

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is proposed to amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AEA NJ E5 Wrightstown, NJ [Revised]**

Lakewood Airport, NJ

(Lat. 40°04'00"N., long. 74°10'40"W.)

McGuire AFB, NJ

(Lat. 40°00'56"N., long. 74°35'37"W.)

Trenton-Robbinsville Airport, NJ

(Lat. 40°12'50"N., long. 74°36'07"W.)

Allaire Airport, NJ

(Lat. 40°11'13"N., long. 74°07'30"W.)

Robert J. Miller Airpark, NJ

(Lat. 39°55'39"N., long. 74°17'33"W.)

Flying W Airport, NJ

(Lat. 39°56'00"N., long. 74°48'24"W.)

Lakehurst (Navy) TACAN

(Lat. 40°02'13"N., long. 74°21'12"W.)

Colts Neck VOR/DME

(Lat. 40°18'42"N., long. 74°09'36"W.)

Coyle VORTAC

(Lat. 39°49'02"N., long. 74°25'54"W.)

Robbinsville VORTAC

(Lat. 40°12'08"N., long. 74°29'43".)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport and within a 10.5-mile radius of McGuire AFB and within a 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the Lakehurst (Navy) Tacan 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending from the VORTAC to 11.3 miles northeast and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast and within a 6.4-mile radius of Trenton-Robbinsville airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials extending from 4.8 miles west to 10 miles east of the VORTAC and within a 6.7-mile radius of Allaire Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Allaire Airport 6.7-mile radius to the VOR/DME and within 4 miles each side of the 312° bearing from the Allaire airport extending from the 6.7-mile radius of the airport to 9 miles northwest of the airport and within a 9.5-mile radius of Flying W Airport and within a 6.5-mile radius of Robert J. Miller Air Park and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius of Robert J. Miller Air Park to the VORTAC, excluding the portions that coincide with the Berlin NJ, Princeton, NJ, Vincentown, NJ, Old Bridge, NJ, Matawan, NJ, and North Philadelphia, PA Class E airspace areas.

\* \* \* \* \*

Issued in Jamaica, New York, on February 25, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98-5926 Filed 3-10-98; 8:45 am]

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**SOCIAL SECURITY ADMINISTRATION****20 CFR Part 404**

**RIN 0960-AE65**

**Revised Medical Criteria for Determination of Disability, Endocrine System and Related Criteria**

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to delete "Obesity," from the listing to adjudicate claims for disability under titles II and XVI of the Social Security Act (the Act) when we evaluate claims of individuals at step 3 of our sequential evaluation process. Current medical and vocational research demonstrates that, while many individuals with obesity are disabled, obesity, in and of itself, is not necessarily determinative of an individual's inability to engage in any gainful activity. Instead, individuals with obesity would have their cases reviewed under the listing for an affected body system(s) or, on a case-by-case basis, at the remaining steps of the sequential evaluation process.

**DATES:** To be sure that your comments are considered, we must receive them no later than May 11, 1998.

**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 Social Security Administration, 2109 West Low Rise 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 hours by making arrangements with the contact person shown below.

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.

**FOR FURTHER INFORMATION CONTACT:** Robert Augustine, Legal Assistant, Office of Process and Innovation

Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 966-5121 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

**SUPPLEMENTARY INFORMATION:** Title II of the Act provides for the payment of disability insurance benefits to workers insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, title XVI of the Act provides for supplemental security income (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 and for persons claiming child's insurance benefits based on disability under the title II program, "disability" means that an impairment(s) results in an inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) results in "marked and severe functional limitations." Under both title II and title XVI, disability must be the result of any medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

The process for determining whether an individual (except for an individual under age 18 claiming SSI benefits based on disability) is disabled based on the statutory definition is set forth in our longstanding regulations at §§ 404.1520 and 416.920. These regulations provide for a sequential evaluation process for evaluating disability. There is a separate sequential evaluation process for individuals under age 18 claiming SSI benefits based on disability. At step 3 of both sequential evaluation processes we ask the same question: Whether an individual, who is not engaging in substantial gainful activity and who has an impairment(s) that is severe, has an impairment(s) that meets or equals in severity the criteria of an impairment listed in appendix 1 of subpart P of part 404, the Listing of Impairments (the listings). The listings describe, for each of the major body systems, impairments that are considered severe enough to prevent a

person from doing any gainful activity (or in the case of a child under age 18 claiming SSI benefits based on disability, to cause marked and severe functional limitations). Although the listings are contained only in part 404, they are referenced by subpart I of part 416.

The listings are divided into part A and part B. The criteria in part A are applied in evaluating impairments of persons age 18 or over. The criteria in part A may also be used to evaluate impairments in persons under age 18 if the disease processes have a similar effect on adults and children. Part B contains additional criteria for evaluating impairments of children under age 18 when the criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for a person under age 18, we first use the criteria in part B and, if the criteria in part B do not apply, we use the criteria in part A (see §§ 404.1525 and 416.925).

When these and several other listings were revised and published in the **Federal Register** on December 6, 1985 (50 FR 50068), we indicated that medical advances in disability evaluation and treatment and program experience would require that we periodically review and update the medical criteria in the listings. Accordingly, we published expiration dates ranging from 3 to 8 years for each of the specific body system listings. We subsequently extended these dates in a final rule published in the **Federal Register** on December 6, 1993 (58 FR 64121). These dates appear in the introductory statement before part A and provide that the current listings in part A and part B for the endocrine system and obesity (9.00) and the endocrine system (109.00) will no longer be effective on June 6, 1997. Subsequently, we issued final rules on June 5, 1997 (62 FR 30746) extending the expiration date of these listings for both part A and part B to June 7, 1999. We are now proposing to delete listing 9.09, "Obesity," and related provisions in the listings, and to rename the section "Endocrine System." (There is no listing for obesity in part B.) These changes will not affect the expiration date for the endocrine system listings.

We propose to remove listing 9.09 to recognize that there is no generally accepted current medical and vocational knowledge which establishes that even massive obesity, *per se*, has a defined adverse effect on an individual's ability to work; i.e., even long-term, massive obesity at the level specified in the listing does not necessarily cause

limitations that would prevent an individual from engaging in any gainful activity. Associated disorders of the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems are generally the major cause of disability at the listing level in obese individuals but, unless the associated disorder(s) is itself of listing-level severity, no reliable conclusions may be drawn about disability in most obese individuals. Rather, it is necessary to consider the effect of any disorders related to or aggravated by obesity on each individual, on a case-by-case basis, in order to determine whether the individual is disabled.

The following is a detailed summary of the proposed revisions, together with our reasons for proposing these changes.

## Revisions to Part A of Appendix 1

### Table of Contents

We propose to delete "and Obesity" from section 9.00 to reflect the proposed deletion of listing 9.09.

#### 9.00 Endocrine System and Obesity

We propose to delete "and Obesity" from the heading in this listing to reflect the proposed deletion of listing 9.09. We also propose to delete the second and third paragraphs from the preface of 9.00 because they discuss aspects of the evaluation of obesity. This discussion would no longer be needed under this proposal.

#### 9.01 Category of Impairments, Endocrine System and Obesity

We propose to delete "and Obesity" from the heading of this listing to reflect the proposed deletion of listing 9.09.

#### 9.09 Obesity

We propose to delete this listing in its entirety. Current medical and vocational research demonstrates that the listing is not necessarily reflective of an inability to engage in any gainful activity or even of an inability to engage in substantial gainful activity. For example, listing 9.09A requires a "[h]istory of pain and limitation of motion in any weight-bearing joint or the lumbosacral spine (on physical examination) associated with findings on medically acceptable imaging techniques of arthritis in the affected joint or lumbosacral spine." While such findings certainly could be a cause of disability depending on their impact on a particular individual's functioning, the listing is not specific: It does not indicate the degree of pain, does not require current pain, only a history of pain, and does not indicate a degree of limitation of motion, or any functional effects resulting from the impairment. Thus, the current listing

can be satisfied with only minimal additional findings over and above the weight levels, even though some individuals might have sufficient residual functional capacities to work.

The same holds true for the other criteria in current listing 9.09. Even though the findings in listings 9.09B through 9.09E could be disabling if they were to cause significant limitations of functioning in a given individual, they could also include individuals who are not prevented from working. Indeed, only listings 9.09B and 9.09E specify laboratory values, but those findings may or may not be associated with significantly limited functioning, depending on the individual.

For this reason, we believe that individuals with the kinds of additional impairments currently listed in 9.09 must have their cases reviewed under the listing for the affected body system or, on a case-by-case basis, at the remaining steps of the sequential evaluation process. Individuals whose severe impairments related to obesity are not of listing-level severity may establish that they are disabled, given their residual functional capacities, together with their age, education, and work experience.

We considered revising the obesity listing by clarifying the severity criteria for the various listed body systems that could be affected (musculoskeletal, cardiovascular, peripheral vascular and respiratory). However, because the effects of obesity and related impairments on an individual's functioning vary so widely, we concluded that the only way we could be certain that individuals would be disabled would be by requiring the other impairments to meet or equal the severity of their respective listings. If another body system listing is met or equaled, the individual's weight would become immaterial to the finding of disability. We also considered raising the weights in the tables to the extent that the exacerbated effect of the obesity would ensure that the individuals would be disabled under the listing based on weight alone. We chose not to revise the listing in this way because we would have had to raise the weights in the tables to such high levels that we would rarely use the listing.

## Other Revisions

### Introductory Text

We propose to delete "and Obesity" from item 10 of the introductory text that precedes part A of the Listing of Impairments. We also propose to revise item 10 of the introductory text to read "Endocrine System (9.00 and 109.00):

June 7, 1999." to conform with the style of this section.

### 3.00 Respiratory System

We propose to delete the cross-reference to the obesity listing in the last sentence of 3.00H and in listing 3.10, *Sleep-related breathing disorders*. Since we propose to delete the obesity listing, the cross-reference would no longer be appropriate.

## Regulatory Procedures

### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Therefore, we prepared and submitted to OMB an assessment of the potential costs and benefits of this regulatory action. This assessment also contains an analysis of alternative policies we considered and chose not to adopt. It is available for review by members of the public by contacting the person shown above.

### Regulatory Flexibility Act

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

### Paperwork Reduction Act

These proposed regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance.

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

## List of Subjects in 20 CFR Part 404

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

Dated: December 19, 1997.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, part 404, subpart P, Chapter III of Title 20, Code of Federal Regulations, is proposed to be amended as set forth below.

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

1. The authority citation for subpart P 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.

### Appendix 1 to Subpart P—[Amended]

2. Appendix 1 to Subpart P is amended as follows:

- a. Item 10 of the introductory text before Part A of appendix 1 is revised.
- b. The Table of Contents for Part A of appendix 1 is amended by removing “and Obesity” from section 9.00.
- c. Listing 3.00 in part A of appendix 1 is amended by removing the last sentence of paragraph H.
- d. Listing 3.10 in Part A of appendix 1 is revised.
- e. Listing 9.00 in part A of appendix 1 is amended by removing “and Obesity” from the title and removing the last two paragraphs from the preface.
- f. Listing 9.01 in part A of appendix 1 is amended by removing “and Obesity” from the title.
- g. Listing 9.09 in part A of appendix 1 is removed.

The revised text is set forth as follows:

### Appendix 1 to Subpart P—Listing of Impairments

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10. Endocrine System (9.00 and 109.00): June 7, 1999.

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#### Part A

\* \* \* \* \*

3.10 *Sleep-related breathing disorders*. Evaluate under 3.09 (Chronic cor pulmonale) or 12.02 (Organic mental disorders).

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[FR Doc. 98–6212 Filed 3–10–98; 8:45 am]

BILLING CODE 4190–29–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 422

RIN 0960–AE66

### Listening-In to or Recording Telephone Conversations

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to add regulations relating to the use of SSA's

telephone lines. In the new regulations, we propose to describe the limited circumstances under which SSA employees may listen-in to or record telephone conversations and the procedures we will follow in connection with this activity.

**DATES:** Your comments will be considered if we receive them no later than May 11, 1998.

**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 Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Lois Berg, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713.

### SUPPLEMENTARY INFORMATION:

#### Background

On August 8, 1996, the Federal Information Resources Management Regulation (FIRMR) was repealed. A provision of the FIRMR, section 201–21.603, related to listening-in to or recording telephone conversations. As a result of the repeal of the FIRMR, we are now proposing to promulgate our own regulations describing the limited circumstances under which SSA employees may listen-in to or record telephone conversations. These circumstances include law enforcement/national security, public safety, public service monitoring, and all-party consent situations. We also describe in the proposed regulations the procedures we will follow in determining the circumstances in which we will permit listening-in to or recording telephone conversations, who will listen-in to or record the conversations, and other policies and procedures which we will follow in connection with this activity.

SSA is committed to providing the public with the highest level of service by ensuring that information provided by SSA employees is delivered accurately and courteously. To ensure that commitment, we conduct monitoring of telephone calls over various designated SSA