

of Directors (Board) hereby certifies that the proposed rescission would not have a significant economic impact on a substantial number of small entities<sup>1</sup> within the meaning of the RFA. Therefore, the provisions of the RFA regarding an initial and final regulatory flexibility analysis (Id. at 603 and 604) do not apply here.

#### List of Subjects in 12 CFR Part 343

Banks, banking, Reporting and recordkeeping requirements, Securities.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to remove part 343 of title 12 of the Code of Federal Regulations.

#### PART 343—[REMOVED AND RESERVED]

1. Part 343 is removed and reserved.

Dated at Washington, DC this 29th day of April, 1997.

By order of the Board of Directors.  
Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Deputy Executive Secretary.*

[FR Doc. 97-12807 Filed 5-15-97; 8:45 am]  
BILLING CODE 6714-01-P

#### SOCIAL SECURITY ADMINISTRATION

##### 20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AE58

#### Administrative Review Process, Testing Elimination of the Fourth Step of Administrative Review in the Disability Claim Process (Request for Review by the Appeals Council)

**AGENCY:** Social Security Administration.  
**ACTION:** Proposed rules.

**SUMMARY:** We propose to amend our rules to establish authority to test elimination of the final step in the administrative review process used in determining claims for Social Security and Supplemental Security Income (SSI) benefits based on disability. If these proposed rules are published in final, the right of appeal for a claimant who is included in the test procedures and is dissatisfied with the decision of an administrative law judge (ALJ) would be to file a civil action in Federal

district court, rather than to request the Appeals Council to review the decision. We are proposing to test procedures that eliminate the request for Appeals Council review in furtherance of the Plan for a New Disability Claim Process that former Commissioner of Social Security Chater approved in September 1994. Unless specified, all other regulations relating to the disability determination process and the administrative review process remain unchanged.

**DATES:** To be sure that your comments are considered, we must receive them no later than June 16, 1997.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966-2830; sent by E-mail to "regulations@ssa.gov"; or, delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Social Security Administration (SSA) currently uses a four-step process in deciding claims for Social Security benefits under title II of the Social Security Act (the Act) and for SSI benefits under title XVI of the Act. Claimants who are not satisfied with the initial determination on their claims may request reconsideration. Claimants who are not satisfied with the reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these four steps, and who are dissatisfied with the final decision, may request judicial review of the decision by filing a civil action in Federal district court. 20 CFR §§ 404.900 and 416.1400.

SSA's Plan for a New Disability Claim Process (59 FR 47887, September 19, 1994) anticipates establishment of a redesigned, two-step process for deciding Social Security and SSI claims

based on disability. The redesign plan anticipates that the process for determining disability can be significantly improved by strengthening the steps of the process in which we make initial determinations and provide dissatisfied claimants an opportunity for a hearing before an ALJ, and by eliminating the reconsideration step and the step in which claimants request the Appeals Council to review the decisions of ALJs.

In 20 CFR 404.906 and 416.1406 (60 FR 20023, April 24, 1995), we have established authority to test, singly and in combination, several model procedures for modifying the disability claims process. Under that authority, we are currently testing, in isolation from other possible changes, a modification of the initial determination step in which a single decisionmaker, rather than a team composed of a disability examiner and a medical consultant, makes the initial determination of disability. In addition, under authority established in 20 CFR 404.943 and 416.1443 (60 FR 47469, September 13, 1995), we are also testing, in another model for evaluating a possible change in isolation from other changes, use of an adjudication officer as the focal point for all prehearing activities in disability cases in which a claimant requests a hearing before an ALJ.

To assess how the above changes and other elements of the disability redesign plan would work together in different combinations, we initiated an integrated test on April 7, 1997, that combines model procedures for major elements of the redesign plan. As presently structured under existing testing authority (established in §§ 404.906, 404.943, 416.1406, and 416.1443 in combination), this integrated model includes, in addition to models for the single decisionmaker and the adjudication officer, a model for procedures to provide a predecision interview conducted by the single decisionmaker (at which a claimant for benefits based on disability will have an opportunity to submit further evidence and have an interview with the initial decisionmaker if the evidence does not support a fully favorable initial disability determination), and a model to test eliminating the reconsideration step in disability claims.

In order to increase our ability to assess the effects of possible modifications of the disability claim process in combination, we are proposing in these rules to amend our regulations to authorize testing of an additional modification in our integrated model. We are proposing to incorporate in this model additional

<sup>1</sup> The definition of "small business entity" derives from the definition of a "small business concern." Part 121 of the Small Business Administration's rules and regulations (13 CFR part 121) provides that any national bank or commercial bank, savings association, or credit union with assets of \$100 million or less qualifies as a small business concern.

procedures to test elimination of the step in that process in which a claimant requests the Appeals Council to review the hearing decision of an ALJ.

Under the proposed rules, we will randomly select approximately one half of the requests for an ALJ hearing in the integrated model for potential inclusion in the proposed test procedures. The remaining requests for hearing in the integrated model will be processed under our existing regulations concerning the Appeals Council and judicial review. This will enable us to assess other modifications tested in the integrated model in association with both the proposed test procedures for eliminating the request for Appeals Council review step and our existing request for review procedures.

Under the proposed rules, we will eliminate the request for review step (which has been established by agency regulations and is not mandated by the Act) in a case in the integrated model if: (1) the case has been randomly selected for inclusion in this aspect of the model, and (2) an ALJ issues a decision in the case that is less than wholly favorable to the claimant (i.e., unfavorable or only partially favorable to the claimant). Cases in the integrated model in which an ALJ issues a wholly favorable decision, dismisses a request for hearing, or issues a recommended decision will not be included in the proposed procedures. These cases will be processed under our existing regulations concerning the Appeals Council and judicial review.

In a case to which the proposed rules apply, the appeal available to the claimant from the ALJ's decision will be filing an action in Federal district court. Requesting review by the Appeals Council will be eliminated as an appeal and as a prerequisite to seeking judicial review.

Our specific goals in testing elimination of the request for review step will be to assess the effects of this change, as it functions in conjunction with other modifications in the disability claim process included in the integrated model, on: (1) Judicial workloads, and (2) the legal sufficiency of decisions subjected to judicial review. We consider the effects of the change in those respects to represent the principal, practical issues bearing on the advisability of eliminating the request for review step in connection with the planned, overall redesign of the disability claim process.

SSA's disability redesign plan anticipates that the request for Appeals Council review will be eliminated in conjunction with the establishment of procedures to increase the number of

ALJ decisions that the Council will consider for quality review purposes under its authority to review cases on its own motion. We are not including procedures to test the enhanced own-motion functions anticipated for the Appeals Council in these proposed rules. We are not including such procedures because we wish to concentrate the proposed test on producing information concerning the effects of eliminating the request for Appeals Council review on judicial workloads and the legal sufficiency of SSA's final decisions. In addition, we are preparing to propose permanent rules to regulate existing procedures and establish new procedures for referring cases to the Appeals Council for possible review under its own-motion authority. Those proposed changes should provide, if adopted in final, increased information regarding own-motion review by the Council.

We propose to test the effect of eliminating the request for review step on judicial workloads by comparing the rate at which civil actions are filed by individuals whose claims are processed under the current administrative review steps in the disability claims process—i.e., the four step process—to the rate at which civil actions are filed in cases selected for processing under the proposed test procedures. We will also consider the rate at which civil actions are filed in cases in the integrated model in which we retain the request for Appeals Council review.

We propose to assess the effect of eliminating the request for review on the legal sufficiency of final decisions by comparing the rates at which, following the filing of civil actions in cases included in the integrated model and in a control sample of cases processed under the current administrative review steps in the disability claims process, we request court-remand of a case within the period during which the Commissioner of Social Security may file his answer to a civil action under § 205(g) of the Act. The Appeals Council, working with agency counsel, will evaluate the claims in the integrated model and in the control sample to identify instances in which a court should be requested (as courts may be under existing procedures) to remand a case for further administrative action.

We believe that, in conjunction with other modifications we are testing in the integrated model, elimination of the request for review step could have a significant beneficial effect on the disability claims process and on our ability to adjudicate claims timely and accurately. We place a high priority on

speedily including a test of the elimination of that step in our integrated model. The proposed rules have the limited purpose of authorizing test procedures in a relatively small number of cases (projected at approximately 1900) to determine how elimination of the request for review step could affect judicial workloads and the legal sufficiency of the agency's final decisions. If we ultimately decide to proceed with elimination of this step, we would publish a Notice of Public Rulemaking setting forth detailed proposals concerning all the changes that would be made in the administrative review process to eliminate the request for review by the Appeals Council. Therefore, and because we have previously provided the public with the opportunity to comment on all aspects of our basic disability redesign plan, including the elimination of the request for review step, we are providing a 30-day comment period for these proposed rules rather than the 60-day period we usually provide. We believe that a 30-day comment period is sufficiently long, in this instance, to allow the public a meaningful opportunity to comment on the proposed rules in accordance with Executive Order (E.O.) 12866.

#### Proposed Regulations

We propose to add new §§ 404.966 and 416.1466 to set forth authority to test elimination of the step in the administrative review process in which claimants for benefits based on disability request the Appeals Council to review the decision of an ALJ. The proposed rules specify in §§ 404.966(a) and 416.1466(a) that testing of elimination of the request for review step will be conducted in randomly selected cases in which we have tested a combination of model procedures for modifying the disability claim process as authorized in §§ 404.906, 404.943, 416.1406 and 416.1443, and an ALJ has issued a decision that is less than wholly favorable to the claimant.

Under proposed §§ 404.966(b) and 416.1466(b), which describe the effect of an ALJ's decision, the ALJ's decision will be binding unless a party to the decision files a civil action, the Appeals Council reviews the decision on its own motion under the authority provided in 20 CFR 404.969 and 416.1469, or the decision is revised by the administrative law judge or the Appeals Council under the rules on reopening final decisions in 20 CFR 404.987 and 416.1487. Under these provisions, the appeal available to a party who is dissatisfied with the decision of an ALJ will be to seek judicial review. As is true of the

provisions of proposed §§ 404.966 and 416.1466 as a whole, the proposed provisions of §§ 404.966(b) and 416.1466(b) pertain only to those ALJ decisions that have been identified for inclusion in that part of our integrated model in which the request for review by the Appeals Council is eliminated.

Proposed §§ 404.966(c) and 416.1466(c) describe the notice an ALJ will issue to advise a party to a decision included in this part of the integrated model of the right to file a civil action. Proposed §§ 404.966(d) and 416.1466(d) describe the right a party will have to request the Appeals Council to grant an extension of time to file a civil action.

#### Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

#### Regulatory Procedures

##### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they are not subject to OMB review.

##### *Regulatory Flexibility Act*

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

##### *Paperwork Reduction Act*

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

#### List of Subjects

##### *20 CFR Part 404*

Administrative practice and procedure, Death benefits, 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, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: May 7, 1997.

**John J. Callahan,**

*Acting Commissioner of Social Security.*

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as set forth below.

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

20 CFR part 404, Subpart J, is amended as follows:

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

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

2. New § 404.966 is added under the undesignated center heading "APPEALS COUNCIL REVIEW" to read as follows:

##### **§ 404.966 Testing elimination of the request for Appeals Council review.**

(a) *Applicability and scope.*

Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to test elimination of the request for review by the Appeals Council. These procedures will apply in randomly selected cases in which we have tested a combination of model procedures for modifying the disability claim process as authorized under §§ 404.906 and 404.943, and an administrative law judge has issued a decision (not including a recommended decision) that is less than wholly favorable to you.

(b) *Effect of an administrative law judge's decision.* In a case to which the procedures of this section apply, the decision of an administrative law judge will be binding on all the parties to the hearing unless —

(1) You or another party file an action concerning the decision in Federal district court;

(2) The Appeals Council decides to review the decision on its own motion under the authority provided in § 404.969; or

(3) The decision is revised by the administrative law judge or the Appeals Council under the procedures explained in § 404.987.

(c) *Notice of the decision of an administrative law judge.* The notice of decision the administrative law judge issues in a case processed under this section will advise you and any other parties to the decision that you may file an action in a Federal district court within 60 days after the date you receive notice of the decision.

(d) *Extension of time to file action in Federal district court.* Any party having a right to file a civil action under this section may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we will use the standards in § 404.911.

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

20 CFR Part 416, Subpart N, is amended as follows:

1. The authority citation for subpart N continues to read as follows:

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

2. New § 416.1466 is added under the undesignated center heading "APPEALS COUNCIL REVIEW" to read as follows:

##### **§ 416.1466 Testing elimination of the request for Appeals Council review.**

(a) *Applicability and scope.*

Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to test elimination of the request for review by the Appeals Council. These procedures will apply in randomly selected cases in which we have tested a combination of model procedures for modifying the disability claim process as authorized under §§ 416.1406 and 416.1443, and an administrative law judge has issued a decision (not including a recommended decision) that is less than wholly favorable to you.

(b) *Effect of an administrative law judge's decision.* In a case to which the procedures of this section apply, the decision of an administrative law judge will be binding on all the parties to the hearing unless —

(1) You or another party file an action concerning the decision in Federal district court;

(2) The Appeals Council decides to review the decision on its own motion under the authority provided in § 416.1469; or

(3) The decision is revised by the administrative law judge or the Appeals Council under the procedures explained in § 416.1487.

(c) *Notice of the decision of an administrative law judge.* The notice of decision the administrative law judge issues in a case processed under this section will advise you and any other parties to the decision that you may file an action in a Federal district court within 60 days after the date you receive notice of the decision.

(d) *Extension of time to file action in Federal district court.* Any party having a right to file a civil action under this section may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we will use the standards in § 416.1411.

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## DEPARTMENT OF LABOR

### Employment Standards Administration

#### 20 CFR Parts 718, 722, 725, 726 and 727

[RIN 1215-AA99]

#### Regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Extension of Comment Period; Additions to the Record

**AGENCY:** Employment Standards Administration, Labor.

**ACTION:** Proposed rule; extension of comment period; additions to the record.

**SUMMARY:** This document extends the period for filing comments regarding the proposed rule to amend and revise the regulations implementing the Black Lung Benefits Act. This action is taken to permit additional comment from interested persons. In addition, this document informs all interested persons that the Department is adding three

medical articles to the official rulemaking record and invites comments on those articles.

**DATES:** Comments must be received on or before August 21, 1997.

**ADDRESSES:** Send written comments on the proposed rule to James L. DeMarce, Director, Division of Coal Mine Worker's Compensation, Room C-3520, Frances Perkins Building, 200 Constitution Ave., NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** James L. DeMarce, (202) 219-6692.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 22, 1997 (62 FR 3338-3435), the Department of Labor published a proposed rule intended to amend and revise the regulations implementing the Black Lung Benefit Act, subchapter IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Interested persons were requested to submit comments on or before March 24, 1997. In the **Federal Register** of February 24, 1997 (62 FR 8201), the Department extended the comment period through May 23, 1997. The trade association representing coal mine operators has requested that the Department once again extend the comment period. The trade association seeks additional time to analyze existing medical evidence and submit its analysis to peer review. The Department deems it desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, amending and revising 20 CFR Parts 718, 722, 725, 726 and 727, is extended through August 21, 1997.

In addition, following publication of the proposed rule, the Department learned of three medical articles relevant to its proposed revision of the definition of the term "pneumoconiosis" at 20 CFR 718.201. See 62 FR 3343-44 (discussion), 3376 (definition). Those articles are: Becklake, M., "Occupational Exposures: Evidence for a Causal Association with Chronic Obstructive Pulmonary Disease," *American Review of Respiratory Disease*, 140: S85-S91, 1989; "Coal Dust and Compensation," *The Lancet*, Vol. 335, No. 8685, pp. 322-324 (Feb. 10, 1990); and Wright, J. *et al.*, "State of the Art: Diseases of the Small Airways," *American Review of Respiratory Diseases*, 146: 240-262, 1992. The Department gives notice of its inclusion of these articles in the official rule-making record, and invites comments on them. Copies of the articles may be reviewed at the Department of Labor.

Signed at Washington, D.C. this 5th day of May, 1997.

**Bernard E. Anderson,**

*Assistant Secretary for Employment Standards.*

[FR Doc. 97-12324 Filed 5-15-97; 8:45 am]

BILLING CODE 4510-27-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 181

RIN 1076-AD82

#### Indian Highway Safety Program Competitive Grant Selection Criteria

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) intends to make funds available to federally recognized tribes on an annual basis for financing tribal highway safety projects designed to reduce the incidence of traffic accidents within Indian country. Due to the limited funding available for the Indian Highway Safety Program, the BIA will review and select from proposed tribal projects on a competitive basis. The proposed rule presents the selection criteria.

**DATES:** Comments must be postmarked by July 15, 1997.

**ADDRESSES:** Comments should be sent to Program Administrator, Indian Highway Safety Program, 505 Marquette Avenue, NW, Suite 1705, Albuquerque, NM 87102.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Jaynes, Chief, BIA Division of Safety Management, (505) 248-5060.

**SUPPLEMENTARY INFORMATION:** This proposed rule sets forth the procedures that will govern the BIA's selection of recipients of the Indian Highway Safety Program grant. The BIA mails grant applications for a given fiscal year to all tribal leaders by the end of February of the preceding fiscal year. Applicants must submit completed applications by the close of business on June 1. The BIA will review and evaluate each complete and timely filed application. BIA seeks to fund as many programs as possible and to the level practicable within the confines of a limited program budget. The scarce amount of resources often forces the BIA to limit funding to select portions of a proposed tribal project.

We are publishing this proposed rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.