

(C) Vacated the warrant for your arrest for the criminal offense, or

(D) Issued any similar exonerating order or took a similar exonerating action, or

(ii) You were erroneously implicated in connection with the criminal offense by reason of identity fraud or mistaken identity.

(2) If none of the actions in paragraph (b)(1) of this section are met, we may find you eligible and pay you benefits if you contact us within 1 year of the date you receive our notice of planned action and supply proof within 90 days after the date you contact us that all of the following apply:

(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related. Violent crimes are those that threaten, attempt to use, or actually use physical force against a person; e.g., assault, homicide, kidnapping/abduction, robbery, and forcible sex offenses. Drug-related crimes are those involving the unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance, and

(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year regardless of the actual sentence imposed) since the date of the warrant, and

(iii) The law enforcement agency that issued the warrant reports that it will not extradite you for the charges on the warrant, or that it will not take action on the warrant for your arrest.

(3) If paragraphs (b)(1) and (2) of this section do not apply, we will find you eligible and pay you benefits if you contact us within 1 year of the date you receive our notice of planned action and supply proof within 90 days after the date that you contact us that all of the following apply:

(i) The crime, attempt to commit a crime, or violating a condition of probation or parole which the warrant is based on was both nonviolent and not drug-related and, if violating probation or parole, the original crime(s) for which you were paroled or put on probation was both nonviolent and not drug-related, as defined in paragraph (b)(2)(i) of this section, and

(ii) You have neither been convicted of nor pled guilty to another felony crime (or, in jurisdictions in the United States and abroad that do not define crimes as felonies, is punishable by death or imprisonment for more than 1 year, regardless of the actual sentence imposed) since the date of the warrant, and

(iii) The warrant was issued 10 or more years ago, and

(iv) Your medical condition impairs your mental capability to resolve the warrant; or you are incapable of managing your benefits; or you are legally incompetent; or we have appointed a representative payee to handle your benefits; or you are residing in a long-term care facility, such as a nursing home or mental treatment/care facility.

(c) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the first month throughout which you no longer have an outstanding warrant, or are no longer violating a condition of probation or parole. If we determine that you meet the requirements in paragraph (b) of this section, we will pay you benefits and repay any benefits previously withheld under paragraph (a) of this section, beginning with either the month the arrest warrant was issued, the month of initial title XVI eligibility, or January 2005, whichever is later.

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AG19

#### Continuing Disability Review Failure To Cooperate Process

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to amend our regulations to provide that we will suspend your disability benefits before we make a determination during a continuing disability review (CDR) under title II and title XVI of the Social Security Act (the Act) when you fail to comply with our request for necessary information. Should you remain non-compliant for a period of one year following your suspension, we will then terminate your disability benefits. Although our current title XVI regulations generally provide for the termination of payments after 12 months of suspension, we are proposing

to amend our regulations by adding this policy to our title II regulations and by restating it in the title XVI CDR regulatory provisions.

**DATES:** To be sure that your comments are considered, we must receive them no later than February 3, 2006.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (i.e., Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment> or the Federal eRulemaking Portal at <http://www.regulations.gov>; 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, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the 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, at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

*Electronic Version:* The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (i.e., Social Security Online) at <http://www.policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment>.

**FOR FURTHER INFORMATION CONTACT:** Don Harvey, Social Insurance Specialist, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 597-1026 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Statutory Background

Sections 221(i) and 1614(a)(3)(H)(ii)(I) of the Act and §§ 404.1589, 416.987 and 416.989 of our regulations require that after we find that you are disabled, we evaluate your impairment(s) from time to time to determine if you remain disabled. We call this evaluation a continuing disability review (CDR). If the medical and other evidence shows that you are not disabled under the standards set out in sections 223(f) and 1614(a)(4) of the Act, we will end the

payment of cash benefits and terminate your period of disability.

Section 1614(a)(3)(H)(iii) of the Act and § 416.987 of our regulations require that if you are eligible for payments as a child under title XVI by reason of disability, we redetermine that eligibility during the one-year period beginning on your 18th birthday, or, in lieu of a CDR, whenever we determine that your case is subject to such a review. We call this evaluation an age-18 redetermination. If the medical and other evidence shows that you are not disabled under the standards set out in section 1614(a)(3)(A)–(B) of the Act, we will end the payment of cash payments and terminate your period of disability.

Sections 223(f) and 1614(a)(4) of the Act provide that, in general, if you receive disability benefits under titles II and/or XVI of the Act, we may find that you are no longer disabled if substantial evidence shows that there has been medical improvement in your impairment or combination of impairments, and you are now able to do substantial gainful activity. Under title XVI, if you are a child (an individual under age 18), substantial evidence must show that there has been medical improvement in your impairment or combination of impairments, and the impairment(s) must no longer cause marked and severe functional limitations. We call this the medical improvement review standard (MIRS), and we apply it whenever we do a CDR for an adult or child. The statute also provides, however, for several exceptions to the “medical improvement” requirement where we will not apply the MIRS. One of those exceptions to applying the MIRS is the situation where you fail, without good cause, to cooperate with us when we do a CDR.

#### **Continuing Disability Review and Age-18 Redetermination Processes Under Our Current Regulations**

When we begin a CDR or an age-18 redetermination, we notify you that we are reviewing your eligibility for disability benefits and explain why we are reviewing your eligibility; what standard will apply, either the MIRS in a CDR or the initial claims criteria in an age-18 redetermination; that our review could result in the termination of your benefits; and that you have the right to submit medical and other evidence for us to consider during the CDR or the age-18 redetermination. Before we determine whether you are still disabled, we develop a complete medical history covering at least the 12 months preceding the date that you complete a report about your continuing

disability status. If our review shows that we should stop your benefits, we notify you in writing and give you the opportunity to appeal. (See §§ 404.1589 and 416.989 of our regulations.) We explain when and how often we will do a CDR in §§ 404.1590 and 404.1591 of our title II regulations and in §§ 416.990 and 416.991 of our title XVI regulations. We explain when we will do an age-18 redetermination in § 416.987 of our title XVI regulations.

When we do a CDR, §§ 404.1594(e)(2), 416.987(e)(3), 416.994(b)(4)(ii) and 416.994a(f)(2) of our regulations set out the general principle that is reflected in sections 223(f) and 1614(a)(4) of the Act; i.e., that you have the responsibility to cooperate with us, or take any required action that we decide is necessary to allow us to complete the CDR or age-18 redetermination. If you do not cooperate with us, and you do not have good cause as defined in §§ 404.911 and 416.1411 of our regulations for not cooperating, we will find that your disability has ended.

We currently have no provision in our regulations that allows us to suspend your benefits under title II of the Act if you fail to cooperate with us when we request necessary information during a CDR. However, § 416.1322 of our title XVI regulations provides general authority that allows us to suspend your payments under title XVI of the Act, whenever you fail to cooperate with our requests for information, including during a CDR.

When we suspend your title XVI payments for such failure to cooperate under § 416.1322, we follow § 416.714(b) of our regulations, which gives you thirty days from the date of our written request to comply with the request for information. We also follow § 416.1336 of our regulations, which provides that before we suspend, reduce, or terminate your title XVI payments, we will give you advance notice of our intent and provide you with appeal rights and payment continuation rights pending resolution of the appeal. When we terminate your title XVI payments due to continuous suspension of payments, we follow § 416.1335 of our regulations, which provides that we will terminate your eligibility for payments following 12 consecutive months of payment suspension.

#### **Why Are We Proposing To Revise Our Regulations?**

We are continually exploring ways to improve the disability process. These proposed rule changes would allow us to make our rules consistent for all beneficiaries under both titles II and

XVI, implement a more efficient CDR process, encourage beneficiaries to cooperate during the CDR process, and make the process less burdensome.

As a result of the proposed revisions, your failure to cooperate in the CDR process would result initially in a suspension rather than a termination of benefits based on a determination that you are no longer entitled to benefits. To have your benefits resumed, you would only have to contact your local Social Security office and provide the requested information and you would have up to 12 months to do so. Accordingly, you would not have to file an appeal in order to have your benefits resumed. In addition, you would not have to request, prepare for, and attend a hearing for your benefits to be resumed.

#### **How Are We Proposing To Change Our Regulations?**

We propose to revise §§ 404.1587 and 404.1596 of our title II regulations and to add new § 416.992 to our title XVI regulations. With respect to § 404.1587, we propose to revise the title to reflect that your benefits may be terminated as well as suspended. In addition, we propose to designate the current paragraph as paragraph (a) and add a heading to it. We also propose to add new paragraphs (b) and (c). Under proposed § 404.1587(b), we would suspend your benefits during a CDR when you do not cooperate with us by failing to comply with our written request for any necessary information. If you subsequently give us the information that we requested, we would reinstate your benefits and continue with the CDR process. We would reinstate your benefits for any previous month for which they are otherwise payable. Under proposed § 404.1587(c), we would terminate your benefits following 12 consecutive months of benefit suspension when you fail to comply with our written request for any necessary information made during a CDR. This termination would be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You would have the right to appeal the termination, but you would not have benefit continuation rights.

Under the proposed revisions to § 404.1596, we would revise the title to reflect that your benefits may be terminated as well as suspended. We also would remove current paragraphs (c)(1) and (c)(2) and add new paragraphs (d) and (e) to explain that we would not make a medical determination when you do not cooperate with us by failing to comply with our written request for

any necessary information. We would suspend your benefits only after we give you advance notice. (See § 404.1595.) The advance notice would tell you what you need to do so that your benefits are not suspended as outlined in § 404.1595(b)(3) of our regulations.

Under the proposed revisions to § 404.1596(d), we are adding language to explain that if we suspend your benefits because you fail to cooperate and you subsequently give us the information that we requested, we would reinstate your benefits and continue with the CDR process. We would reinstate your benefits for any previous months for which they are otherwise payable.

With respect to § 404.1596(e), we propose to explain that if we suspend your benefits because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we would terminate your benefits. The termination would be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You would have the right to appeal the termination, but you would not have benefit continuation rights.

We are proposing to add a new § 416.992 to explain what would happen if you fail to comply with our request for information during a CDR or age-18 redetermination. We would suspend your payments before we make a determination regarding your continuing eligibility for disability payments if you fail to comply with our request for information for your CDR or age-18 redetermination. We would suspend your payments only after we give you advance notice as described in § 416.995. The advance notice would tell you what you need to do so that your payments are not suspended as outlined in § 416.1336 of our regulations. If we suspend your payments because you fail to cooperate and you subsequently give us the information that we requested, we would reinstate your payments and continue with the CDR or age-18 redetermination process. We would reinstate your payments for any previous month for which they are otherwise payable. If we suspend your payments because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we would terminate your payments. The termination would be effective with the start of the 13th month after your payments were stopped because you failed to cooperate. You would have the right to appeal the termination, but you would not have payment continuation rights.

### Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that 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?

### Regulatory Procedures

#### *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 E.O. 12866, as amended by E.O. 13258. Thus they were subject to OMB review.

#### *Regulatory Flexibility Act*

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### *Paperwork Reduction Act*

These proposed regulations impose no reporting requirements subject to OMB clearance.

(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.

#### *20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: November 28, 2005.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

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

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

#### **Subpart P—[Amended]**

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

**Authority:** Sections 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)); section 211(b), Pub. L. 104-193, 110 Stat. 2105, 2189.

2. Section 404.1587 is revised to read as follows:

#### **§ 404.1587 Circumstances under which we may suspend and terminate your benefits before we make a determination.**

(a) *We will suspend your benefits if you are not disabled.* We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.

(b) *We will suspend your benefits if you fail to comply with our request for necessary information.* We will suspend your benefits effective with the month in which it is determined in accordance with § 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause, to comply with our request for necessary information. When we have received the information, we will continue with the CDR process and reinstate your benefits for any previous month for which they are otherwise payable.

(c) *We will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information

in accordance with § 404.1596(b)(2)(i). We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (b) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

3. Section 404.1596 is amended by revising the section heading, removing paragraphs (c)(1) and (c)(2), redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(1) and (c)(2), and adding new paragraphs (d) and (e) to read as follows:

**§ 404.1596 Circumstances under which we may suspend and terminate your benefits before we make a determination.**

\* \* \* \* \*

(d) *When the suspension is effective.* We will suspend your benefits effective with the month in which it is determined in accordance with § 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause, to comply with our request for necessary information for your continuing disability review. This review is to determine whether or not you continue to meet the disability requirements of the law. When we have received the information, we will continue with the CDR process and reinstate your benefits for any previous month for which they are otherwise payable.

(e) *When we will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information in accordance with § 404.1596(b)(2)(i). We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (d) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

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

**Subpart I—[Amended]**

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

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

5. Section 416.992 is added to read as follows:

**§ 416.992 What happens if you fail to comply with our request for information.**

We will suspend your payments before we make a determination regarding your continued eligibility for disability payments if you fail to comply with our request for information for your continuing disability review or age-18 redetermination. The suspension is effective with the month in which it is determined in accordance with § 416.1322 that your eligibility for disability payments has ended due to your failure to comply with our request for necessary information. When we have received the information, we will continue with the CDR or age-18 redetermination process, and reinstate your payments for any previous month for which they are otherwise payable. We will terminate your eligibility for payments following 12 consecutive months of payment suspension as discussed in § 416.1335.

[FR Doc. 05-23615 Filed 12-2-05; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD13-05-040]

**RIN 1625-AA09**

**Drawbridge Operation Regulations; Wishkah River, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily modify the drawbridge operation regulations for the Heron Street Bridge across the Wishkah River, mile 0.2, at Aberdeen, Washington. The proposed temporary change will enable the bridge owner to delay and plan for openings of the bridge from February 2006 through March 2007. This will facilitate major structural and mechanical rehabilitation of the bridge.

**DATES:** Comments and related material must reach the Coast Guard on or before February 3, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpw), 13th Coast Guard District, 915 Second Avenue, Seattle, WA 98174-1067 where the public docket for this rulemaking is maintained. 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 the Waterways Management Branch between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Chief, Bridge Section, (206) 220-7282.

**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 [CGD13-05-040], 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 stamped, 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 the Aids to Navigation and Waterways Management 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 proposed temporary rule would enable the Washington State Department of Transportation (WSDOT), the owner of the bridge, to rehabilitate the structure and manage interruptions to this refurbishment caused by draw openings. The 48-hour notice requirement proposed as a temporary requirement would enable the work to proceed while still providing operational capability. The work includes mechanical and electrical improvements, seismic retrofit, debris containment, replacement of all navigation lights and hydraulic locks for the swing span. This work will be done between February, 2006 and April, 2007. The replacement of the center bearing will require the bridge to be closed for 14 calendar days and will be authorized via a separate rulemaking. This portion of the project will require jacking the span in place to replace the pivot bearing, thereby immobilizing the draw.