.1469 Appeals Council initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Appeals Council may decide on its own motion to review the action that was taken in your case. We may refer your case to the Appeals Council for it to consider reviewing under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. We will identify cases for referral to the Appeals Council through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We will also identify cases for referral to the Appeals Council through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Our selective sampling procedures will not identify cases based on the identity of the decisionmaker or the identity of the office issuing the decision. We may examine cases that have been identified through random or selective sampling to refine the

identification of cases in which the action taken may not be supported by the record.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Appeals Council if the decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim; the decision is clearly inconsistent with the Social Security Act, the regulations, or a published ruling; or the decision is unclear regarding a matter that affects the claim's outcome.

(c) *Referral of cases.* We will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral based on the results of such a case examination or the effectuation process will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 416.1473. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision to review a case is established by its issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to § 416.1487.

[FR Doc. 97-25365 Filed 9-24-97; 8:45 am]
BILLING CODE 4190-29-U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AE56

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Evaluating Opinion Evidence

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise the Social Security and supplemental security income (SSI) regulations about the evaluation of medical opinions to clarify how administrative law judges and the Appeals Council are to consider opinion evidence from State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in claims for disability benefits under titles II and XVI of the Social Security Act (the Act). We also propose to define or clarify several terms used in our regulations and to delete other terms.

DATES: To be sure that your comments are considered, we must receive them no later than November 24, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1758 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213.

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