

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 121

[Docket No. FAA-2002-13464; Notice No. 02-17]

RIN 2120-AC84

#### Improved Seats in Air Carrier Transport Category Airplanes; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM); correction.

**SUMMARY:** This document makes a correction to the proposed rule published in the **Federal Register** on October 4, 2002 (67 FR 62294), which proposes to require that all passenger and flight attendant seats in transport category airplanes used in part 121 passenger-carrying operations meet improved crashworthiness standards. The FAA inadvertently retained a paragraph in the preamble that should have been removed in the editing process of the original SNPRM. This document removes that paragraph.

**FOR FURTHER INFORMATION CONTACT:** Hal Jensen, Aircraft Certification Service, Aircraft Engineering Division, AIR-120, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8807; facsimile (202) 267-5340.

**SUPPLEMENTARY INFORMATION:** On October 4, 2002, the FAA published Notice No. 02-17, Improved Seats in Air Carrier Transport Category Airplanes (67 FR 62294). The SNPRM proposed to amend the regulations to require that all passenger and flight attendant seats in transport category airplanes used in part 121 passenger-carrying operations meet improved crashworthiness standards. The FAA inadvertently retained a paragraph in the preamble that should have been removed in the editing process of the original SNPRM. In the

preamble discussion of the new proposal, on page 62299, in the third column, the third paragraph states that the FAA is proposing an amendment to 14 CFR 121.583(a). The FAA does not propose an amendment to 14 CFR 121.583 and intended that this paragraph be removed in the editing process. This document removes that paragraph..

#### Correction

In proposed rule FR Doc. 02-25051, published on October 4, 2002 (67 FR 62294), make the following correction:

1. On page 62299, in the third column, remove the third full paragraph, which begins "The FAA also notes \* \* \*".

Issued in Washington, DC on December 13, 2002.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 02-32144 Filed 12-20-02; 8:45 am]

**BILLING CODE 4910-13-P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AF32

#### Revised Medical Criteria for Evaluating Impairments That Affect Multiple Body Systems

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** We propose to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving impairments that affect multiple body systems. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect current medical knowledge, treatment, and methods of evaluating impairments that affect multiple body systems.

**DATES:** To be sure your comments are considered, we must receive them by February 21, 2003.

**ADDRESSES:** You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at <http://www.ssa.gov/regulations/>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); by telefax to (410) 966-2830, or, by letter to the

Commissioner of Social Security, PO Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**Electronic Version:** The electronic file of this document is available on the date of publication in the **Federal Register** at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). It is also available on the Internet site for SSA (*i.e.*, Social Security Online): <http://www.ssa.gov/regulations/>.

#### FOR FURTHER INFORMATION CONTACT:

Suzanne DiMarino, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-1769 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet web site, Social Security Online, at <http://www.ssa.gov>.

#### SUPPLEMENTARY INFORMATION:

#### What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

#### Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

#### How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that meets the statutory

duration requirement; that is, it must be expected to result in death or must have lasted or be expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) that meets the statutory duration requirement and results in * * *
Title II .....	An adult or a child .....	The inability to do any substantial gainful activity (SGA).
Title XVI .....	A person age 18 or older .....	The inability to do any SGA.
Title XVI .....	A person under age 18 .....	Marked and severe functional limitations.

#### What Are The Listings?

The listings are examples of impairments that we consider severe enough to prevent a person from doing any gainful activity or that result in “marked and severe functional limitations” in children seeking SSI payments under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

#### How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

We use the listings only to decide that people are disabled or that they are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the “sequential evaluation process” that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.)

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended based only on any

changes in the listings. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled the listings. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule after we decide that you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

#### Why Are We Proposing To Revise the Listings for Impairments That Affect Multiple Body Systems?

We last published final rules revising the adult listings for impairments that affect multiple body systems in the **Federal Register** on May 19, 2000 (65 FR 31800); the rules were effective on June 19, 2000. In that document, we said that those rules would be effective for 8 years unless we extended them, or revised and issued them again. The current adult (Part A) listings for impairments that affect multiple body systems will no longer be effective on June 19, 2008 unless we extend them, or revise and issue them again.

We last published final rules revising the childhood listings for impairments that affect multiple body systems in the **Federal Register** on December 12, 1990 (55 FR 51204). The current childhood (Part B) listings for impairments that affect multiple body systems will no

longer be effective on July 2, 2003 (66 FR 34361).

We are proposing these revisions because we decided to update the medical criteria in the listings and to provide more information about how we evaluate impairments that affect multiple body systems.

#### When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

#### How Long Would These Proposed Rules Be Effective?

If we publish these proposed rules as final rules, they will remain in effect for 8 years after the date they become effective, unless we extend them, or revise and issue them again.

#### What Revisions Are We Proposing To Make?

We are proposing to:

- Change the name of this body system listing from “Multiple Body Systems” to “Impairments That Affect Multiple Body Systems,”
- Expand, update, and reorganize the introductory text,
- Remove current listing 110.07,
- Make conforming changes, when applicable, in related regulations, and
- Make nonsubstantive editorial changes.

#### Why Are We Proposing To Change the Name of This Body System Listing?

We are proposing to change the name of this body system listing from “Multiple Body Systems” to “Impairments That Affect Multiple Body Systems” to more accurately

reflect that we use this listing to evaluate single impairments that affect two or more body systems.

### **How Are We Proposing to Change the Introductory Text to the Adult Multiple Body Systems Listing?**

#### *10.00 Impairments That Affect Multiple Body Systems*

To provide additional guidance, we propose to expand, update, and reorganize the introductory text to the listing of impairments that affect multiple body systems. A detailed description of the proposed introductory text follows.

#### *Proposed 10.00A—What Impairment Do We Evaluate Under This Body System Listing?*

This section expands and clarifies current 10.00A, “Down syndrome (except for mosaic Down syndrome)” and provides a description of Down syndrome:

- Proposed 10.00A1 explains that we evaluate non-mosaic Down syndrome under this body system listing.
- Proposed 10.00A2 is a new paragraph that describes Down syndrome and explains that it exists in “non-mosaic” and “mosaic” forms.
- Proposed 10.00A3a describes non-mosaic Down syndrome. Proposed 10.00A3b explains that we evaluate non-mosaic Down syndrome under proposed listing 10.06. It also explains that, if you have confirmed non-mosaic Down syndrome, we consider you disabled from birth. This provision is currently part of listing 10.06, but we propose to move it here, because it is a criterion for establishing when the person is first disabled under our rules, which belongs in the introductory text.
- Proposed 10.00A4a describes mosaic Down syndrome. Proposed 10.00A4b explains that we evaluate adults with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis and refers to 10.00C for an explanation of how we adjudicate claims involving mosaic Down syndrome.

#### *Proposed 10.00B—What Documentation Do We Need To Establish That You Have An Impairment That Affects Multiple Body Systems?*

This section, which expands and modifies current 10.00B, explains the documentation we need to establish that you have an impairment(s) that affects multiple body systems. There are two subsections:

- Proposed 10.00B1 explains that the documentation we need to establish the

existence of a medically determinable impairment must come from an acceptable medical source. We require such documentation for any impairment. The documentation must include a clinical description of the abnormal physical findings and definitive laboratory tests, including chromosomal analysis, where appropriate.

- Proposed 10.00B2 explains that, in lieu of a copy of the actual laboratory report, we will accept medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. This section includes the guidance in current 10.00B on what we mean by medical evidence that is “persuasive.”

#### *Proposed 10.00C—How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet the Criteria of the Listing In This Body System?*

- Proposed 10.00C1 explains that if your severe impairment(s) that affects multiple body systems does not meet the listing in this body system, we must consider whether you have another impairment(s) that meets the criteria of a listing in another body system.
- Proposed 10.00C2 gives some examples of the many other impairments that can affect multiple body systems, such as trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. We also explain that, because the body systems that these impairments can affect vary, and the effects on each body system can differ in severity and progression, we would evaluate these impairments under the listing criteria of the affected body system on an individual case basis. Proposed 10.00C2 generally corresponds to current 10.00C.

- Proposed 10.00C3 explains that, if you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. If not, we will proceed to the fourth and, if necessary, fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. We explain that we follow the rules in §§ 404.1594 and 416.994, as appropriate, when we decide whether you continue to be disabled.

#### *Proposed 10.01—Category of Impairments, Impairments That Affect Multiple Body Systems*

The following is an explanation of the proposed changes to the listing.

#### *Proposed Listing 10.06—Non-Mosaic Down Syndrome*

We propose to simplify the heading to make it clear that we evaluate only non-mosaic Down syndrome under this listing. We also propose to move the last sentence of current 10.06 to proposed 10.00A3b because it is a criterion for establishing when the person is first disabled under our rules, which belongs in the introductory text.

### **What Changes Do We Propose for Children?**

If the same criteria exist in both the adult and childhood rules, we propose to make the same changes in the childhood rules that we propose for the adult rules for the same reasons we made the changes in the adult rules.

To provide additional guidance, we propose to expand, update, and reorganize the introductory text to the listing of impairments that affect multiple body systems. A description of the proposed introductory text follows.

#### *Proposed 110.00A—What kinds of Impairments Do We Evaluate Under This Body System Listing?*

This section describes the kinds of impairments that we evaluate under these listings.

- Proposed 110.00A1 explains that we use these listings when a single impairment affects two or more body systems, and describes what kinds of impairments we evaluate under these listings. We also provide a brief description of the effects that these impairments generally have on a child's ability to perform age-appropriate activities and explain how we use the term “very seriously.”

- Proposed 110.00A2 describes Down syndrome.

- Proposed 110.00A3a describes non-mosaic Down syndrome. Proposed 110.00A3b explains that we evaluate children with confirmed non-mosaic Down syndrome under proposed listing 110.06.

- Proposed 110.00A4a describes mosaic Down syndrome. Proposed 110.00A4b explains that we evaluate children with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis.

- Proposed 110.00A5a describes what we mean by “catastrophic congenital abnormalities or diseases.” We explain that it is reasonably certain that these abnormalities and diseases result in early death or interfere very seriously with development. “Very seriously” is consistent with our definition of “extreme” limitation in § 416.926a(e)(3).

Proposed 110.00A5b explains that we evaluate catastrophic congenital abnormalities or diseases under proposed listing 110.08.

*Proposed 110.00B—What Documentation Do We need To Establish That You Have an Impairment That Affects Multiple Body Systems?*

This section, which expands and modifies current 110.00B, explains the documentation we need to establish that you have an impairment(s) that affects multiple body systems. There are two subsections:

- Proposed 110.00B1 explains the documentation we need to establish that you have a medically determinable impairment. This section is substantively the same as proposed section 10.00B1 of the part A listings for adults.

- Proposed 110.00B2 explains what medical evidence we will accept in lieu of a copy of the actual laboratory report. The medical evidence must be persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. This section is substantively the same as proposed section 10.00B2 of the part A listings for adults.

*Proposed 110.00C—How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet The Criteria of The Listings In This Body System?*

Proposed 110.00C is substantively similar to proposed section 10.00C of the part A listings for adults.

- Proposed 110.00C1 explains that if your severe impairment(s) that affects multiple body systems does not meet the criteria for a listing in this body system, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

- Proposed 110.00C2 gives some examples of the many other impairments that can affect multiple body systems, such as trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. We also explain that, because the body systems that these impairments can affect vary, and the effects on each body system can differ in severity and progression, we would evaluate these impairments under the listing criteria of any affected body system on an individual case basis.

- Proposed 110.00C3 explains that, if your severe medically determinable impairment(s) does not meet a listing, we will consider whether your

impairment(s) medically equals a listing or, in the case of a claim for SSI payments, functionally equals the listings. Proposed 110.00C3 also explains that if you are a child receiving SSI payments, we use the rules in § 416.994a to decide whether you continue to be disabled.

*Proposed 110.01 Category of Impairments, Impairments That Affect Multiple Body Systems*

The following is an explanation of the proposed changes to the listings.

*Proposed Listing 110.06—Non-Mosaic Down Syndrome*

We propose to simplify the heading to make it clear that we evaluate only non-mosaic Down syndrome under this listing. We also propose to move the last sentence of current 110.06 to proposed 110.00A3b because it is a criterion for establishing when the child is first disabled under our rules, which belongs in the introductory text.

*Current Listing 110.07—Multiple Body Dysfunction*

We propose to remove current listing 110.07 for two reasons.

- First, the A criterion in this listing, published December 12, 1990, was created to evaluate physical impairments in infants or young children. We wrote this listing before we had the policy of functional equivalence (§ 416.926a) to help adjudicators evaluate physical impairments in very young children. Current listing 110.07A is now outdated and unnecessary because we have made a number of changes in our other listings and regulations, including the implementation of the functional equivalence policy more than 10 years ago, that provide better rules for evaluating infants and toddlers.

- Second, the remaining criteria, 110.07B through F, are solely reference listings that refer adjudicators to another listing for the affected body system. As we update the listings in each of the body systems, we are removing reference listings because they are redundant.

*Proposed Listing 110.08—A Catastrophic Congenital Abnormality or Disease*

In proposed 110.08, we explain that such abnormalities and diseases are generally regarded as being incompatible with prolonged life outside the uterus (110.08A) or interfere very seriously with development (110.08B). In proposed 110.08A, we are changing the phrase “incompatible with extrauterine life” in current listing

110.08A to “incompatible with prolonged life outside the uterus” to recognize that children with some catastrophic congenital abnormalities or diseases may live for many months or even a few years. In proposed 110.08B, we are changing the phrase “attainment of the growth and development of 2 years is not expected to occur” in the current listing to “interfere very seriously with development.” The new language takes into consideration advances in evaluation and management of these abnormalities and diseases, and is consistent with our definition of “extreme” limitation in § 416.926a(e)(3). We also propose to make listing 110.08 clearer and easier to understand by:

- Changing the word “abnormalities” in current listing 110.08 to “abnormality” to emphasize that there need be only a single abnormality or disease involved; and
- Moving the requirement for “a positive diagnosis” from current listings 110.08A and B to the opening statement in proposed listing 110.08.

**What Other Rules Are We Proposing to Change?**

We propose to remove the last sentence of 101.00B2c(2), “How we assess inability to perform fine and gross movements in very young children,” in the introductory text of the childhood musculoskeletal listings, because it refers adjudicators to current 110.07A, which we propose to remove from the multiple body listings. We propose to replace the reference to 110.07A with the following statement: “For such children, an extreme level of limitation means skills or performance at no greater than one-half of age-appropriate expectations based on an overall developmental assessment rather than on one or two isolated skills.” This statement provides clearer guidance for assessing extreme limitation of fine and gross movements in very young children, and is the same guidance we provide in 101.00B2b(2).

We propose to change the presumptive disability citation for Down syndrome in § 416.934, “Impairments which may warrant a finding of presumptive disability or presumptive blindness” (§ 416.934(g)) from “Allegation of Down’s syndrome (Mongolism)” to “Allegation of Down Syndrome.” This will update the language of our rules to reflect current terminology.

**Clarity of These Proposed Rules**

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your

substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

*For example:*

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

### Regulatory Procedures

#### *Executive Order (E.O.) 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were subject to OMB review.

#### *Regulatory Flexibility Act*

We certify that these proposed rules would 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 rules contain reporting requirements at 10.00B, 10.00C, 110.00B, and 110.00C. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burdens referenced in these rules because they were not considered during the clearance of the forms. An Information Collection request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social

Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

### References

We consulted the following sources when developing these proposed rules: Goldman, L. & Bennett, J.C. (Eds.). (2000). *Cecil Textbook of Medicine*, (21st ed.). (126-129). Philadelphia: W. B. Saunders Company. Fauci, A.S., et al. (Eds.). (1998). *Harrison's Principles of Internal Medicine*, (14th ed.). (365-403, 2087-2131). New York: McGraw-Hill. Behrman, R.E., Kliegman, R.M. & Jenson, H.B. (Eds.). (2000). *Nelson's Textbook of Pediatrics* (16th ed.). (313-342). Philadelphia: W.B. Saunders Company.

These references are included in the rulemaking record for these proposed rules and are available for inspection by interested persons by making arrangements with the contact person shown in this preamble.

### List of Subjects

#### *20 CFR Part 404*

Administrative practice and procedure, Blind, 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 25, 2002.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

#### **Subpart P—[Amended]**

1. 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 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.

2. Item 11 in the introductory text before part A of appendix 1 to subpart P of part 404 is revised to read as follows:

#### **Appendix 1 to Subpart P Of Part 404—Listing of Impairments**

\* \* \* \* \*

11. Impairments That Affect Multiple Body Systems (10.00 and 110.00): [*Date 8 years after effective date of final regulations.*]

\* \* \* \* \*

3. The list of sections for part A is amended by revising the heading for section 10.00 to read as follows:

#### **Part A**

\* \* \* \* \*

#### **10.00 Impairments That Affect Multiple Body Systems**

\* \* \* \* \*

4. Listing 10.00, Multiple Body Systems, of part A of appendix 1 of subpart P of part 404 is revised to read as follows:

\* \* \* \* \*

#### **10.00 Impairments That Affect Multiple Body Systems**

*A. What impairment do we evaluate under this body system listing?*

1. *General.* We evaluate non-mosaic Down syndrome under this body system listing.

2. *What is Down syndrome?* Down syndrome is a chromosomal condition, present before birth, in which there are three chromosomes 21 instead of two. The three chromosomes may be separate (trisomy) or one chromosome may be attached to another (translocation). The extra chromosomal material changes the orderly development of the body and brain. Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and mental retardation. It is often accompanied by heart disease, vision defects, chronic respiratory infections, and other conditions. It exists in non-mosaic and mosaic forms.

3. *What is non-mosaic Down syndrome?*

a. Non-mosaic Down syndrome occurs when the extra chromosome is replicated in every cell of the body. This form of Down syndrome is responsible for 95 percent of all cases. Virtually all cases of non-mosaic Down syndrome affect the mental, neurological, and skeletal systems, and often other body systems such as cardiac, endocrine, and gastrointestinal.

b. We evaluate adults with confirmed non-mosaic Down syndrome under 10.06. If you have confirmed non-mosaic Down syndrome, we consider you disabled from birth.

4. *What is mosaic Down syndrome?*

a. Mosaic Down syndrome occurs when you have some cells with normal chromosomes and some cells with extra chromosomal material. When this occurs, there is a mixture of two types of cells. Some of the cells contain 46 chromosomes and some of the cells contain 47 chromosomes. Mosaic Down syndrome occurs far less frequently than non-mosaic Down syndrome and can have features that manifest in a wide range of severity. Mosaic Down syndrome can be profound and disabling, but it also can be so slight as to be undetected clinically.

b. We evaluate adults with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis, as described in 10.00C.

#### *B. What Documentation Do We Need To Establish That You Have an Impairment That Affects Multiple Body Systems?*

1. *General.* We need documentation from an acceptable medical source as defined in §§ 404.1513(a) and 416.913(a) to establish that you have a medically determinable impairment. The documentation must include a clinical description of the abnormal physical findings and definitive laboratory tests, including chromosomal analysis, where appropriate.

2. *What will we accept as medical evidence in lieu of the actual laboratory report?* When the actual laboratory report is unavailable, we will accept medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. To be persuasive, a report from an acceptable medical source must state that appropriate testing was conducted and the results confirmed the diagnosis. The report must be consistent with other evidence in your case record, for example, the description of abnormal physical findings, your educational history, or, if available, the results of psychological testing.

#### *C. How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet the Criteria of the Listing in This Body System?*

1. Non-mosaic Down syndrome (10.06) is an example of a common impairment that affects multiple body systems that we consider severe enough to prevent you from doing any gainful activity. If your severe impairment(s) does not meet the criteria of this listing, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. There are many other impairments that cause deviation from, or interruption of, the normal function of the body, but the degree of deviation may vary widely from person to person. Therefore, the resulting functional limitations and the progression of those limitations also vary widely. For these reasons, we will evaluate these impairments on an individual case basis under the listing criteria in any affected body system. Examples of such impairments include trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome.

3. If you have a severe medically determinable impairment(s) that does not

meet a listing, we will consider whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926.) If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. In that situation, we proceed to the fourth and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. If you are an adult, we use the rules in §§ 404.1594 and 416.994, as appropriate, when we decide whether you continue to be disabled.

#### **10.01 Category of Impairments, Impairments That Affect Multiple Body Systems**

10.06 *Non-mosaic Down syndrome*, established by clinical and laboratory findings, as described in 10.00B.

\* \* \* \* \*

5. The list of sections for part B is amended by revising the heading title for section 110.00 to read as follows:

#### **Part B**

\* \* \* \* \*

110.00 Impairments That Affect Multiple Body Systems.

\* \* \* \* \*

6. Section B.2.c.(2) of the introductory text of 101.00, Musculoskeletal System, of Part B of appendix 1 of Subpart P of part 404 is revised to read as follows:

\* \* \* \* \*

B. \* \* \*

2. \* \* \*

\* \* \* \* \*

C. \* \* \*

\* \* \* \* \*

(2) *How we assess inability to perform fine and gross movements in very young children.* For very young children, the consideration is limitations in the ability to perform comparable age-appropriate activities involving the upper extremities given normal developmental expectations. For such children, an extreme level of limitation means skills or performance at no greater than one-half of age-appropriate expectations based on an overall developmental assessment rather than on one or two isolated skills.

\* \* \* \* \*

7. Listing 110.00, Multiple Body Systems, of part B of appendix 1 of subpart P of part 404 is revised to read as follows:

\* \* \* \* \*

#### **110.00 Impairments That Affect Multiple Body Systems**

*A. What Kinds of Impairments Do We Evaluate Under This Body System listing?*

1. *General.* We use these listings when a single impairment affects two or more body systems. Under these listings, we evaluate impairments that affect multiple body systems due to non-mosaic and mosaic Down syndrome or a catastrophic congenital abnormality or disease. These kinds of

impairments generally produce long-term, if not lifelong, interference with age-appropriate activities. Some of them result in early death or interfere very seriously with development. We use the term "very seriously" in these listings to describe an "extreme" limitation of functioning as defined in § 416.926a(e)(3).

2. *What is Down syndrome?* Down syndrome is a chromosomal condition, present before birth, in which there are three chromosomes 21 instead of two. The three chromosomes may be separate (trisomy) or one chromosome may be attached to another (translocation). This extra chromosomal material changes the orderly development of the body and brain. Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and mental retardation. It is often accompanied by heart disease, vision defects, chronic respiratory infections, and other conditions. It exists in non-mosaic and mosaic forms.

3. *What is non-mosaic Down syndrome?*

a. Non-mosaic Down syndrome occurs when the extra chromosome is replicated in every cell of the body. This form of Down syndrome is responsible for 95 percent of all cases. Virtually all cases of non-mosaic Down syndrome affect the mental, neurological, and skeletal systems, and often other body systems such as cardiac, endocrine, and gastrointestinal.

b. We evaluate children with confirmed non-mosaic Down syndrome under listing 110.06. If you have confirmed non-mosaic Down syndrome, we consider you disabled from birth.

4. *What is mosaic Down syndrome?*

a. Mosaic Down syndrome occurs when you have some cells with normal chromosomes and some cells with extra chromosomal material. When this occurs, there is a mixture of two types of cells. Some of the cells contain 46 chromosomes and some of the cells contain 47 chromosomes. Mosaic Down syndrome occurs far less frequently than non-mosaic Down syndrome and can have features that manifest in a wide range of severity. Mosaic Down syndrome can be profound and disabling, but it also can be so slight as to be undetected clinically.

b. We evaluate children with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis.

5. *What are catastrophic congenital abnormalities or diseases?*

a. Catastrophic congenital abnormalities or diseases are present at birth although they may not be apparent immediately. They cause deviation from, or interruption of, the normal function of the body and are reasonably certain to result in early death or interfere very seriously with development.

b. We evaluate catastrophic congenital abnormalities or diseases under listing 110.08.

#### *B. What Documentation Do We Need to Establish That You Have an Impairment That Affects Multiple Body Systems?*

1. *General.* We need documentation from an acceptable medical source as defined in §§ 404.1513(a) and 416.913(a) to establish

that you have a medically determinable impairment. The documentation must include a clinical description of the abnormal physical findings and definitive laboratory tests, including chromosomal analysis, where appropriate.

2. *What will we accept as medical evidence in lieu of the actual laboratory report?* When the actual laboratory report is unavailable, we will accept medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. To be persuasive, a report from an acceptable medical source must state that appropriate testing was conducted and that the results confirmed the diagnosis. The report must be consistent with other evidence in your case record, for example, the description of abnormal physical findings, your educational history, or, if available, the results of psychological testing.

*C. How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet the Criteria of the Listings in This Body System?*

1. These listings are examples of common impairments that affect multiple body systems that we consider severe enough to result in marked and severe functional limitations. If your severe impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. There are many other impairments that cause deviation from, or interruption of, the normal function of the body, but the degree of deviation may vary widely from child to child. Therefore, the resulting functional limitations and the progression of those limitations are more variable than with catastrophic congenital abnormalities or diseases described in 110.00A5. For these reasons, we evaluate these impairments on an individual case basis under the listing criteria in any affected body system. Examples of such impairments include trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome.

3. If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing, and, in the case of a claim for SSI payments, functionally equals the listings. (See §§ 404.1526, 416.926, and 416.926a.) If you are receiving SSI payments, when we decide whether you continue to be disabled, we use the rules in § 416.994a.

**110.01 Category of Impairments, Impairments That Affect Multiple Body Systems**

110.06 *Non-mosaic Down syndrome*, established by clinical and laboratory findings, as described in 110.00B.

110.08 *A catastrophic congenital abnormality or disease*. With a positive diagnosis as described in 110.00B, AND THAT:

A. Is generally regarded as being incompatible with prolonged life outside the uterus (for example, anencephaly, trisomy D or E, cyclopia);

OR

B. Interferes very seriously with development; for example, 5p-syndrome (cri du chat) or Tay-Sachs disease.

\* \* \* \* \*

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

**Subpart I—[Amended]**

7. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a) and 15, Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

8. Section 416.934(g) is revised to read as follows:

**§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.**

\* \* \* \* \*

(g) Allegation of Down syndrome; and

\* \* \* \* \*

[FR Doc. 02-32217 Filed 12-20-02; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-124069-02]

RIN 1545-BA77

**Section 6038—Returns Required With Respect to Controlled Foreign Partnerships**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulation and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing a temporary regulation relating to controlled foreign partnerships. That document requires that the United States partner must follow the filing requirements that are specified in the instructions for Form 8865. The text of that regulation also serves as the text of this proposed regulation. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by March 24, 2003. Outlines of topics to be discussed at the

public hearing scheduled for March 12, 2003, at 10 a.m., must be received by February 19, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-124069-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG-124069-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at <http://www.irs.gov/regs>. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Tasheaya Warren, (202) 622-3860; concerning submissions and the hearing LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by February 21, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and