Estimated Average Burden: 2,000 hours.

2. Pre-1957 Military Service Federal Benefit Questionnaire—0960–0120. Form SSA–2512 is used by SSA to solicit sufficient information to make a determination of eligibility for military wage credits. Sections 217 (a) and (e) of the Social Security Act provide for crediting military service to the wage earner's record and for using the data in the claims adjudication process to grant gratuitous military wage credits, when applicable. The respondents are individuals who are applying for Social Security benefits on a record where the wage earner has pre-1957 military service.

Number of Respondents: 56,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 9,333 hours.

3. Certificate of Support—0960–0001. The information collected on Form SSA–760–F4 is used to determine whether the deceased worker provided one-half support required for entitlement to parent's or spouse's benefits. The information will also be used to determine whether the Government pension offset would apply to the applicant's benefit payment. The respondents are parents of deceased workers or spouses who may be subject to Government pension offset.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 4,500 hours.

4. Report of Function—Child—0960–0542. The information collected on Forms SSA–3375, 3376, 3377, 3378, and 3379 will be used by SSA to help determine if a child claiming SSI disability benefits under title XVI is disabled. The respondents are parents or guardians who file for such benefits on behalf of a child.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 166,667 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: February 18, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–4705 Filed 2–23–98; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-2(8)]

Sird v. Chater; Mental Retardation—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-2(8).

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after February 24, 1998. If we made a determination or decision on your application for benefits between January 27, 1997, the date of the Court of Appeals' decision, and February 24, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: December 29, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-2(8)

Sird v. *Chater*, 105 F.3d 401 (8th Cir. 1997)—Mental Retardation—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant for disability insurance benefits or Supplemental Security Income (SSI) benefits based on disability who has mental retardation or autism with a valid IQ score in the range covered by Listing 12.05C, and who cannot perform his or her past relevant work because of a physical or other mental impairment, has *per se* established the additional and significant work-related limitation of function requirement of Regulations 20 CFR Part 404, Subpart P, Appendix 1, section 12.05C.[1]

Statute/Regulation/Ruling Citation: Sections 223(d)(1) and 1614(a)(3) of the Social Security Act (42 U.S.C. 423(d)(1) and 1382c(a)(3)); 20 CFR Part 404, Subpart P, Appendix 1, section 12.05C.

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

[1] Although *Sird* was a title XVI case, similar principles also apply to title II. Therefore, this Ruling extends to both title II and title XVI disability claims.

Sird v. *Chater*, 105 F.3d 401 (8th Cir. 1997).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing or Appeals Council).

Description of Case: Donald Sird applied for SSI benefits based on disability on September 27, 1991. In a decision dated January 27, 1995, an ALJ found that Mr. Sird had borderline intellectual capacity, a history of alcoholism, a history of chronic obstructive pulmonary disease and a history of urinary tract infection. The ALJ also found that Mr. Sird had an IQ score within the range required by Listing 12.05C but did not have ''a physical or other mental impairment imposing additional and significant work-related limitation of function.'' The ALJ further found that the combination of Mr. Sird's impairments imposed several environmental restrictions and also functional limitations. Relying on the vocational expert's opinion that an individual with Mr. Sird's characteristics could perform light or sedentary work, the ALJ concluded that, although the claimant could not perform his past relevant work, he was not disabled. After the Appeals Council denied the claimant's request for review, he sought judicial review but the district court upheld the Social Security Administration's (SSA's) decision. Mr. Sird appealed this decision to the United States Court of Appeals for the Eighth Circuit.

Holding: The Eighth Circuit vacated the judgment of the district court and remanded the case to SSA with directions to award benefits. After reviewing Eighth Circuit case law that defined the other impairment requirement of Listing 12.05C as requiring ''a physical or additional mental impairment that has a 'more than slight or minimal' effect on ability to work''[2] and the Fourth Circuit's holding in *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985)[3] that established the rule that an inability to do past relevant work meets the requirement of the Listing that the other impairment cause an additional and significant work-related limitation of function, the court held that the *Branham* court's conclusion was ''ineluctable.''

The Eighth Circuit observed that the ALJ's finding of Mr. Sird's inability to perform his past relevant work, assuming no change occurred in his mental impairments after he stopped working, was inconsistent with the ALJ's other finding that Mr. Sird did not satisfy the other impairment requirement of Listing 12.05C because he did not have an additional impairment that significantly limited his ability to work. The court was not convinced that, in this particular case, there was a difference in application between the Eighth Circuit's case law in *Warren* and *Cook*, and the *Branham* court's holding. The court concluded that under either test the claimant was disabled.

Statement As To How Sird Differs From SSA's Interpretation of the Regulations

At issue in *Sird* is the meaning of the term ''additional and significant work-related limitation of function'' in Listing 12.05C. What constitutes an ''additional and significant work-related limitation of function'' is not defined in SSA's regulations. SSA's interpretation of the Listing is that, if an individual has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that is severe within the meaning of 20 CFR 404.1520(c) or 416.920(c), the individual's impairments meet Listing 12.05C.[4] That is, to satisfy the criteria of Listing 12.05C, the additional physical or other mental impairment must result in more than minimal limitations in the individual's ability to do basic work activities. The inability to perform past work does not *per se* satisfy this standard.

The *Sird* court held that an impairment that prevents a claimant from performing his or her past relevant work constitutes a significant work-related limitation of function that is more than slight or minimal, and *per se* meets the other impairment requirement of Listing 12.05C.[5]

Explanation of How SSA Will Apply The Sird Decision Within The Circuit

This Ruling applies only where the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any administrative level of review, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

A claimant who has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that prevents him or her from performing past relevant work, will be considered to have a physical or other mental impairment that results in more than minimal limitations in the ability to do basic work activities and to have satisfied the requirements of Listing 12.05C.

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[2] *Warren* v. *Shalala*, 29 F.3d 1287 (8th Cir. 1994) and *Cook* v. *Bowen*, 797 F.2d 687 (8th Cir. 1986). The Court of Appeals made an alternative holding in the case, and found that, under the circumstances present in the case, the outcome would be the same under the interpretation of the regulations set out in *Warren* and *Cook*. *See* 105 F.3d at 403. The court's alternative holding in the case, relying on the interpretation of Listing 12.05C made in *Warren* and *Cook*, is not inconsistent with SSA's interpretation of the Listing.

[3] On March 10, 1992, SSA published Acquiescence Ruling (AR) AR 92-3(4) at 57 FR 8463 to reflect the holding in *Branham*. On April 29, 1993, the AR was revised and republished as AR 93-1(4) at 58 FR 25996 to incorporate a regulatory change regarding the IQ range included in Listing 12.05C and to make several technical corrections.

[4] For title XVI, an individual under age 18 shall be considered to have an impairment that meets Listing 112.05D if he or she has mental retardation, as defined above, with a valid verbal, performance or full scale I.Q. of 60 through 70 and a physical or other mental impairment that is severe within the meaning of 20 CFR 416.924(c).

[5] As noted above, the Court of Appeals alternative holding, relying on the decisions in *Warren* v. *Shalala*, 29 F.3d 1287 (8th Cir. 1994) and *Cook* v. *Bowen*, 797 F.2d 687 (8th Cir. 1986) is not inconsistent with SSA's interpretation of the Listing, as explained above.

DEPARTMENT OF STATE

Office of Consular Affairs

[Public Notice 2746]

60-Day Notice of Proposed Information Collection; Nonimmigrant Visa Application

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal**