

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and Effective, September 16, 2002, is amended as follows:

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

\* \* \* \* \*

**AWP CA E5 Susanville, CA [New]**

Susanville Municipal Airport, CA  
(Lat. 40°22'33" N, long. 120°34'21" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Susanville Municipal Airport and within 2 miles each side of the 134° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10.3 miles southeast of the Susanville Municipal Airport and within 2 miles each side of the 339° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10 miles northwest of the Susanville Municipal Airport.

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Issued in Los Angeles, California, on April 29, 2003.

**John Clancy,**

*Manager, Air Traffic Division, Western-Pacific Region.*

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**RAILROAD RETIREMENT BOARD**

**20 CFR Part 220**

**RIN 3220–AB50**

**Determining Disability**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Board proposes to amend its regulations to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index and to increase from \$200 to \$530 the minimum amount of monthly earnings to count during a trial work period and then index that amount

to the Social Security national average wage index.

**DATES:** In order for us to consider your comments on these specific proposals, the Board must receive them by August 8, 2003.

**ADDRESSES:** Submit comments in writing to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** The Railroad Retirement Act provides for disability annuities for employees, widow(er)s, and children of deceased railroad employees who are unable to engage in any regular employment because of a physical or mental impairment. Regular employment is defined by reference to the definition of substantial gainful activity under the Social Security Act. Sections 220.141 and 220.142 of the Board's regulations reflect this definition and define "substantial gainful activity" (SGA) as work activity that involves doing significant physical or mental activities for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not profit is realized. Section 220.143 sets forth earnings levels at which the Board considers a person to be engaged in SGA regardless of the severity of his or her impairment. The amount of average monthly earnings that ordinarily demonstrates SGA was increased effective July 1, 1999, when the Board raised from \$500 to \$700 the average monthly earnings guidelines used to determine whether work done by a person is substantial gainful activity.

The Board proposes to issue regulations that would increase certain thresholds for disabled workers. Under the proposal, the average monthly earnings guideline, which is used to determine whether work done by disabled workers (other than those who are blind) is substantial gainful activity, would be increased to \$740.00 for calendar year 2001 and would thereafter be automatically adjusted each year based on increases in the Social Security national average wage index. See 42 U.S.C. 409(k)(1). The amount that is used to determine if a disabled individual has performed "services" during a trial work period also would be subject to an automatic annual adjustment. These changes would conform to changes in the regulations of the Social Security Administration that

became final effective January 29, 2001 (65 FR 82905, December 29, 2000).

In order to be eligible for disability benefits, an applicant must not be performing substantial gainful activity. A beneficiary's ongoing eligibility for disability benefits is also subject to this rule. Therefore, the Board has established both upper and lower thresholds as guidelines for determining, respectively, what is prima facie evidence of engaging in SGA and what is prima facie evidence of not engaging in SGA. Except for those who work in sheltered workshops, disabled workers with earnings between the two thresholds are subject to further examination. Currently, the upper and lower thresholds are \$700 and \$300, respectively. For those working in sheltered workshops, earnings below the upper threshold are prima facie evidence that the worker is not performing SGA.

Under the Board's proposal, beginning January 1, 2002, the upper threshold would be adjusted annually, based on the Social Security national wage index, to conform to the SGA level determined by the Social Security Administration (SSA) and published in the **Federal Register** each October as part of SSA's notice that includes new adjustments. Under this proposal, the SGA amount would never be lower than the previous year's amount. However, there may be years in which there is no increase.

As part of this proposal, the Board also plans to eliminate the lower SGA threshold so that earnings below the upper threshold would be prima facie evidence that a disabled worker is not engaging in SGA, regardless of whether the worker is working in competitive employment or in a sheltered workshop.

The Board also proposes to increase the monthly amount that a disabled worker may earn within a trial work period without jeopardizing the amount of time remaining in the trial work period. Currently, a disabled worker may test his or her ability to work and still be considered disabled by working during a trial work period. A disabled beneficiary will continue to be considered disabled until the beneficiary performs "service" in at least nine months within a rolling 60-month period. Since 1990, the Board has considered any month in which at least more than \$200 is earned to be a month of service.

Under the proposed rule, the threshold amount would be increased to \$530 for 2001, and then would be adjusted annually thereafter based on the Social Security national average wage index to conform to the amount