

work in the territories (as elsewhere defined in these regulations).

\* \* \* \* \*

4. Section 303.5(b)(6) is revised to read as follows:

**§ 303.5 Application for annual allocation of duty-exemptions.**

\* \* \* \* \*

(b) \* \* \*

(6) Records on purchases of components, including documentation on the purchase of any preassembled movements, which demonstrate that such movements could not have been purchased from the vendor in an unassembled condition, and records on the sales of insular watches and movements, including proof of payment; and

\* \* \* \* \*

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas,  
Under Secretary, Department of Commerce.*

**David B. Cohen,**

*Deputy Assistant Secretary for Insular Affairs,  
Department of the Interior.*

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AF86

#### Continuation of Benefit Payments to Certain Individuals Who Are Participating in a Program of Vocational Rehabilitation Services, Employment Services, or Other Support Services

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to revise our regulations, which provide for the continuation of benefit payments to certain individuals who recover medically while participating in a vocational rehabilitation program with a State vocational rehabilitation agency. We are proposing these changes because of statutory amendments, which extend eligibility for these continued benefit payments to certain individuals who recover medically while participating in another appropriate program of vocational rehabilitation services. These include individuals participating in the Ticket to Work and Self-Sufficiency Program or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security.

These proposed regulations would affect the payment of Social Security disability benefits under title II of the Social Security Act (the Act) and the payment of Supplemental Security Income (SSI) disability or blindness benefits under title XVI of the Act.

**DATES:** To be sure your comments are considered, we must receive them by September 30, 2003.

**ADDRESSES:** You may give us your comments: by using our Internet site facility (*i.e.*, Social Security Online) at <http://www.socialsecurity.gov>; by 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, MD 21235-7703. You may also deliver them to the Office of Disability and Income Security Programs, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the 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 the Social Security Administration (*i.e.* Social Security Online): <http://www.socialsecurity.gov/regulations/>.

**FOR FURTHER INFORMATION CONTACT:** Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov), or telephone (410) 965-1769 or TTY (410) 966-5609 for information about these rules. 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.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Statutory Background

*The Social Security Disability Amendments of 1980*

The Social Security Disability Amendments of 1980 (the 1980 Amendments), Pub. L. 96-265, amended titles II and XVI of the Act to provide for the continuation of payment of disability benefits under the Social Security or SSI program to certain

individuals whose disability medically ceases while the individual is engaged in a program of vocational rehabilitation. Section 301 of the 1980 Amendments added sections 225(b) and 1631(a)(6) of the Act to provide that the payment of benefits based on disability shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement or eligibility is based, has or may have ceased, if:

- The individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and
- The Commissioner of Social Security determines that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual may be permanently removed from the disability benefit rolls.

The purpose of these benefit continuation provisions is to encourage individuals to continue participating in the approved vocational rehabilitation program in which they are engaged at the time their disability ceases in "those exceptional cases where the administration is able to determine that continuation in a vocational rehabilitation program will increase the likelihood of the individual's being permanently removed from the disability rolls." Report of the Senate Committee on Finance on the 1980 Amendments, S. Rep. No. 408, 96th Cong., 1st Sess. 50 (1979).

Our regulations implementing the provisions of the Act added by section 301 of the 1980 Amendments provide that we may continue an individual's benefits (and, when the individual receives benefits as a disabled worker, the benefits of his or her dependents) after the individual's impairment is no longer disabling if:

- The individual's disability did not end before December 1980, the effective date of the provisions of the Act added by section 301 of the 1980 Amendments;
- The individual is participating in an appropriate program of vocational rehabilitation, that is, one that has been approved under a State plan approved under title I of the Rehabilitation Act of 1973 and which meets the requirements outlined in 34 CFR part 361 for a rehabilitation program;
- The individual began the program before his or her disability ended; and
- We have determined that the individual's completion of the program, or his or her continuation in the

program for a specified period of time, will significantly increase the likelihood that the individual will not have to return to the disability benefit rolls.

Our regulations provide that these continued benefits generally will be stopped with the month the individual completes the program, stops participating in the program for any reason, or we determine that the individual's continuing participation in the program will no longer significantly increase the likelihood that the individual will be permanently removed from the disability benefit rolls.

*The Omnibus Budget Reconciliation Act of 1987*

Section 9112 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), Pub. L. 100-203, amended section 1631(a)(6) of the Act to extend eligibility for continued benefits under that section to individuals who receive SSI benefits based on blindness and whose blindness ends while they are participating in an approved State vocational rehabilitation program. This amendment was effective April 1, 1988. We implemented this amendment through the issuance of operating instructions reflecting the extension of eligibility for continued benefits under section 1631(a)(6) of the Act to individuals receiving SSI blindness benefits. In addition, when we added §§ 416.2201(b) and 416.2212 to our regulations governing payments under the vocational rehabilitation cost reimbursement program, we included rules in §§ 416.2201(b) and 416.2212 to reflect the expanded scope of the benefit continuation provision under section 1631(a)(6) of the Act resulting from the amendment made by section 9112 of OBRA 1987.

*The Omnibus Budget Reconciliation Act of 1990*

Section 5113 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Pub. L. 101-508, amended sections 225(b) and 1631(a)(6) of the Act to permit the continuation of benefit payments on account of an individual's participation in a non-State vocational rehabilitation program. Section 5113 amended sections 225(b) and 1631(a)(6) of the Act to allow the continuation of payment of Social Security disability benefits or SSI disability or blindness benefits to an individual whose disability or blindness ends while he or she is participating in a program of vocational rehabilitation services approved by us. These amendments extended to Social Security disability beneficiaries and SSI disability or blindness beneficiaries who medically

recover while participating in an approved non-State vocational rehabilitation program the same benefit continuation rights applicable to individuals participating in an approved State vocational rehabilitation program. The amendments made by section 5113 of OBRA 1990 were effective for benefits payable for months beginning on or after November 1, 1991, and applied to individuals whose disability or blindness ended on or after that date. We implemented these amendments through the issuance of operating instructions reflecting the extension of eligibility for continued benefits under sections 225(b) and 1631(a)(6) of the Act to individuals who medically recover while participating in an approved non-State vocational rehabilitation program.

*The Personal Responsibility and Work Opportunity Reconciliation Act of 1996*

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, amended section 1614(a)(3) of the Act to require redeterminations of the eligibility for SSI benefits based on disability of individuals who attain age 18 (*i.e.*, age-18 redeterminations). The law requires us to redetermine the eligibility of individuals who attain age 18 and who were eligible for SSI benefits for children based on disability for the month before the month in which they attained age 18. In these disability redeterminations, the law requires us to use the rules for determining initial eligibility for adults (individuals age 18 or older) filing new applications for benefits. The medical improvement review standard used in continuing disability reviews does not apply to these redeterminations.

In § 416.987(b) of our regulations, we explain the rules for adult applicants that we use in redetermining the eligibility of an individual who has attained age 18. If we find that the individual is not disabled, we will find that his or her disability has ended as explained in § 416.987(e). For an individual whose disability has ended as a result of a redetermination using the rules described in § 416.987(b), and who is participating in a program of vocational rehabilitation services when disability ends, our operating guides provide that we will consider the individual for eligibility for continued benefits under section 1631(a)(6) of the Act. For benefits to continue, the individual must be participating in an approved program of vocational rehabilitation services. In addition, the completion or continuation of the program must satisfy the test of increasing the likelihood of the

individual's permanent removal from the benefit rolls. Also, the individual must meet all of the other requirements of SSI eligibility.

*The Ticket to Work and Work Incentives Improvement Act of 1999*

On December 17, 1999, the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170, became law. Section 101(a) of this law added a new section 1148 of the Act to establish the Ticket to Work and Self-Sufficiency Program (Ticket to Work program). The purpose of the Ticket to Work program is to expand the universe of service providers available to beneficiaries with disabilities who are seeking employment services, vocational rehabilitation services, or other support services to assist them in obtaining, regaining, and maintaining self-supporting employment.

Under the Ticket to Work program, the Commissioner of Social Security may issue a ticket to Social Security disability beneficiaries and disabled or blind SSI beneficiaries for participation in the program. Each beneficiary has the option of using his or her ticket to obtain services from a provider known as an employment network or from a State vocational rehabilitation agency. The beneficiary will choose the employment network or State vocational rehabilitation agency, and the employment network or State vocational rehabilitation agency will provide services. Employment networks will also be able to choose whom they serve.

We published final regulations implementing the Ticket to Work program in the **Federal Register** on December 28, 2001 (66 FR 67370). The final regulations were effective January 28, 2002. Under the provisions of these final regulations, service providers that provide vocational rehabilitation services, employment services, or other support services can qualify as employment networks and serve beneficiaries under the Ticket to Work program. The expansion of options available to beneficiaries to obtain these services are intended to enhance the choices of beneficiaries in getting the services they need to obtain, regain and/or maintain employment.

Section 101(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 amended sections 225(b)(1) and 1631(a)(6)(A) of the Act by deleting "a program of vocational rehabilitation services" and inserting in its place "a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1148 or another program of vocational rehabilitation services, employment services, or other support

services.” The amended provisions of these sections now expressly authorize the continuation of benefit payments under section 225(b) or 1631(a)(6) of the Act to an individual whose disability or blindness ceases when the individual is participating in a program consisting of the Ticket to Work program under section 1148 of the Act or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security. The amendments did not change the requirement in sections 225(b)(2) and 1631(a)(6)(B) of the Act that, for an individual to qualify, the Commissioner of Social Security must determine that the completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual may be permanently removed from the disability or blindness benefit rolls.

#### *The Individuals with Disabilities Education Act*

The Individuals With Disabilities Education Act Amendments of 1997 (IDEA 97), Pub. L. 105–17, was enacted on June 4, 1997. In the final regulations published by the Secretary of Education (the Secretary) in the **Federal Register** on March 12, 1999 (64 FR 12406), the Secretary stated that “The purposes of this part are \* \* \* (t)o ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; \* \* \*” IDEA requires a coordinated set of activities for a student with a disability that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, or community participation. Each State can receive a grant of assistance under IDEA for serving a child with a disability birth through age 21.

In order for a State to receive assistance under part B of IDEA, an individualized education program (IEP) must be developed, reviewed and revised for each child with a disability. The IEP must be developed, reviewed and, if appropriate, revised by a team including, among others, the student, if appropriate, and his or her parents, a special education teacher, the student’s regular education teacher, if the child is or may be participating in the regular education environment, and other individuals who have knowledge or

special expertise concerning the child. For each student with a disability beginning at age 16 (or younger if determined appropriate by the IEP team), the IEP must include a statement of needed transition services for the student that promotes movement from school to post-school activities including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Based on the individual student’s needs, transition services might include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Each student’s IEP must be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and must be revised, as appropriate, to: address any lack of expected progress toward the annual goals and in the general curriculum; the results of any reevaluation; information about the child provided to, or by, the parents; the child’s anticipated needs; or other matters.

#### **Other Background**

##### *The National Longitudinal Transition Study*

The National Longitudinal Transition Study (NLTS) was mandated by the U.S. Congress in 1983, and describes the experiences and outcomes of youth with disabilities nationally during secondary school and early adulthood. It was conducted from 1987 through 1993 by SRI International under contract number 300–87–0054 with the Office of Special Education Programs, U.S. Department of Education. (The electronic file of this document is available at <http://www.sri.com/policy/cehs/publications/dispub/nlts/nltssum.html>.)

The NLTS provides evidence of the importance of supporting students with disabilities to stay in school. The study showed that:

- Students with disabilities who stay in school have better post-school outcomes than their peers who dropped out of school.
- Students with disabilities who stayed in school were more likely to enroll in postsecondary vocational or academic programs.
- There was a consistently positive relationship between staying in school and employment success.

In addition, the NLTS documented the importance of vocational education and work experience programs in school:

- Students with disabilities who took occupationally-oriented vocational education were significantly less likely to drop out of school than students who did not.
- Students with disabilities who participated in work experience programs missed significantly less school and were less likely to fail a course or drop out of high school.
- For the majority of students with disabilities (those with learning, speech or emotional disabilities or mild mental retardation) vocational education in high school was related to a higher probability of finding competitive jobs and higher earnings.
- For students with orthopedic or health impairments, participation in high school work experience programs translated into a higher likelihood of employment and higher earnings after high school.

The NLTS also documented that the post-school paths of youths with disabilities reflected their transition goals. Twelfth-graders who had a transition goal related to competitive employment or to postsecondary education were more likely to find jobs or go on to postsecondary schools than students who did not.

The NLTS suggests that any efforts that encourage students with disabilities to stay in school and complete their educational and vocational training are important to improving post-school outcomes for students with disabilities. It indicates that students with disabilities drop out of school at a higher rate than students in the general population (38 percent vs. 25 percent).

##### *The New Freedom Initiative*

On February 1, 2001, President George W. Bush announced his New Freedom Initiative to promote the full participation of people with disabilities in all areas of society by increasing access to assistive and universally designed technologies, expanding educational and employment opportunities, and promoting full access to community life. Because a solid education is critical to ensuring that children with disabilities have an equal chance to succeed, the New Freedom Initiative includes goals of expanding access to quality education for youth with disabilities, ensuring that they receive support to transition from school to employment, and improving the high school graduation rates of students with disabilities. These proposed rules fully support the

education and employment goals embodied in the New Freedom Initiative.

#### *Explanation of Proposed Changes*

The proposed rules would update our regulations to reflect amendments to sections 225(b) and 1631(a)(6) of the Act. They also would make certain other changes to our regulations regarding eligibility for continued benefit payments under these sections of the Act.

#### *Extension of Eligibility for Continued Benefit Payments to Individuals Who Receive SSI Benefits Based on Blindness*

We propose to revise §§ 416.1321(d), 416.1331(a) and (b), 416.1338(a) and (b), and 416.1402(j) to reflect the OBRA 1987 amendment which extended the scope of section 1631(a)(6) of the Act to cover individuals receiving SSI benefits based on blindness. We propose to revise these sections to indicate that an individual whose eligibility for SSI benefits is based on blindness and whose blindness ends due to medical recovery while he or she is participating in a program of vocational rehabilitation services, employment services, or other support services may be eligible for continued benefits under section 1631(a)(6) of the Act. We also are reflecting this expanded scope of the statute in proposed new § 416.1338(e), which we discuss later in this preamble.

#### *Individuals Whose Disability Is Determined To Have Ended as a Result of an Age-18 Redetermination of SSI Eligibility*

We propose to revise the introductory text of § 416.1338(a) to indicate that children who receive SSI benefits based on disability and whose disability is determined to have ended under the rules in § 416.987(b) and (e)(1) in an age-18 redetermination may have their benefit payments continued under section 1631(a)(6) of the Act if the individual meets all other requirements for continued benefits.

#### *Students Participating in an Individualized Education Program*

As noted above, the NLTS documented the importance of vocational education and work experience programs in school. An IEP that addresses needed transition services is developed, reviewed and, if appropriate, revised on a regular basis by the IEP team for a student with a disability beginning at age 16 (or younger, if determined appropriate by the IEP team). Therefore, we are proposing rules to provide that we will consider a student's completion of or

continuation in such a program to be analogous to the individualized determination that completion of or continuation in other approved programs of vocational rehabilitation services will improve an individual's level of education, work experience, or skills so that he or she would be more likely to be able to do other work that exists in the national economy, despite a possible future reduction in his or her residual functional capacity. On this basis, under the rules we are proposing to add as §§ 404.328 and 416.1338(e), we will determine that participation in such a program will increase the likelihood that an individual who is engaged in such a program at the time his or her disability ceases will not have to return to the disability rolls.

The NLTS also demonstrated that there was a consistently positive relationship between staying in school and employment success, and suggested that any efforts that encourage students with disabilities to stay in school and complete their educational and vocational training are important to improving post-school outcomes for students with disabilities. We, therefore, propose to amend our rules to encourage young people with disabilities to stay in school and complete their educational and vocational training, and to encourage the families of students with disabilities to support them in preparing for employment and self-sufficiency. This is consistent with the goals of the President's New Freedom Initiative to expand access to quality education for youth with disabilities, ensure that they receive support to transition from school to employment, and improve the high school graduation rates of students with disabilities. Specifically, we are proposing that, if a student age 18 through 21 is receiving services under an IEP, and if the student's disability ceases as a result of a continuing disability review or a redetermination of his or her eligibility at age 18 under the rules for determining initial eligibility as adults (*i.e.*, age 18 redeterminations), we will consider that the student's completion of or continuation in the IEP will increase the likelihood that he or she will not have to return to the disability or blindness benefit rolls.

We are proposing benefit continuation on this basis for students beginning at age 18, who are receiving services under IEPs when their disabilities cease as a result of continuing disability reviews or age-18 redeterminations, in order to encourage young people with disabilities to stay in school and complete their educational and vocational training, and to encourage

their families to support them in preparing for employment and self-sufficiency, regardless of the possible outcome of continuing disability reviews or age 18 redeterminations. We are proposing benefit continuation on this basis for students with disabilities through age 21, since each State can receive a grant of assistance under IDEA for serving a child with a disability through age 21.

#### *Individuals Participating in the Ticket to Work Program or Another Program of Vocational Rehabilitation Services, Employment Services, or Other Support Services Approved by Us*

We propose to revise and update our regulations regarding the type of program in which an individual must be participating in order to qualify for continued benefits. Our existing regulations, which are based on the original provisions of sections 225(b) and 1631(a)(6) of the Act, indicate that an individual whose impairment is no longer disabling may be considered for eligibility for continued benefits if he or she is participating in a vocational rehabilitation program provided by a State vocational rehabilitation agency. The amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act, made by OBRA 1990, extended consideration for continued benefits under sections 225(b) and 1631(a)(6) of the Act to individuals in approved non-State vocational rehabilitation programs.

We implemented the amendments made by OBRA 1990 by publishing operating instructions in 1992. These instructions identified an approved non-State vocational rehabilitation program as any non-State vocational rehabilitation service provider who meets one of the following criteria:

- Is licensed, certified, accredited, or registered, as appropriate, to provide vocational rehabilitation services in the State in which it provides services; or
- Is an agency of the Federal government (*e.g.*, the Department of Veterans Affairs); or
- Is a provider approved to provide services under a Social Security Administration research or demonstration project.

The amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act, made by section 101(b) of Pub. L. 106-170, further expanded the type of program in which an individual must be participating to qualify for continued benefits. These sections of the Act now provide that an individual may be considered for eligibility for continued benefits if she or he is participating in a program consisting of the Ticket to Work program or another program of

vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security.

We propose to revise §§ 404.316(c)(1), 404.337(c)(1), 404.352(d)(1), 404.902(s), 404.1586(g)(1), 404.1596(c)(4), 404.1597(a), 416.1321(d)(1), 416.1331(a) and (b), 416.1338(a), and 416.1402(j) to take account of the amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act. In the proposed revisions to these sections of the regulations, we are proposing to use the term “an appropriate program of vocational rehabilitation services, employment services, or other support services” to refer to the program in which an individual must be participating in order to be considered for eligibility for continued benefits under sections 225(b) and 1631(a)(6) of the Act, as amended.

We also propose to amend our regulations by adding new §§ 404.327(a) and 416.1338(c) to explain the term “an appropriate program of vocational rehabilitation services, employment services, or other support services.” We explain that an appropriate program of vocational rehabilitation services, employment services, or other support services means one of the following:

- A program carried out under an individual work plan with an employment network under the Ticket to Work program;
- A program carried out under an individualized plan for employment with a State vocational rehabilitation agency operating under a State plan approved under title I of the Rehabilitation Act of 1973, as amended;
- A program which is carried out by an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).
- A program of vocational rehabilitation services, employment services, or other support services carried out under a similar individualized employment plan with another provider of services approved by us; or
- An individualized education program (IEP) developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. 1400 *et seq.*).

We also propose to include an appropriate cross-reference to § 404.327(a) or § 416.1338(c) in the

sections of the regulations which state the basic requirement that the individual must be participating in an appropriate program.

#### *Definition of “Participating” in the Program*

We propose to amend our regulations to add new §§ 404.327(b) and 416.1338(d) to explain when an individual will be considered to be “participating” in the program. Sections 225(b) and 1631(a)(6) of the Act and our existing regulations do not define the term “participating.”

Our existing operating instructions (published in 1986) use the term “actively involved” in a vocational rehabilitation program and define active participation in a State vocational rehabilitation program as placement in one of four State vocational rehabilitation agency status codes: vocational rehabilitation plan developed and approved; counseling and guidance; physical restoration; and training, including vocational and college training. Any other State vocational rehabilitation agency status codes are not considered active participation for purposes of continued benefit payments. Other providers of vocational rehabilitation services, employment services, or other support services do not use these codes and several State vocational rehabilitation agencies no longer use them.

Our operating instructions on demonstrating participation in a non-State vocational rehabilitation program require that we obtain information regarding the individual’s status, such as whether the individual is actively receiving services such as counseling and guidance, physical restoration, or academic, business, vocational, or other training. We use this information to determine on a case-by-case basis whether the individual’s status is equivalent to the State vocational rehabilitation status codes used to determine participation.

In proposed new §§ 404.327(b) and 416.1338(d), we explain the criteria we will use to determine whether an individual is “participating” in the program for purposes of continued benefit payments. We explain that for a program which is carried out under an individual work plan with an employment network, an individualized plan for employment with a State vocational rehabilitation agency, or a similar, individualized, written employment plan with another provider of services approved by us, we will consider the individual to be participating in the program if the individual is engaging in the activities

outlined in his or her plan. If the individual is age 18 through 21 and receiving services under an IEP developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, we will consider the individual to be participating in the program if he or she is taking part in the activities or services outlined in his or her IEP. To meet our requirements for participation, the individual must be taking part in the activities outlined in his or her plan or program.

#### *Determining Increased Likelihood of Permanent Removal From the Disability Benefit Rolls*

We propose to amend our regulations to add new §§ 404.328 and 416.1338(e) to explain how we will determine whether an individual’s completion of or continuation in an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that the individual will not have to return to the disability benefit rolls. Sections 225(b) and 1631(a)(6) of the Act provide for continued benefits to persons who are no longer disabled due to medical recovery and who are participating in an appropriate program only if SSA can determine that completion or continuation of the program “will increase the likelihood” that the individual will remain permanently off the disability benefit rolls. As the individual is not disabled and, by definition, is able to engage in substantial gainful activity without the need for the program, there is already a “likelihood” that the individual will stay off the disability benefit rolls. Benefits may be continued to the individual only if completion or continuation of the program will “increase” this likelihood. For this reason, proposed new §§ 404.328 and 416.1338(e) will require, that, in order that we will make a determination that a program will increase the likelihood that an individual will not have to return to the disability benefit rolls, we must determine that completion of or participation in the program will provide the individual with:

- An improvement in the individual’s work experience so that he or she would be more likely to be able to do past relevant work, despite a possible future reduction in his or her residual functional capacity; or
- An improvement in any of the vocational factors of education, work experience, or skills so that he or she would be more likely to be able to do

other work that exists in the national economy, despite a possible future reduction in his or her residual functional capacity.

We are also proposing a rule in §§ 404.328 and 416.1338(e) for students age 18 through 21 who are participating in an individualized education program developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, as amended (20 U.S.C. § 1400 *et seq.*). Under the proposed rule, we will find that these students' completion of or continuation in the program will increase the likelihood that they will not have to return to the disability or blindness benefit rolls.

As a result of our proposed revisions regarding how we will make a likelihood determination, we propose to eliminate the examples provided in §§ 404.316(c)(1)(iv) and 416.1338(a)(4) regarding making a "likelihood" decision because these examples do not directly illustrate the rules we are proposing. Additionally, in §§ 404.316(c), 404.337(c), 404.352(d), 404.902(s), 404.1586(g), 404.1596(c), 404.1597(a), 416.1321(d), 416.1331(b), 416.1338(a), and 416.1402(j), we are proposing to remove the modifier "significantly" from the phrase "significantly increase the likelihood" in the existing provisions to make the regulations conform more closely to the language of sections 225(b)(2) and 1631(a)(6)(B) of the Act.

*Summary of Proposed Revisions to the Regulations on Continuation of Social Security Disability and SSI Disability or Blindness Benefits*

We propose to revise §§ 404.316(c)(1), 404.337(c)(1), 404.352(d)(1), 404.1586(g)(1), 404.1596(c)(4), 416.1321(d) and 416.1338(a) to indicate that an individual's benefits may be continued after his or her impairment is no longer disabling (or, for SSI blindness benefits, after his or her blindness ends due to medical recovery) if:

- The individual is participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in proposed new § 404.327(a) and (b) or in proposed new § 416.1338(c) and (d);
- The individual began participating in the program before the date his or her disability or blindness ended; and
- We have determined under proposed new § 404.328 or proposed new § 416.1338(e) that the individual's completion of the program, or

continuation in the program for a specified period of time, will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

In the proposed revision of § 416.1338(a), we also explain that an individual whose disability is determined to have ended as a result of an age-18 redetermination may continue to receive SSI benefits if the requirements described above are met.

We propose to revise §§ 404.316(c)(2), 404.337(c)(2), 404.352(d)(2), 404.1586(g)(2) and 416.1338(b) to indicate that we will stop an individual's benefits with the earliest of these months:

- The month in which the individual completes the program;
- the month in which the individual stops participating in the program for any reason; or
- The month in which we determine under proposed new § 404.328 or proposed new § 416.1338(e) that continued participation will no longer increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

We propose to revise the *Exception* in §§ 404.316(c)(2), 404.337(c)(2), 404.352(d)(2), and 404.1586(g)(2) by inserting the phrase "provided you meet all other requirements for entitlement to and payment of benefits through such month" following the word "ends." We propose to add new §§ 404.327, 404.328 and 416.1338(c), (d) and (e) to our regulations. In proposed new §§ 404.327(a) and 416.1338(c), we explain what we mean by "an appropriate program of vocational rehabilitation services, employment services, or other support services." In proposed new §§ 404.327(b) and 416.1338(d), we explain when we will consider an individual to be "participating" in the program.

We propose to add new §§ 404.328 and 416.1338(e) to explain when we will find that an individual's completion of or continuation in an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

We propose to revise § 404.902(s) by removing reference to "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support services." We propose to make this same change in the heading of § 404.1586(g).

We propose to revise § 404.1597(a) to eliminate the references to November 1980 and December 1980, to remove reference to "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support services," and to indicate that the individual must have started participating in the program before the date his or her disability ended.

We propose to revise § 416.1331(a) and (b). We propose to combine the discussion of the rules in the first and third sentences of § 416.1331(a) into a single sentence to indicate that the last month for which we can pay SSI benefits based on disability or blindness is the second month after the month in which the individual's disability or blindness ends. We explain that § 416.1338 provides an exception to this rule for certain individuals who are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services. We also are proposing to add to § 416.1331(a) appropriate cross-references to the sections of the SSI regulations which explain when disability or blindness ends. In addition, we propose to remove from § 416.1331(a) the cross-reference to § 416.261 which discusses special SSI benefits for working individuals who have a disabling impairment. We believe that inclusion of this cross-reference in § 416.1331 is inappropriate since § 416.1331 is concerned with the termination of SSI benefits in cases when an individual's disability or blindness has ended.

We propose to revise § 416.1331(b) by removing reference to "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support services." In addition, we propose to revise § 416.1331(b) by inserting the term "or blind" following the term "disabled" and inserting the term "or blindness" following the term "disability."

In addition to the other revisions to § 416.1338, discussed previously, we propose to revise the section heading to read: "If you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services."

We propose to revise § 416.1402(j) by removing "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support

services,” and by adding references to “blindness” and “blind.”

### Regulatory Procedures

#### *Clarity of These Proposed Rules*

Executive Order 12866, as amended by Executive Order 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 is not 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?

#### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules would meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 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 would primarily affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### *Federalism*

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132, “Federalism,” and determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

#### *Paperwork Reduction Act*

These proposed rules contain reporting requirements at §§ 404.316(c), 404.327, 404.328, 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 416.1321(d), 416.1331(a)

and (b), and 416.1338. We have been collecting the information using form SSA-4290, Vocational Rehabilitation “301” Program Development, under Office of Management and Budget (OMB) Number 0960-0282, which expires on March 31, 2006. However, the changed reporting requirements described in the sections listed above will require revision of this form. Therefore, an information collection request will be submitted to OMB for clearance under the Paperwork Reduction Act of 1995. We estimate that it will take 15 minutes for approximately 9,000 respondents to provide the information for an estimated annual burden of 2,250 hours.

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 OMB and the Social Security Administration at the following fax numbers and/or address:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, Fax Number: 410-965-6400.

Comments can be received from between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410-965-0454.

(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; 96.006, Supplemental Security Income)

### 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, Vocational rehabilitation.

#### *20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping

requirements, Supplemental Security Income (SSI), Vocational rehabilitation.

Dated: July 23, 2003.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend parts 404 and 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 D—[Amended]**

1. The authority citation for subpart D of part 404 continues to read as follows:

**Authority:** Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.316 is amended by revising paragraph (c) to read as follows:

#### **§ 404.316 When entitlement to disability benefits begins and ends.**

\* \* \* \* \*

(c)(1) Your benefits, and those of your dependents, may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (see § 404.327(b) for what we mean by “participating” in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

**Exception:** In no case will we stop your benefits within a month earlier than the second month after the month your disability ends, provided that you

meet all other requirements for entitlement to and payment of benefits through such month.

\* \* \* \* \*

3. A new undesignated centered heading and new §§ 404.327 and 404.328 are added following § 404.325 to read as follows:

*Rules Relating to Continuation of Benefits After Your Impairment Is No Longer Disabling*

**§ 404.327 When you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services.**

(a) *What is an appropriate program of vocational rehabilitation services, employment services, or other support services?* An appropriate program of vocational rehabilitation services, employment services, or other support services means—

(1) A program which is carried out under an individual work plan with an employment network under the Ticket to Work and Self-Sufficiency Program under part 411 of this chapter;

(2) A program which is carried out under an individualized plan for employment with a State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended) under 34 CFR part 361;

(3) A program which is carried out by an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).

(4) A program of vocational rehabilitation services, employment services, or other support services which is carried out under a similar, individualized, written employment plan with another provider of services approved by us; or

(5) An individualized education program developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, as amended (20 U.S.C. § 1400 *et seq.*); you must be age 18 through age 21 for this provision to apply.

(b) *When are you participating in the program?*

(1) You are participating in the program described in paragraph (a)(1), (a)(2) or (a)(3) of this section when you are taking part in the activities and

services outlined in your individual work plan, your individualized plan for employment, or your similar, individualized, written employment plan, as appropriate.

(2) If you are a student age 18 through age 21 receiving services under an individualized education program described in paragraph (a)(4) of this section, you are participating in your program when you are taking part in the activities and services outlined in your individualized education program.

**§ 404.328 When your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.**

(a) We will determine that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls if your completion of or your continuation in the program will provide you with—

(1) Work experience (*see* § 404.1565) so that you would be more likely able to do your past relevant work (*see* § 404.1560(b)), despite a possible future reduction in your residual functional capacity (*see* §§ 404.1545, 404.1561, and 404.1567); or

(2) Education, work experience, or skills so that you would be more likely able to do other work which exists in the national economy, despite a possible future reduction in your residual functional capacity (*see* §§ 404.1545, 404.1561, and 404.1567).

(b) If you are a student age 18 through age 21 participating in an individualized education program described in § 404.327(a)(4), we will find that your completion of or continuation in the program will increase the likelihood that you will not have to return to the disability benefit rolls.

4. Section 404.337 is amended by revising paragraph (c) to read as follows:

**§ 404.337 When does my entitlement to widow's and widower's benefits start and end?**

\* \* \* \* \*

(c)(1) Your benefits may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the

program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (*see* § 404.327(b) for what we mean by “participating” in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

*Exception:* In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

\* \* \* \* \*

5. Section 404.352 is amended by revising paragraph (d) to read as follows:

**§ 404.352 When does my entitlement to child's benefits begin and end?**

\* \* \* \* \*

(d)(1) Your benefits may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (*see* § 404.327(b) for what we mean by “participating” in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood

that you will not have to return to the disability benefit rolls.

*Exception:* In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

\* \* \* \*

#### Subpart J—[Amended]

6. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 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).

7. Section 404.902 is amended by revising paragraph (s) to read as follows:

#### § 404.902 Administrative actions that are initial determinations.

\* \* \* \*

(s) Whether your completion of, or continuation for a specified period of time in, an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that you will not have to return to the disability benefit rolls, and thus, whether your benefits may be continued even though you are not disabled;

\* \* \* \*

#### Subpart P—[Amended]

8. 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.

9. Section 404.1586 is amended by revising paragraph (g) to read as follows:

#### § 404.1586 Why and when we will stop your cash benefits.

\* \* \* \*

(g) *If you are in an appropriate program of vocational rehabilitation services, employment services, or other support services.*

(1) Your benefits, and those of your dependents, may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (*see* § 404.327(b) for what we mean by “participating” in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

*Exception:* In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

10. In § 404.1596, the heading and introductory text of paragraph (c) are republished, and paragraph (c)(4) is revised to read as follows:

#### § 404.1596 Circumstances under which we may suspend your benefits before we make a determination.

\* \* \* \*

(c) *When we will not suspend your cash benefits.* We will not suspend your cash benefits if—

(4) Even though your impairment is no longer disabling,

\* \* \* \*

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

11. Section 404.1597 is amended by revising paragraph (a) to read as follows:

#### § 404.1597 After we make a determination that you are not now disabled.

(a) *General.* If we determine that you do not meet the disability requirements

of the law, your benefits generally will stop. We will send you a formal written notice telling you why we believe you are not disabled and when your benefits should stop. If your spouse and children are receiving benefits on your social security number, we will also stop their benefits and tell them why. The notices will explain your right to reconsideration if you disagree with our determination. However, your benefits may continue even though your impairment is no longer disabling, if you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services (*see* § 404.327). You must have started participating in the program before the date your disability ended. In addition, we must have determined that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls. (*See* §§ 404.316(c), 404.328, 404.337(c), 404.352(d), and 404.1586(g)). You may still appeal our determination that you are not disabled even though your benefits are continuing because of your participation in an appropriate program of vocational rehabilitation services, employment services, or other support services. You may also appeal a determination that your completion of the program, or your continuation in the program for a specified period of time, will not increase the likelihood that you will not have to return to the disability benefit rolls and, therefore, you are not entitled to continue to receive benefits.

\* \* \* \*

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

#### Subpart M—[Amended]

12. The authority citation for subpart M of part 416 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1129A, 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382d, 1382h, and 1383).

13. Section 416.1321 is amended by revising paragraph (d) to read as follows:

#### § 416.1321 Suspensions; general.

\* \* \* \*

(d) *Exception.* Even though conditions described in paragraph (a) of this section apply because your impairment is no longer disabling or you are no longer blind under § 416.986(a)(1), (a)(2)

or (b), we will not suspend your benefits for this reason if—

(1) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 416.1338(c) and (d);

(2) You began participating in the program before the date your disability or blindness ended; and

(3) We have determined under § 416.1338(e) that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

14. Section 416.1331 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 416.1331 Termination of your disability or blindness payments.**

(a) *General.* The last month for which we can pay you benefits based on disability or blindness is the second month after the month in which your disability or blindness ends. (See §§ 416.987(e), 416.994(b)(6) and 416.994a(g) for when disability ends, and § 416.986 for when blindness ends.) See § 416.1338 for an exception to this rule if you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services. You must meet the income, resources, and other eligibility requirements to receive any of the benefits referred to in this paragraph. We will also stop payment of your benefits if you have not cooperated with us in getting information about your disability or blindness.

(b) *After we make a determination that you are not now disabled or blind.* If we determine that you do not meet the disability or blindness requirements of the law, we will send you an advance written notice telling you why we believe you are not disabled or blind and when your benefits should stop. The notice will explain your right to appeal if you disagree with our determination. You may still appeal our determination that you are not now disabled or blind even though your payments are continuing because of your participation in an appropriate program of vocational rehabilitation services, employment services, or other support services. You may also appeal a determination that your completion of, or continuation for a specified period of time in, an appropriate program of vocational rehabilitation services, employment services, or other support services will not increase the likelihood that you will not have to return to the disability or blindness benefit rolls and,

therefore, you are not eligible to continue to receive benefits.

\* \* \* \* \*

15. Section 416.1338 is revised to read as follows:

**§ 416.1338 If you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services.**

(a) *When may your benefits based on disability or blindness be continued?*

Your benefits based on disability or blindness may be continued after your impairment is no longer disabling, you are no longer blind as determined under § 416.986(a)(1), (a)(2) or (b), or your disability has ended as determined under § 416.987(b) and (e)(1) in an age-18 redetermination, if—

(1) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in paragraphs (c) and (d) of this section;

(2) You began participating in the program before the date your disability or blindness ended; and

(3) We have determined under paragraph (e) of this section that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

(b) *When will we stop your benefits?* We generally will stop your benefits with the earliest of these months:

(1) The month in which you complete the program; or

(2) The month in which you stop participating in the program for any reason (see paragraph (d) of this section for what we mean by “participating” in the program); or

(3) The month in which we determine under paragraph (e) of this section that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

*Exception:* In no case will we stop your benefits with a month earlier than the second month after the month your disability or blindness ends, provided that you are otherwise eligible for benefits through such month.

(c) *What is an appropriate program of vocational rehabilitation services, employment services, or other support services?* An appropriate program of vocational rehabilitation services, employment services, or other support services means—

(1) A program which is carried out under an individual work plan with an

employment network under the Ticket to Work and Self-Sufficiency Program under part 411 of this chapter;

(2) A program which is carried out under an individualized plan for employment with a State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended) under 34 CFR part 361;

(3) A program which is carried out by an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).

(4) A program of vocational rehabilitation services, employment services, or other support services which is carried out under a similar, individualized, written employment plan with another provider of services approved by us; or

(5) An individualized education program developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 *et seq.*); you must be age 18 through age 21 for this provision to apply.

(d) *When are you participating in the program?*

(1) You are participating in the program described in paragraph (c)(1), (c)(2), or (c)(3) of this section when you are engaging in the activities outlined in your individual work plan, your individualized plan for employment, or your similar, individualized, written employment plan, as appropriate.

(2) If you are a student age 18 through age 21 taking part in services and activities under an individualized education program described in paragraph (c)(4) of this section, you are participating in your program when you are taking part in the activities and services outlined in your individualized education program.

(e) *How will we determine whether or not your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness benefit rolls?*

(1) We will determine that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness

benefit rolls if your completion of or your continuation in the program will provide you with—

(i) Work experience (*see* § 416.965) so that you would be more likely able to do your past relevant work (*see* § 416.960(b)), despite a possible future reduction in your residual functional capacity (*see* §§ 416.945, 416.961, and 416.967); or

(ii) Education (*see* § 416.964), work experience, or skills (*see* § 416.968) so that you would be more likely able to do other work which exists in the national economy, despite a possible future reduction in your residual functional capacity (*see* §§ 416.945, 416.961, and 416.967).

(2) If you are a student age 18 through age 21 participating in an individualized education program described in paragraph (c)(4) of this section, we will find that your completion of or continuation in the program will increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

#### Subpart N—[Amended]

16. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

17. Section 416.1402 is amended by revising paragraph (j) to read as follows:

#### § 416.1402 Administrative actions that are initial determinations.

\* \* \* \* \*

(j) Whether your completion of, or continuation for a specified period of time in, an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that you will not have to return to the disability or blindness benefit rolls, and thus, whether your benefits may be continued even though you are not disabled or blind;

\* \* \* \* \*

[FR Doc. 03–19541 Filed 7–31–03; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[CGD07–03–110]

RIN 1625–AA01

#### Special Anchorage Area; Okeechobee Waterway, St. Lucie River, Stuart, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to extend the special anchorage area that begins on the Okeechobee Intracoastal Waterway between mile markers 7 and 8 on the St. Lucie River in Stuart, Florida to include 17 additional moorings. This proposed rule would improve safety for vessels anchoring within and transiting through this high traffic area and also reduce negative impacts on the ecosystem by providing a designated safer area for vessels to anchor.

**DATES:** Comments and related material must reach the Coast Guard on or before September 30, 2003.

**ADDRESSES:** You may mail comments and related material to Commander, Seventh Coast Guard District, Aids to Navigation Branch, 909 SE. First Avenue, Miami, Florida 33131–3050. Commander, Seventh Coast Guard District, Aids to Navigation Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, Seventh Coast Guard District, Aids to Navigation Branch, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Embres, Seventh Coast Guard District, Aids to Navigation Branch, at (305) 415–6750.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–03–110), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound

format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Seventh Coast Guard District, Aids to Navigation Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The City of Stuart has asked the Coast Guard to extend the current special anchorage field that begins on the Okeechobee Intracoastal Waterway between mile markers 7 and 8 on the St. Lucie River. The City would like to extend the anchorage area by adding 9.73 acres and installing 17 additional moorings. The proposed rule is intended to reduce the risk of vessel collisions by enlarging the current anchorage area and to provide notice to mariners of the additional 9.73 acres. This proposed rule would allow vessels 65 feet in length and under to anchor without exhibiting anchor lights as required by the navigation rules at 33 CFR 109.10. The City of Stuart has coordinated with the Florida Department of Environmental Protection (DEP) regarding this proposal. The DEP determined that properly managed mooring and anchorage fields located in appropriate areas will encourage vessels to utilize them for safety purposes, and, as a side benefit, the ecosystem will incur less detrimental impacts.

#### Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.