

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b-2(a), 80b-3, 80b-4, 80b-6(4), 80b-6A, 80b-11, unless otherwise noted.

* * * * *

8. Section 275.0-7 is revised to read as follows:

§ 275.0-7. Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(2) of the Act (15 U.S.C. 80b-3a(a)(2)) and reported on Form ADV-T (17 CFR 279.3) or its most recent Schedule I to Form ADV (17 CFR 279.1), having a total value of less than \$25 million, or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A));

(2) Did not have total assets of \$5 million or more on the last day of the most recent fiscal year; and

(3) Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more (or such higher amount as the Commission may deem appropriate), or any person (other than a natural person) that had total assets of \$5 million or more on the last day of the most recent fiscal year.

(b) For purposes of this section:

(1) *Control* means the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another person is presumed to control the other person.

(2) *Total assets* means the total assets as shown on the balance sheet of the investment adviser or other person described above under paragraph (a)(3) of this section, or the balance sheet of the investment adviser or such other

person with its subsidiaries consolidated, whichever is larger.

Dated: June 24, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960-AE86

Administrative Review Process; Prehearing Proceedings and Decisions by Attorney Advisors; Extension of Expiration Date

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules extend the time period set out in our regulations during which attorney advisors in our Office of Hearings and Appeals (OHA) may conduct certain prehearing proceedings and, where the documentary record developed as a result of these proceedings warrants, issue decisions that are wholly favorable to the parties to the hearing in claims for Social Security or Supplemental Security Income (SSI) benefits based on disability. We are extending the date at which these rules will no longer be effective from July 1, 1998, until April 1, 1999.

EFFECTIVE DATE: These rules are effective June 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Harry J. Short, Legal Assistant, Office of Process and Innovation Management, 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: On June 30, 1995, in an action undertaken to reduce the record numbers of requests for an administrative law judge (ALJ) hearing pending in our OHA hearing offices, we published final rules in the **Federal Register** (60 FR 34126) that authorize OHA's attorney advisors to conduct certain prehearing proceedings and, if a decision that is wholly favorable to the parties to the hearing may be issued at the completion of these proceedings, to issue such a decision. These regulations, which are codified at §§ 404.942 and 416.1442, included a provision stating that the rules would

no longer be effective on June 30, 1997, unless the Commissioner of Social Security extended the expiration date of the provisions by publication of a final rule in the **Federal Register**. We subsequently published a final rule in the **Federal Register** on June 30, 1997 (62 FR 35073), stating that these rules would no longer be effective on July 1, 1998.

In order to maximize our ability to meet our hearing production goals, we have decided to extend the date on which these rules will no longer be effective from July 1, 1998, to April 1, 1999. The final rules amend the sunset provision in §§ 404.942 and 416.1442 (which expressly provides for extending the expiration date of those sections) to provide that the provisions authorizing prehearing proceedings and decisions by attorney advisors will no longer be effective on April 1, 1999, unless the provisions are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103-296, 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. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because these rules only extend the date on which the regulatory provisions concerning prehearing proceedings and decisions by attorney advisors will no longer be effective. These rules make no substantive change to those provisions. The current regulations expressly provide that the provisions may be extended. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the provisions on prehearing proceedings and decisions by attorney advisors. However, without a timely extension of the expiration date for these provisions, we will lack

regulatory authority beginning July 1, 1998, to have OHA attorney advisors conduct certain prehearing proceedings and issue fully favorable decisions where appropriate under the rules. In order to provide for an uninterrupted continuance of that authority for the additional period we believe appropriate, and to ensure that we retain the ability to manage the hearings process appropriately, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the rules are not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they 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 reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability 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: June 23, 1998.

Kenneth S. Apfel,

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 amended as set forth below.

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

Subpart J is amended as follows:

1. The authority citation for subpart J of part 404 continues 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. 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 404.942 is amended by revising paragraph (g), to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 1999, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

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

Subpart N is amended as follows:

1. The authority citation for subpart N continues 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).

2. Section 416.1442 is amended by revising paragraph (g), to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

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(g) *Sunset provision.* The provisions of this section will no longer be effective on April 1, 1999, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868, 884, and 890

[Docket No. 94N-0418]

Medical Devices; Retention of Three Preamendment Class III Devices in Class III

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is retaining the following three preamendments class III devices in class III: Lung water monitor, powered vaginal muscle stimulator for therapeutic use, and stair-climbing wheelchair. The agency is taking this action because insufficient information exists to determine that special controls would provide reasonable assurance of their safety and effectiveness, and/or these devices present a potential unreasonable risk of illness or injury.

EFFECTIVE DATE: July 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Janet L. Scudiero, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1184.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 18, 1997 (62 FR 33044), FDA issued a proposed rule to retain the lung water monitor, the powered vaginal muscle stimulator for therapeutic use, and the stair-climbing wheelchair in class III. This proposed retention in class III was based on a lack of information submitted in response to the section 515(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(i)) order to determine whether or not special controls could be established to reasonably assure the safety and effectiveness of these devices.

Interested persons were given until September 16, 1997, to comment on the proposed rule. During the comment period, FDA received no comments on the proposed rule.

II. FDA's Conclusion

FDA has concluded that insufficient information exists to establish special controls to provide reasonable assurance of the safety and effectiveness of the lung water monitor, the powered vaginal muscle stimulator for therapeutic use, and the stair-climbing wheelchair and/or that these devices present a potential unreasonable risk of illness or injury.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.