

determined by the Social Security Administration and published in the **Federal Register** every October. The Board notes that while the SGA amount has increased since 1990, during the same period, the trial work period services amount has remained unchanged. As with the change proposed for the SGA threshold amount, the trial work period amount would never be lower than the previous year's amount.

Proposed Regulations—Background

The Board proposes to revise §§ 220.143(b)(2) and (b)(4) to adjust annually the earnings guidelines that we use to determine whether a non-blind employee is engaged in substantial gainful activity. Beginning January 2001, the average monthly earnings considered to be substantial gainful activity will be increased from \$700 to \$740. Beginning January 2002, the guideline would be the higher of the previous year's amount or an increased amount as computed and published by the Social Security Administration based on the Social Security national average wage index.

The Board also proposes to amend §§ 220.143(b)(2) and (b)(4) to clarify that this guideline applies to earnings from sheltered work. This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in § 220.144 of this part.

The Board proposes to revise §§ 220.143(b)(3) and (b)(6) to provide, beginning January 2002, that we will ordinarily find that an employee whose average monthly earnings are equal to or less than the "primary substantial gainful activity amount" set forth in § 220.143(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. The Board also proposes to make conforming changes to § 220.143(b)(4).

The Board proposes to revise § 220.170 to increase from \$200 to \$530 the minimum amount of monthly earnings that we consider shows that a person is performing or has performed "services" for counting trial work period months, effective January 1, 2001. We also propose to adjust the amount annually to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index, beginning January 1, 2002.

Collection of Information Requirements

The amendments to this part do not impose information collection and recordkeeping requirements.

Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of this proposed rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of \$100 million or more per year.

The amendments made by this proposed rule are not significant. The amendments to §§ 220.143 and 220.170 will 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 increases 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.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(l). Section 551(l)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order

13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been found not to be a significant amendment by the Office of Management and Budget.

List of Subjects in 20 CFR Part 220

Railroad Retirement.

For the reasons stated in the preamble, the Railroad Retirement Board proposes to amend part 220 of chapter II of title 20 of the Code of Federal Regulations as follows:

PART 220—DETERMINING DISABILITY

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

Subpart L—Substantial Gainful Activity

2. Section 220.143 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

§ 220.143 Evaluation guides for an employed claimant.

* * * * *

(b) * * * (1) * * *

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant show that the claimant engaged in substantial gainful activity if:

(i) *Before January 1, 2002*, the earnings averaged more than the amount(s) in Table 1 of this section for the time(s) in which the claimant worked.

(ii) *Beginning January 1, 2002*, the earnings are more than an amount determined for each calendar year to be the larger of:

(A) The amount for the previous year, or

(B) The amount established by the Social Security Administration to constitute substantial gainful activity for such year.

TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED

For months:	Monthly earnings averaged more than:
In calendar years before 1976	\$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260