

By the Commission.

Jonathan G. Katz,

Secretary.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AF21

Reinstatement of Entitlement to Disability Benefits

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are publishing final rules regarding the Reinstatement of Entitlement (Expedited Reinstatement) provision in section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999. This provision allows former Social Security disability and Supplemental Security Income (SSI) disability or blindness beneficiaries, whose entitlement or eligibility had been terminated due to their work activity, to have their entitlement or eligibility reinstated in a timely fashion if they become unable to do substantial gainful work. These rules provide beneficiaries an additional incentive to return to work.

DATES: Effective Date: These final rules are effective on October 31, 2005.

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): <http://www.socialsecurity.gov/regulations/>.

FOR FURTHER INFORMATION CONTACT: John Nelson, Team Leader, Employment Policy Team, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Room 128 Altmeyer Building, Baltimore, Maryland 21235-6401, (410) 966-5114 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:

Background

The expedited reinstatement provision, along with other work incentives and the Ticket to Work program contained in the Ticket to

Work and Work Incentives Improvement Act of 1999 (Pub. L. 106-170) is intended to expand your options as a Social Security disability beneficiary or a disabled or blind Supplemental Security Income recipient. We expect that the expedited reinstatement provision along with other provisions in the Ticket to Work and Work Incentives Improvement Act of 1999 will remove some of the disincentives that may discourage you from either attempting to work or increasing your work activity. If more beneficiaries with disabilities engage in self-supporting work, the net result will be an increase in the independence of disabled beneficiaries, a reduction in the Social Security and Supplemental Security Income disability rolls, and savings to the Social Security Trust Fund and general revenues.

General Goals of the Expedited Reinstatement Provision

The expedited reinstatement provision is intended to relieve some concerns you may have about returning to work. If we terminate your entitlement or eligibility for benefits due to your work activity, this provision provides you an easier way to have your entitlement or eligibility reinstated and to be placed back into payment status. This process should ease some concerns you may have about what will happen if your attempt to return to work is unsuccessful.

Advice of the Ticket to Work and Work Incentives Advisory Panel

During the preparation of these final rules, we consulted with the Ticket to Work and Work Incentives Advisory Panel. The Ticket to Work and Work Incentives Advisory Panel was established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999. This panel advises the President, the Congress, and us on issues related to work incentive programs, planning and assistance for individuals with disabilities and the Ticket to Work Program established under this Act.

Section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999

Congress indicated that the purpose of section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999 (the expedited reinstatement provision) was to encourage disability beneficiaries to return to work by reassuring them that if they meet our disability standards their benefits would be restored in a timely fashion should

they become unable to continue working.

The expedited reinstatement provision provides a method for you to have your disability benefits reinstated without filing an application if you have had your entitlement to, or eligibility for, benefits terminated due to your work activity during the previous 5 years, and you can no longer do substantial gainful activity.

Effect of the Expedited Reinstatement Provision

The expedited reinstatement provision provides you another option for regaining entitlement to benefits under title II and eligibility under title XVI of the Act after we have terminated your entitlement to or eligibility for disability benefits due to your work activity. If you file a request for expedited reinstatement, you can still file a new application for benefits under existing initial claim rules.

Prior to the effective date of this provision, when we terminated your entitlement or eligibility due to work activity, you were required to file a new application to become entitled to or eligible for benefits again. We processed your application under rules that required a new disability determination using the medical requirements that we apply when you file an initial claim for benefits. You generally were entitled to receive benefits only after we processed your entitlement or eligibility determination. If we determined that you again qualified for benefits, you became eligible for work incentives such as the trial work period, the reentitlement period, and special SSI eligibility status under your new period of disability.

The expedited reinstatement provision provides you the option of requesting that your prior entitlement to or eligibility for disability benefits be reinstated, rather than filing a new application for a new period of entitlement or eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. At the time you request reinstatement, you must be unable to engage in substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard that we use in our continuing disability review process. Under the medical improvement review standard, we will generally find that you are disabled,

unless there is substantial evidence demonstrating that there has been medical improvement in your impairment(s) and the improvement is related to your ability to work.

When you request reinstatement you can be paid up to 6 months of provisional benefits, and may be entitled to Medicare benefits or Medicaid, while we are deciding whether you qualify for reinstatement. Provisional benefits, or payments, are cash benefits that can be paid to you on a temporary basis when you were previously a Social Security (title II) disability beneficiary or a disabled or blind Supplemental Security Income (title XVI) recipient and you are now requesting reinstatement. The period during which you can receive provisional benefits is your provisional benefit period. This period begins with the first month you can receive provisional benefits and can never extend beyond six consecutive months. Your provisional benefit period will end earlier than the sixth consecutive month if we make our determination on your request for reinstatement before that month. Your title II provisional benefit period will also end if you attain full retirement age or if you do substantial gainful work activity.

You can receive title II provisional benefits beginning with the month you file your request for reinstatement. We will base your provisional benefit amount (*i.e.*, the amount of the monthly cash benefit you receive during the provisional benefit period) on the prior benefit amount that was actually payable to you under title II. We will terminate your title II provisional benefits when your provisional benefit period ends, such as if you do substantial gainful activity. You can receive title XVI provisional payments beginning with the month after you file your request for reinstatement. We will base your title XVI provisional benefit amount (*i.e.*, the amount of the monthly cash payment you receive during the provisional benefit period) on the Federal Supplemental Security Income benefit that would actually be payable to you for each month in the provisional benefit period, depending on your income. We will terminate your title XVI provisional payments when your provisional benefit period ends. If you have previously received provisional benefits based upon a prior request for reinstatement, you cannot receive additional provisional benefits if you file a second request for reinstatement based on the same prior entitlement or eligibility. This could occur, for example, if we denied your prior request for reinstatement and then you

subsequently file a new request for reinstatement because you believe you meet the requirements.

We are also amending §§ 404.903 and 416.1403 to indicate, consistent with the expedited reinstatement legislation, that the determination we make regarding your right to receive provisional benefits is not an initial determination and it is, therefore, not subject to administrative review under subpart J of part 404 and subpart N of part 416.

If we deny your request for reinstatement, we generally will not consider the provisional benefits you received as an overpayment. If your reinstatement request is denied, and you have not filed a new benefits application, we will treat that request as your intent to file an initial application for benefits. If we approve your request for reinstatement, we will reinstate your prior disability entitlement or eligibility and reestablish your Medicare/Medicaid entitlement, as appropriate, if you are not already entitled to Medicare/Medicaid. We will pay you reinstated benefits under title XVI beginning with the month after the month in which you file your request. We will pay you reinstated benefits under title II beginning no later than the month in which you file your request. We can pay you title II reinstated benefits for any of the 12 months preceding your request for reinstatement if you would have met all of the requirements for reinstatement had you requested reinstatement in that month. We will reduce reinstated benefits payable for a month by the amount of any provisional benefits that you already received for that month.

When we reinstate your entitlement under this provision, you are then entitled to a 24-month initial reinstatement period. Your 24-month initial reinstatement period begins with the month your benefits are reinstated and ends with the 24th month that you have a benefit payable. For title II purposes, we consider a benefit to be payable in a month when you do not do substantial gainful activity and the non-payment provisions in subpart E of part 404 do not apply. For title XVI purposes, we consider a benefit to be payable in a month when, using normal payment calculation procedures in subpart D of part 416, we determine you are due a monthly payment, or you are considered to be receiving SSI benefits in a month under section 1619(b) of the Act. After the 24-month initial reinstatement period is completed, you are eligible for additional work incentives under title II (such as a trial work period and a reentitlement period), as well as possible future reinstatement through the expedited

reinstatement provision under title II and title XVI.

Notice of Proposed Rulemaking

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 27, 2003 (68 FR 61162), which proposed rules regarding the expedited reinstatement provision of the Act. We provided a 60-day period for the public to comment. We subsequently extended the comment period to January 16, 2004 (69 FR 307 (2004)). We received comments from 72 commenters. We discuss the significant public comments we received on the NPRM and provide our responses to those comments later in this preamble under "Public Comments on the Notice of Proposed Rulemaking." As we explain below under "*Explanation of Changes to Regulations*," in these final rules we are making some changes from the proposed rules in response to these public comments.

Explanation of Changes to Regulations

We are amending our regulations to provide the rules for expedited reinstatement. These rules add §§ 404.1592b through 404.1592f to part 404 and §§ 416.999 through 416.999d to part 416.

Part 404

Section 404.1592b provides a general overview of expedited reinstatement and summarizes the basic requirements for expedited reinstatement, as discussed in §§ 404.1592c through 404.1592f. In response to public comments, we have revised the requirement in the NPRM that you must have stopped doing substantial gainful activity because of your medical condition to instead provide that you must be unable to do substantial gainful activity because of your medical condition. In these final rules we also revised the proposed reference in the last sentence of this section from § 404.1592g to § 404.1592f because we deleted proposed § 404.1592e.

Section 404.1592c describes the requirements for reinstatement to title II benefits. Section 223(i)(1) of the Act lists the requirements you must meet to have your entitlement reinstated under the title II expedited reinstatement provision. These rules explain that you must have previously been entitled as a disabled insured individual, a disabled child, a disabled widow or widower, or a disabled Medicare qualified government employee. We must have terminated your prior entitlement due to your doing substantial gainful activity. You must be unable to do substantial gainful activity due to your medical

condition. Your current impairment must be the same as or related to the impairment on which we based your prior period of disability, and you must currently be disabled. Section 223(i)(3) of the Act requires us to use the medical improvement review standard in section 223(f) of the Act when we determine if you are disabled for the purposes of this provision. If your entitlement is reinstated, an auxiliary beneficiary who was previously entitled on your record can also be reinstated. The auxiliary beneficiary must request reinstatement and must meet the current entitlement factors for the benefit.

In response to public comments, we are not requiring in these final rules that you stopped working due to your medical condition. However, as required under section 223(i)(1)(B)(iii) of the Act, these final rules provide that you must be unable to do substantial gainful activity because of your medical condition. We will determine that you meet the requirement that you are unable to do substantial gainful activity due to your medical condition when:

(1) You file, under § 404.1592d, your request for reinstatement stating that you are unable to do substantial gainful activity due to your medical condition,

(2) You do not do substantial gainful activity in the month you file your request for reinstatement, and

(3) We determine that you are under a disability, based on the application of the medical improvement review standard, as required by § 404.1592c(a)(4).

We believe this more closely follows the requirement in section 223(i)(1)(B)(iii) of the Social Security Act and removes a possible disincentive for you to return to work.

In response to public comments, in these final rules we also deleted proposed § 404.1592c(b) and redesignated proposed § 404.1592c(c) to § 404.1592c(b). We made these changes from the proposed rules so that you may be able to make a second request for reinstatement of entitlement. Therefore, for example, if your request for expedited reinstatement is denied because we either determine that your current impairment is not the same as or related to the impairment that we used as the basis for your previous entitlement or eligibility, or that you are not disabled, you may be able to be reinstated on a later request for reinstatement provided you meet the requirements in § 404.1592c at that time. However, as we explain in § 404.1592e, in these final rules we have added that you cannot be paid additional provisional benefits based on the subsequent request if you received

provisional benefits based on the first request. By deleting proposed § 404.1592c(b), these final rules now provide that you may be able to be reinstated on your request for reinstatement even if, after your prior entitlement had been terminated because of the performance of substantial gainful activity, we had made an intervening determination that you were no longer disabled under the medical improvement review standard because we conducted a continuing disability review on a disability entitlement or a medical review on your Medicare entitlement. We believe these changes make expedited reinstatement more responsive to your needs, while maintaining the integrity of the program.

Section 404.1592d describes how to request reinstatement of benefits under the expedited reinstatement provision. Your request must be made in writing. Section 223(i)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that we terminated your prior entitlement to disability benefits due to the performance of substantial gainful activity. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-month time period. Your request must state that you are disabled, that your current impairment is the same as or related to the impairment that was used as the basis for your prior disability entitlement, and that you cannot do substantial gainful activity because of your medical condition. Your request must also include the information we need to help us determine whether you meet the non-medical factors of entitlement for the benefit and the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001. In response to public comments, in these final rules we changed the proposed rule in § 404.1592d(d)(2) which stated that you must certify that you became unable to continue to do substantial gainful activity because of your medical condition. These final rules have been revised to require that you certify that you cannot do substantial gainful activity due to your medical condition. This change is necessary due to our decision to delete the proposed § 404.1592e.

In response to public comments, we deleted the proposed § 404.1592e as these final rules do not require that you stopped working (or reduced your work and earnings below the substantial gainful activity level) because of your impairment. Therefore, the proposed § 404.1592e is no longer necessary. As a result of this deletion, we changed §§ 404.1592f and 404.1592g in the proposed rules to § 404.1592e and § 404.1592f, respectively, in these final rules.

Section 404.1592e now provides information on when your title II provisional benefits start, how they are computed, when they are paid, and when they end. Section 223(i)(7) of the Act lists the requirements for us to pay provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, these rules explain that we can pay you up to 6 months of provisional benefits during your provisional benefit period. In addition, if you are not already entitled to Medicare, we can reestablish your Medicare entitlement during your provisional benefit period. Your entitlement to provisional benefits begins with the month your reinstatement request is filed. We will base your provisional benefit amount on your monthly insurance benefit that was actually payable to you at the time we terminated your prior entitlement. We will increase your prior benefit amount payable by any intervening cost of living increases that would have been applicable to the prior benefit amount under section 215(i) of the Act. If you are entitled to another title II benefit or another provisional benefit, the maximum benefit amount we will pay you when all benefits are combined will be the amount of your highest computed benefit. If you request reinstatement as a disabled widow or widower or a disabled child, we will not reduce your provisional benefit, or the payable benefits to other individuals entitled at that time on the same record when your provisional benefit causes the total benefits payable on the record to exceed the family maximum.

Based on revisions to the proposed rules that we are making in response to public comments, these final rules provide that if you have previously received provisional benefits based upon a prior request for reinstatement, you cannot receive a second period of provisional benefits if you file a second request for reinstatement based on the same prior entitlement. In addition, as already provided in the proposed rules, we will not pay you provisional benefits for a month if you are not entitled to

payment for the month under our usual rules, such as if you are a prisoner. We also will not pay you provisional benefits for any month that is after the earliest of the following months: the month we send you notice of our determination on your request for reinstatement; the first month you do substantial gainful activity; the month before you attain retirement age; or the fifth month following the month you filed your request for reinstatement. You are not entitled to provisional benefits if, prior to starting your provisional benefits, we determine that you do not meet the requirements for reinstatement such as when: we determine that you did not file your request for reinstatement in a timely manner; or we determine that your prior entitlement did not terminate because of your doing substantial gainful activity; or, as provided in these final rules, we determine that, in the month you requested reinstatement, you did not meet the requirement of being unable to engage in substantial gainful activity because of your medical condition. As provided in the final rules, you are also not entitled to provisional benefits if we determine that your statements on your request for reinstatement are false. Our determinations on provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover a previously existing overpayment from your provisional payments unless you give us permission to do so. If we determine you are not entitled to reinstated benefits, usually we will not consider the provisional benefits you received as an overpayment unless we determine you knew or should have known that you did not qualify for reinstatement and therefore you should not have received the provisional benefits. In these final rules we added a clarification in § 404.1592e(h) that provides if you receive provisional benefits when you are not entitled to provisional benefits because we determined you are not entitled to reinstatement before any provisional benefits were paid to you, the payments may be subject to recovery as an overpayment. Provisional benefits may also be subject to recovery as an overpayment if we pay you a provisional benefit for a month that comes after we determine you are not entitled to reinstated benefits.

In response to public comments, these final rules have been revised from the proposed rules to allow you to request reinstatement after being denied in a prior request. As these final rules provide you can file subsequent

requests for reinstatement, we have also revised these final rules to provide that if you file a subsequent request for reinstatement on the same prior entitlement, after having received provisional benefits based upon the prior reinstatement request, you cannot be paid additional provisional benefits. In these final rules we changed § 404.1592f from the proposed rule to § 404.1592e since we deleted in its entirety the proposed § 404.1592e. In these final rules we have also deleted proposed § 404.1592f(d)(2) and redesignated proposed § 404.1592f(d)(3) as § 404.1592e(e)(2). This was necessary since proposed § 404.1592f(2) referenced deleted § 404.1592c(b).

Section 404.1592f now discusses how we determine your reinstated benefits consistent with the requirements regarding paying reinstated benefits in section 223(i) of the Act. These final rules explain that if we have determined we can reinstate you in the month you filed your reinstatement request, we will then consider whether we can pay you retroactive reinstated benefits. We will reinstate your benefits beginning with the earliest month in the 12-month period immediately preceding the month you requested reinstatement in which you would have met all of the reinstatement requirements if you had filed your request for reinstatement in that month. We will also reinstate your Medicare entitlement. Your entitlement to title II disability benefits and Medicare, under the expedited reinstatement provision, cannot be reinstated for a month prior to January 2001.

We will determine and pay your reinstated monthly benefits under our normal payment provisions of title II of the Act, with some exceptions. We will withhold from your reinstated benefits due for a month the amount of any provisional payments we already paid for that month. If the provisional benefits we paid you for a month exceed the amount of reinstated benefits due you for that month, we will consider the difference as an overpayment. We will use the same date of onset to calculate your new primary insurance amount as a reinstated individual that we used in your most recent period of disability. When you are reinstated, you are entitled to a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We consider a month a payable month when you do not do substantial gainful activity and the non-payment provisions in subpart E of part 404 do not apply. During the

initial reinstatement period, in addition to normal non-payment events, a benefit is not payable for any month in which you do substantial gainful activity. We will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, or the provisions of § 404.1574a regarding averaging of earnings, when we determine if you have done substantial gainful activity in a month during your initial reinstatement period. After you complete your initial reinstatement period, we will consider your future work under the work incentive provisions of title II of the Act. Your trial work period begins the month after you complete your initial reinstatement period. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month we terminate your benefits for another reason, the month you reach retirement age, or the month you die.

We consider determinations we make regarding your title II reinstated benefits to be initial determinations subject to administrative and judicial review. If we determine you are not entitled to reinstated benefits, we will consider your request for reinstatement as your intent to file a new initial claim for the benefit.

In these final rules we changed § 404.1592g from the proposed rule to § 404.1592f, since we deleted in its entirety the proposed § 404.1592e. In these final rules we added a sentence to § 404.1592f(d) that provides if the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider that month a payable month under § 404.1592f. We added this sentence to clarify in these final rules our intent in the NPRM; it was not intended as a change from the proposed rules. We also changed references to § 404.900 through § 404.999 in paragraph (g) of the NPRM to subpart J of part 404 in these final rules. This has been done for simplification purposes and is not intended as a change from the proposed rules.

Part 416

Section 416.999 provides a general overview of expedited reinstatement and summarizes the basic requirements for expedited reinstatement, as discussed in §§ 416.999a through 416.999d. In response to public comments, in these final rules we have revised the requirement in the NPRM that you must have stopped doing

substantial gainful activity because of your medical condition to instead provide that you must be unable to do substantial gainful activity because of your medical condition. In these final rules we also revised the proposed reference in the last sentence of the section from § 416.999e to § 416.999d because we deleted the NPRM proposed § 416.999c.

Section 416.999a describes the requirements for reinstatement to title XVI benefits. Section 1631(p)(1) of the Act lists the requirements you must meet to be reinstated under the title XVI expedited reinstatement provision. These rules explain that you must have previously been eligible for SSI based on disability or blindness. We must have terminated your prior eligibility due to earned income or a combination of earned and unearned income. You must be unable to do substantial gainful activity due to your medical condition. Your current impairment must be the same as or related to the impairment on which we based your prior eligibility, and you must currently be disabled. Section 1631(p)(3) of the Act requires we use the medical improvement review standard in section 1614(a)(4) of the Act when we determine if you are disabled for the purposes of this provision. If you are reinstated, your spouse can also be reinstated if your spouse was previously eligible. Your spouse must request reinstatement and must meet the current eligibility factors for title XVI benefits.

In response to public comments, we are not requiring in these final rules that you stopped working due to your medical condition. However, as required under section 1631(p)(1)(B)(iii) of the Act, these final rules now provide that you must be unable to do substantial gainful activity because of your medical condition. When you file your request for reinstatement under § 416.999b that states you are unable to do substantial gainful activity due to your medical condition; and you do not do substantial gainful activity in the month you file your request for reinstatement; and we determine that you are under a disability, based on the application of the medical improvement review standard, as required by § 416.999a(a)(4); we will determine that you meet the requirement that you are unable to do substantial gainful activity due to your medical condition. We believe this more closely follows the requirement in section 1631(p)(1)(B)(iii) of the Act and removes a possible disincentive for you to return to work.

In response to public comments, in these final rules we also deleted proposed § 416.999a(b) and redesignated proposed § 416.999a(c) to

§ 416.999a(b). We are making these changes from the proposed rules so that you may be able to make a second request for reinstatement of eligibility. Therefore, for example, if your request for expedited reinstatement is denied because we either determine that your current impairment is not the same as or related to the impairment that we used as the basis for your previous entitlement or eligibility, or that you are not disabled, you may be able to be reinstated on a later request for reinstatement provided you meet the requirements in § 416.999a at that time. However, as we explain in § 416.999c, in these final rules we have added that you cannot be paid additional provisional benefits based on the subsequent request if you received provisional benefits based on the first request. By deleting proposed § 416.999a(b), these final rules now provide that you may also be able to be reinstated on your request for reinstatement even if, after your prior eligibility had been terminated because of your work activity, we had made an intervening determination that you were no longer disabled under the medical improvement review standard because we conducted a continuing disability review on a disability eligibility. We believe these changes make expedited reinstatement more responsive to your needs, while maintaining the integrity of the program.

Section 416.999b describes how to request reinstatement of benefits under the expedited reinstatement provision. Your request must be in writing. Section 1631(p)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that we terminated your prior eligibility to disability benefits because of earnings. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-month time period. Your request must state that you are disabled, that your current impairment is the same as or related to the impairment that we used as the basis for your prior disability eligibility, that you cannot do substantial gainful activity because of your medical condition, and that you meet all of the non-medical requirements for eligibility. Your request must also include the information we need to determine whether you meet the non-medical factors of eligibility for the benefit and

the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001. In response to public comments, in these final rules we changed the proposed rule in § 416.999b(e) which stated that you must certify that you became unable to continue to do substantial gainful activity because of your medical condition. These final rules have been revised to require that you certify that you cannot do substantial gainful activity due to your medical condition. This change is necessary due to our decision to delete the proposed § 416.999c.

In response to public comments, we deleted proposed § 416.999c as these final rules do not require that you stopped working (or reduced your work and earnings below the substantial gainful activity level) because of your impairment. Therefore, the proposed § 416.999c is no longer necessary. As a result of this deletion, we changed §§ 416.999d and 416.999e in the proposed rules to §§ 416.999c and 416.999d, respectively, in these final rules.

Section 416.999c now provides information on when your title XVI provisional benefits start, how they are computed, when they are paid, and when they end. Section 1631(p)(7) of the Act lists the requirements for us to pay you provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, these final rules explain that we can pay you up to 6 months of provisional benefits during your provisional benefit period. Your provisional benefits will begin with the month after you request reinstatement. We will base your provisional benefit amount on normal computational methods for an individual receiving SSI benefits under title XVI of the Act with the same amounts and kind of income. If your spouse also requests reinstatement, we can pay provisional payments to your spouse. Your spouse must meet SSI eligibility requirements, except those relating to the filing of an application, before we can pay provisional payments. We will use the same computation method used for you and your spouse's provisional benefit that we would use to figure an eligible individual and eligible spouse receiving non-provisional benefits under title XVI of the Act with the same kind and amount of income. As required by section 1631(p)(8) of the Act, you are not eligible for state supplementary payments during the provisional benefit period.

Based on revisions to the proposed rules that we are making in response to public comments, these final rules provide that if you have previously received provisional benefits based upon a prior request for reinstatement, you cannot receive a second period of provisional benefits if you file a second request for reinstatement based on the same prior eligibility. In addition, as already provided in the proposed rules, we will not pay you provisional benefits for any month where a suspension or terminating event occurs under our usual rules, such as when you are in an institution or if you die. We also will not pay provisional benefits for any month after the earliest month either of the following events occurs: the month we send you our notice of our determination on your request for reinstatement; or the sixth month following the month you filed your request for reinstatement. You are not eligible for provisional benefits if, prior to starting your provisional benefits, we determine you do not meet the requirements for reinstatement such as when: We determine that you did not file your request for reinstatement timely; or we determine that your prior eligibility terminated for a reason unrelated to income; or, as provided in these final rules, we determine that you engaged in substantial gainful activity in the month you requested reinstatement. As provided in the final rules, you are also not eligible for provisional benefits, if we determine that your statements on your request for reinstatement are false. Our determinations on your provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover previously existing overpayments from your provisional payments unless you give us permission to do so. If we determine that you are not eligible for reinstated benefits, usually we will not consider the provisional payments you received as an overpayment unless you knew or should have known that you did not qualify for reinstatement and you should not have received provisional payments. In these final rules we added a clarification in § 416.999c(h) that provides if you receive provisional benefits when you are not entitled to provisional benefits because we determined you are not entitled to reinstatement before any provisional benefits were paid to you, the payments may be subject to recovery as an overpayment. Provisional benefits may also be subject to recovery as an overpayment if we pay you a provisional benefit for a month that

comes after we determine you are not entitled to reinstated benefits.

In response to public comments, these final rules have been revised from the proposed rules to allow you to request reinstatement after being denied in a prior request. As these final rules provide you can file subsequent requests for reinstatement, we have also revised these final rules to provide that if you file a subsequent request for reinstatement on the same prior eligibility, after having received provisional benefits based upon the prior reinstatement request, you cannot be paid additional provisional benefits. In these final rules we changed § 416.999d from the proposed rule to § 416.999c since we deleted in its entirety the proposed § 416.999c. In these final rules we have also deleted proposed § 416.999d(d)(2) and redesignated proposed § 416.999d(d)(3) as § 416.999c(e)(2). This was necessary since proposed § 416.999d(d)(2) referenced deleted § 416.999a(b).

Section 416.999d now discusses how we determine your reinstated SSI benefits consistent with the requirements regarding paying reinstated benefits in section 1631(p)(4) of the Act. These final rules explain that we will reinstate your eligibility, and your spouse's eligibility, with the month following the month you filed your request for reinstatement. Your eligibility cannot be reinstated for a month prior to February 2001.

We will determine and pay your reinstated benefits under the normal payment provisions of title XVI of the Act, with one exception. We will withhold from your reinstated benefits due in a month the amount of any provisional payments you were already paid for that month. If we pay you a provisional benefit for a month that exceeds the amount of your reinstated benefit due for that month, we will consider the difference an overpayment. When your request for reinstatement is approved, you are eligible for a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We consider a month a payable month when, considering the normal payment rules, you are due a benefit payment for the month. As a result of public comments, we have also clarified in these final rules in § 416.999d(c) that we will consider a month a payable month in your initial reinstatement period if you are considered to be receiving SSI benefits in a month under section 1619(b) of the Act. After you complete the initial reinstatement period, you are

again eligible for expedited reinstatement if we terminate your eligibility due to income. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month before we terminate your eligibility for another reason, or the month you die.

We consider determinations we make regarding your title XVI reinstated benefits to be initial determinations subject to administrative and judicial review. If we determine you are not eligible for reinstated benefits we will consider your request for reinstatement your intent to file a new initial claim for benefits.

In these final rules we changed § 416.999e from the proposed rule to § 416.999d since we deleted in its entirety the proposed § 416.999c. In these final rules we added a sentence to § 416.999d(c) that provides if the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider that month a payable month under § 416.999d. We also changed references to §§ 416.1400 through 416.1499 in paragraph (e) of the NPRM to subpart N of part 416 in these final rules. This has been done for simplification purposes and is not intended as a change from the proposed rules.

Public Comments

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 27, 2003 (68 FR 61162), which proposed rules regarding the Expedited Reinstatement provision. We provided a 60-day period for the public to comment ending December 26, 2003. We subsequently extended the comment period to January 16, 2004. (69 FR 307 (1994)). We received comments from 72 commenters. We carefully considered the comments we received on the proposed rules in publishing these final rules. The comments we received and our responses to the comments are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe we have expressed the views accurately and have responded to all the relevant issues raised.

Comments and Responses

Comment: Multiple commenters indicated that we should modify proposed §§ 404.1592c(b) and 416.999a(b), which stated that your entitlement could not be reinstated

under the expedited reinstatement provision if we had previously denied your prior request for expedited reinstatement because we determined you were not disabled or because we determined you did not have a same as or related impairment, or because, after your prior entitlement had been terminated because of your work activity, we had made an intervening determination that you were no longer disabled based upon a prior medical review or continuing disability review. These commenters indicated that these sections could limit the effectiveness of expedited reinstatement by not allowing you to use this provision more than once. Other commenters suggested that we should either delete §§ 404.1592c(b) and 416.999a(b) or provide a time limit after which a second request for reinstatement could be allowed.

Response: Based upon these comments, we decided to delete proposed §§ 404.1592c(b) and 416.999a(b) from these final rules. Therefore, if your request for expedited reinstatement is denied because we either determine that your current impairment is not the same as or related to the impairment that we used as the basis for your previous entitlement or eligibility, or that you are not disabled, as determined under the medical improvement review standard in §§ 404.1594(a) through 404.1594(e), 416.994, or 416.994a, you may be able to be reinstated on a later request for reinstatement provided you meet the requirements in § 404.1592c or § 416.999a at that time. However, as we explain in our discussion of § 404.1592e and § 416.999c, these final rules have been revised to provide that you cannot be paid additional provisional benefits based on a subsequent request if you received provisional benefits based on the first request. You also may be able to be reinstated on your request for reinstatement if, after your prior entitlement had been terminated because of your work activity, we made an intervening determination that you were no longer disabled under the medical improvement review standard because we conducted a continuing disability review on a disability entitlement or eligibility or a medical review on your Medicare entitlement. We believe these changes make expedited reinstatement more responsive to those people with episodic impairments and serve as a better incentive to return to work, while also maintaining the integrity of the program.

Comment: Multiple commenters indicated that we should change our proposed rules in §§ 404.1592b,

404.1592e, 416.999 and 416.999c to state that you should not have to have stopped working due to your medical condition to qualify for expedited reinstatement.

Response: We agree with these comments. In these final rules we deleted the requirement in NPRM sections §§ 404.1592b, 404.1592e, 416.999, and 416.999c that you must have stopped working due to your medical condition. These final rules have been revised to require under §§ 404.1592b, 404.1592c(a)(4)(i), 416.999, and 416.999a(4)(i) that you must be unable to do substantial gainful activity because of your medical condition. Also, when you file your request for reinstatement under §§ 404.1592d and 416.999b these final rules provide, as required by sections 223(i)(2)(A)(ii) and 1631(p)(2)(A)(ii) of the Act, that you will need to certify that you cannot do substantial gainful activity due to your medical condition. This requirement was changed from the NPRM that you certify that you became unable to do substantial gainful activity due to your medical condition. When you file your request for reinstatement stating that you cannot do substantial gainful activity due to your medical condition, you do not do substantial gainful activity in the month you file your request for reinstatement, and we determine that you are under a disability, based on the application of the medical improvement review standard, as required by §§ 404.1592c(a)(4) and 416.999a(a)(4), we will then determine that you meet the requirement that you cannot do substantial gainful activity due to your medical condition. We believe this more closely follows the requirement in sections 223(i)(1)(B)(iii) and 1631(p)(1)(B)(iii) of the Social Security Act as it conforms to the plain language of the statute that states your disability must render you unable to do substantial gainful activity. Therefore, your medical condition does not have to be the reason you stopped working, but it must cause you to now be unable to do substantial gainful activity.

We, therefore, deleted in their entirety the proposed rules in §§ 404.1592e and 416.999c as they are no longer necessary. Since we deleted §§ 404.1592e and 416.999c, we changed proposed §§ 404.1592f, 404.1592g, 416.999d and 416.999e to §§ 404.1592e, 404.1592f, 416.999c and 416.999d, respectively, in these final rules. As indicated above, in these final rules we have also made necessary changes in proposed §§ 404.1592b, 404.1592d, 416.999 and 416.999b.

Comment: Multiple commenters expressed the view that if we remove the requirement in §§ 404.1592e and 416.999c that you must have stopped your work activity due to your medical condition, we could then also remove the requirement that we must do a continuing disability review to determine whether you are disabled when you request reinstatement. One commenter suggested that we should reestablish the medical diary review date on your reinstatement and do the medical review at the previously scheduled time.

Response: We deleted proposed §§ 404.1592e and 416.999c. However, even though we deleted those rules, we still have to make a medical determination when you request reinstatement. Sections 223(i)(3) and 1631(p)(3) of the Act require we use the requirements of sections 223(f) and 1614(a)(4) to determine whether you are under a disability, or blind or disabled, respectively. These sections also require that you must have a current physical or mental impairment that is the same as or related to the impairment that was the basis for the finding of disability that gave rise to your prior entitlement or eligibility. Therefore, the medical determination we make when you request reinstatement is an entitlement or eligibility determination that uses, in part, our medical improvement review standard. Since the statute requires you must be disabled (or blind), we are continuing to include that requirement in these final rules in §§ 404.1592c(a)(4) and 416.999a(a)(4).

Comment: Multiple commenters suggested that we reword the preamble explanation of proposed § 404.1592f(a)(6) (§ 404.1592e(a)(6) in these final rules) to more closely match the wording of the regulation. These commenters stated that the wording in the preamble could be misinterpreted to mean that we would adjust provisional benefits payable when the provisional benefits, plus the benefit payable to beneficiaries already entitled on the record, exceed the family maximum benefit payable.

Response: We reworded the preamble discussion of this provision to more closely match the wording of § 404.1592e(a)(6) in these final rules. We believe the revised preamble is clearer as it now states that we will not reduce your provisional benefit, or the payable benefits to other individuals entitled at that time on the same record, when your provisional benefit causes the total benefits payable on the record to exceed the family maximum.

Comment: Multiple commenters indicated that under proposed

§§ 404.1592g(c)(1) and 416.999e(b) (§§ 404.1592f(c)(1) and 416.999d(b) in these final rules) we should not recover as an overpayment provisional benefits that were paid to you that exceed the amount of the reinstated benefit you are due when the family maximum benefit is involved.

Response: Section 223(i)(7)(D) (and section 1631(p)(7)(D) for SSI cases) of the Act generally provides for the exclusion of the provisional benefits you have been paid from recovery as an overpayment when we determine that you are not entitled to reinstated benefits. That statutory exclusion is not applicable when we determine that you are entitled to reinstated benefits. Section 223(i)(4)(B)(iii) (and section 1631(p)(4)(B)(ii) for SSI cases) requires us to reduce your reinstated benefits by the amount of any provisional benefits you have been paid for the month. The Act does not provide for the exclusion from possible recovery as an overpayment the amount of provisional benefits that exceed your reinstated benefits when you are reinstated. We believe the number of overpayments, and the amount of those overpayments, created under §§ 404.1592f(c)(1) and 416.999d(c) of these final rules will be minimal. You can also request we waive adjustment or recovery of the overpayment under subpart F of part 404 (subpart E of part 416 for SSI cases).

Comment: Multiple commenters indicated that the 24 month initial reinstatement period in § 404.1592g(d) and § 416.999e(c), (§§ 404.1592f(d) and 416.999d(c) in these final rules) is confusing and should be simplified. One commenter expressed concern that we may not be able to process monthly wage reports on a timely basis, which could serve as a disincentive for you to return to work.

Response: The 24 month initial reinstatement period is established by sections 223(i)(6) and 1631(p)(6) of the Act. Furthermore, section 223(i)(4)(c) specifically provides that, when you are reinstated under the expedited reinstatement provision, we may not pay a benefit for any month in which you engage in substantial gainful activity. In developing the proposed rules, we attempted to avoid any unnecessary complexity regarding the 24 month initial reinstatement period, and did not add any complexity beyond what the statute requires. We have changed the section numbers from §§ 404.1592g and 416.999e to §§ 404.1592f and 416.999d, respectively, because, as explained in response to another comment, we decided to delete the proposed §§ 404.1592e and 416.999c. As a result of these comments,

we have included two clarifications in these final rules that were not in the proposed rules. We have clarified in § 404.1592f(d) (and § 416.999d(c)) of these final rules that if the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month, so no additional payment is due, we will consider that month a payable month in your initial reinstatement period. We have also clarified in these final rules in § 416.999d(c) that we will consider a month a payable month in your initial reinstatement period if you are considered to be receiving SSI benefits in a month under section 1619(b) of the Act. We recognize the need to process your work reports in a timely manner. We believe actions we have taken, outside of these final rules, are addressing this concern. We do not believe these final rules are the appropriate avenue to address this issue.

Comment: One commenter indicated that if you are requesting reinstatement on the record of an insured person under proposed § 404.1592c(c), you should not be required to file a new application to receive those benefits.

Response: Section 223(i)(5) of the Social Security Act provides that we may reinstate your entitlement on the record of an insured person if we determine that you satisfy the requirements for entitlement to such benefits (other than the requirements related to the filing of an application). Therefore, under proposed § 404.1592c(c), redesignated as § 404.1592c(b) in these final rules, and § 404.1592d, you must make a request for reinstatement (as opposed to filing an application) and your request must be in writing and provide us the information we request so that we can determine whether you meet the requirements for entitlement. The purpose of the form we require is to allow us to collect the information we need to determine whether you meet the requirements for reinstatement and to determine your proper benefit amount should we determine you can be reinstated.

Comment: Multiple commenters indicated that we should design a separate form to use to request reinstatement under §§ 404.1592d and 416.999b, rather than using already existing forms we use for other purposes. Commenters suggested we should possibly tailor the form to the reinstatement requirements or make the form shorter and easier to complete.

Response: Sections 223(i)(2)(A) and 1631(p)(2)(A) of the Act provide that we

should determine the form and the information we need in your reinstatement request. These sections also specifically require that your request must include a statement that you are under a disability, the impairment that is the basis for the finding of disability is the same as or related to the impairment that was the basis for the finding of disability that gave rise to your prior disability entitlement, and that your disability renders you unable to perform substantial gainful activity. Therefore, your request for reinstatement under §§ 404.1592d and 416.999b must be made in writing and must provide us the information we need so that we can determine whether you meet the requirements for reinstatement. We have designed separate reinstatement request forms for you to use to request reinstatement. The purpose of the supplemental forms we require is to allow us to collect the additional information we need to determine whether you meet the requirements for reinstatement and to determine your proper benefit amount should we determine you can be reinstated. We are not developing a specialized supplemental form to collect the additional information we need, as the information needed is the same information we can collect using our existing forms.

Comment: One commenter indicated that deciding whether to file for reinstatement versus filing a new initial claim application may be difficult, so you should seek advice. This commenter suggested that we should include language in these final rules explaining the complexity of this decision and the need to consult with our staff and possibly others prior to making this decision.

Response: Our staff is trained to assist you when you decide whether to file a new initial application, or whether to file for expedited reinstatement. There can be advantages to filing a request for expedited reinstatement such as: the payment of provisional benefits, entitlement to Medicare benefits or Medicaid, using the medical improvement review standards for the medical determination, and protecting your filing for an initial claim if your expedited reinstatement request is denied. Also, for Social Security benefit purposes, if your benefits are reinstated on your own earnings record, we will compute your primary insurance amount with the same date of onset we used in your most recent period of disability on your earnings record. Since we will not pay you reinstated benefits for any months of substantial gainful

activity during your initial reinstatement period, this could also be an advantage in extending your entitlement. There could also be some disadvantages to filing a request for reinstatement rather than a new initial application: such as, if we deny your request for reinstatement because we determine you are not disabled under the medical improvement review standard, we could also stop your Medicare benefits; in some circumstances your monthly benefit amount could be less than it would be if you became entitled to disability benefits again by filing a new application; and your trial work period begins after you have completed your 24 month initial reinstatement period rather than being immediately available to you if you became entitled again by filing a new application. It will normally be to your advantage to request expedited reinstatement rather than filing a new initial application; however, this decision will depend on your particular circumstances and you should discuss this thoroughly with our staff at the appropriate time. Since these decisions must be made based upon your own particular circumstances, we are not placing language in these final rules about these discussions beyond what is required to be eligible for, or entitled to, reinstatement.

When you contact us about filing a new initial application for benefits, or about requesting reinstatement, our staff will discuss with you your options and the effect of your decision. You could also choose to obtain information about your options from other knowledgeable sources. We want to make sure you make the decision that is the most advantageous for you. Since the decision on whether to request reinstatement is your decision, you should consider all of your individual circumstances, however, we do not believe we could properly discuss in these final rules everything you should consider. Since we cannot identify in these final rules all of the information you may need to make your decision, we also do not believe we could tell you how you should arrive at your decision. Therefore, while we do encourage you to discuss your situation with our staff and others who would be helpful, we do not believe we can include in these final rules a rule on how you should arrive at your decision.

Comment: One commenter noted that proposed § 416.999d (§ 416.999c in these final rules) discusses overpayment policies for provisional benefits when we determine that you are not eligible to receive reinstated benefits and suggested that clarifying this language

may be helpful, especially when we say that provisional benefits already paid under § 416.999c will not be subject to recovery as an overpayment unless we determine you knew, or should have known, you did not meet the requirements for reinstatement.

Response: We considered this comment and decided not to change these final rules. The specific language regarding “whether you knew, or should have known,” is in § 416.999c(h) and is based upon the standard set forth in section 1631(p)(7)(D) of the Act. In these final rules we used the same phrasing as in the statute for whether you knew, or should have known. Our determination on whether you knew or should have known you did not meet the requirements for reinstatement will be based on the facts of your situation.

Comment: Multiple commenters indicated that under proposed §§ 404.1592f and 416.999d (§§ 404.1592e and 416.999c in these final rules), your provisional benefits should be extended beyond the six month limitation if we cannot make our determination within six months, or we should ensure all reinstatement determinations are made within six months.

Response: Sections 223(i)(7)(C)(ii) and 1631(p)(7)(C)(ii) of the Act require us to stop your provisional benefits with the earlier of the month in which we make our determination on your eligibility or entitlement for reinstated benefits or with the end of the fifth month after your provisional benefits start. Therefore, we can pay you no more than six months of provisional benefits. While we do try to make all determinations within this six month timeframe, since the Act considers the possibility we may not be able to do this and requires we stop payments if we haven’t, we do not have the authority to extend provisional benefits beyond the consecutive six months that begin with the first month your provisional benefits can start under § 404.1592e or § 416.999c of these final rules.

Comment: One commenter indicated that we should clarify the circumstances when benefits would be offered under proposed § 416.999e(f) (§ 416.999d(f) of these final rules) when we say that if we deny your request for reinstatement, the denial protects your filing a new claim.

Response: Section 1631(p)(2)(B) (section 223(i)(2)(B) for title II cases) of the Act provides that a request for reinstatement may lead to constitute an application for benefits if we determine you are not eligible for reinstated benefits. These final rules, therefore, provide that if you request reinstatement under § 416.999b and we

determine that we cannot reinstate your eligibility, we will then treat your request for reinstatement as your intent to file a new initial claim (*i.e.*, a protective filing). The NPRM and these final rules do not place any restrictions on having your reinstatement request treated as a protective filing, other than we must determine you are not eligible for reinstated benefits. If we determine you are not eligible for reinstatement, you can then file a new initial application for benefits and have the date you filed your request for reinstatement considered to be your application filing date. If we determine your benefits cannot be reinstated, that determination is considered an initial determination and you can also request review if you are dissatisfied with it. If you choose, you can file a new initial application for benefits at the same time you request we review our determination that your benefits cannot be reinstated.

Comment: One commenter indicated that since an expedited reinstatement determination that denies eligibility becomes a new application there appears to be little gained by our insisting that the expedited reinstatement determination not be an initial determination for appeal purposes.

Response: We have considered this comment and have not changed these final rules. These final rules provide, under §§ 404.1592f and 416.999d, that determinations we make regarding your entitlement to or eligibility for reinstated benefits are initial determinations for purposes of our administrative review process. The NPRM, and these final rules, provide in §§ 404.903, 404.1592e(f), 416.999c(f), and 416.1403, that determinations we make regarding your provisional benefits are not initial determinations and are not subject to administrative or judicial review. We believe the commenter may have confused provisional benefit determinations with determinations we make regarding your entitlement to or eligibility for reinstatement.

Comment: Multiple commenters indicated that we should provide a means by which you can obtain a new ticket under the Ticket to Work program when your entitlement is reinstated under the expedited reinstatement provision.

Response: If you are reinstated under the expedited reinstatement provision, under §§ 404.1592b through 404.1592f or §§ 416.999 through 416.999d, you may be eligible for a new ticket under § 411.125(c). Since the Ticket to Work program already provides those rules,

we have not included them in these final rules.

Comment: Multiple commenters stated that we should add a section to the expedited reinstatement rules to provide different rules for people using a ticket under the Ticket to Work program.

Response: Sections 223(i) and 1631(p) of the Act do not provide us the authority to provide different rules for you if you are using a ticket as part of the Ticket to Work program under §§ 411.100 through 411.735. The expedited reinstatement provision is a work incentive that you can use if you meet the requirements indicated in § 404.1592b or § 416.999, without consideration of whether you are using a ticket. We cannot add rules in these final rules that provide different rules for you if you are using a ticket.

Comment: One commenter stated that if you have assigned and are using a ticket under the Ticket to Work program, you should be allowed to move into payment status when you are not engaging in substantial gainful activity.

Response: As we noted in the prior response, we do not have the statutory authority to pay you benefits using different rules if you are using a ticket under the Ticket to Work Program. Section 223(i)(6) of the Act provides that after you have been reinstated and you have had 24 payable months, you will be afforded the work incentives that would have been provided you if you had filed a new initial application. Therefore, as we indicate in these final rules, after you have completed your 24 month initial reinstatement period you will then be provided a new trial work period and then a reentitlement period using the rules in §§ 404.1592 and 404.1592a.

Comment: One commenter expressed the view that the expedited reinstatement rules may discourage your employment network, under the Ticket to Work program, from providing additional services. The provisional benefit period could encourage an employment network to stop services during that period. In addition, the commenter noted that if we provide you with a new ticket when benefits are reinstated, we must cancel the old ticket.

Response: Sections 223(i) and 1631(p) of the Act provide the statutory requirements for paying provisional benefits when you request reinstatement. These final rules include the rules we will use to determine when we can pay you provisional benefits. Under § 404.1592e(d) in these final rules, and consistent with the statutory

requirements, we will not pay you a provisional benefit for any month that is after the month you do substantial gainful activity. In addition, under § 416.999c, we will determine your benefits payable for supplemental security income purposes using our normal income rules. Therefore, the disincentive for an employment network to provide services to you during the provisional benefit period is lessened by the fact that if you return to work at a substantial level we will stop paying you provisional benefits. In addition, when you are reinstated, we can provide you a new ticket if you meet the requirements under § 411.125(c). If we provide you with a new ticket, we will terminate your prior ticket under § 411.155(b) and (c)(7). We do not believe that the expedited reinstatement rules provide a disadvantage to your employment network in comparison to the rules for establishing entitlement or eligibility based on the filing of a new application. If your new entitlement or eligibility were based upon your filing a new initial application for benefits, we would terminate your prior ticket under § 411.155(b) and (c)(6). In that case, you would receive a new ticket if you meet the requirements of § 411.125(a) and (b). By providing you a new ticket, you are then able to receive services and your employment network can then receive payments from us based upon the new ticket.

Comment: One commenter suggested that we should discuss how expedited reinstatement, unemployment insurance, and the Workforce Investment Act interrelate. This commenter pointed out that if we determine you cannot be reinstated that there may be other services you can receive.

Response: If we determine that we cannot reinstate you after you have requested expedited reinstatement, under §§ 404.1592f(h) and 416.999d(f), your request for reinstatement serves as your intent to claim benefits. Therefore, you can file a new initial application for benefits. If we determine your benefits cannot be reinstated, that determination is considered an initial determination and you can request review if you are dissatisfied with it. We did not discuss in these final rules other services you may be able to receive if your reinstatement request is denied. Those services can vary depending upon where you live and your particular circumstances and those rules are beyond the scope of these final rules.

Regulatory Procedures

Executive Order 12866

We consulted with the Office of Management and Budget (OMB) and determined that these final rules 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 final rules would not have a significant economic impact on a substantial number of small entities because they would primarily affect only individuals. Thus an initial regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in sections 404.1592c, 404.1592d, 416.999a, and 416.999b of these final rules. The OMB Control Number for this collection is 0960-0690, expiring 08/31/2007.

(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: September 26, 2005.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending part 404, subparts J and P, and part 416, subparts I and N, of title 20 of the Code of Federal Regulations to read as follows:

PART 404—FEDERAL OLD-AGE, SURVIVOR AND DISABILITY INSURANCE (1950—)

Subpart J—[Amended]

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

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 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, 423(i), 425, and 902(a)(5)); 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. Amend § 404.903 to revise paragraphs (u) and (v) and add paragraph (w) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(u) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 404.527 and 422.310 of this chapter);

(v) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title II of the Social Security Act (see part 422, subpart E, of this chapter); and

(w) Determining whether provisional benefits are payable, the amount of the provisional benefits, and when provisional benefits terminate (see § 404.1592e).

Subpart P—[Amended]

■ 3. 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.

■ 4. Add new §§ 404.1592b through 404.1592f to read as follows:

§ 404.1592b What is expedited reinstatement?

The expedited reinstatement provision provides you another option for regaining entitlement to benefits when we previously terminated your entitlement to disability benefits due to your work activity. The expedited reinstatement provision provides you the option of requesting that your prior entitlement to disability benefits be reinstated, rather than filing a new application for a new period of entitlement. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful

activity within 60 months of your prior termination. You must not be able to do substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard that we use in our continuing disability review process. The advantage of using the medical improvement review standard is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the medical improvement review standard process applies. We explain the rules for expedited reinstatement in §§ 404.1592c through 404.1592f.

§ 404.1592c Who is entitled to expedited reinstatement?

(a) You can have your entitlement to benefits reinstated under expedited reinstatement if—

(1) You were previously entitled to a disability benefit on your own record of earnings as indicated in § 404.315, or as a disabled widow or widower as indicated in § 404.335, or as a disabled child as indicated in § 404.350, or to Medicare entitlement based on disability and Medicare qualified government employment as indicated in 42 CFR 406.15;

(2) Your disability entitlement referred to in paragraph (a)(1) of this section was terminated because you did substantial gainful activity;

(3) You file your request for reinstatement timely under § 404.1592d; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition as determined under paragraph (c) of this section;

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous entitlement referred to in paragraph (a)(2) of this section; and

(iii) You are disabled, as determined under the medical improvement review standard in §§ 404.1594(a) through (e).

(b) You are entitled to reinstatement on the record of an insured person who is or has been reinstated if—

(1) You were previously entitled to one of the following benefits on the record of the insured person—

(i) A spouse or divorced spouse benefit under §§ 404.330 and 404.331;

(ii) A child's benefit under § 404.350; or

(iii) A parent's benefit under § 404.370;

(2) You were entitled to benefits on the record when we terminated the insured person's entitlement;

(3) You meet the requirements for entitlement to the benefit described in the applicable paragraph (b)(1)(i) through (b)(1)(iii) of this section; and

(4) You request to be reinstated.

(c) We will determine that you are not able to do substantial gainful activity because of your medical condition, under paragraph (a)(4)(i) of this section, when:

(1) You certify under § 404.1592d(d)(2) that you are unable to do substantial gainful activity because of your medical condition;

(2) You do not do substantial gainful activity in the month you file your request for reinstatement; and

(3) We determine that you are disabled under paragraph (a)(4)(iii) of this section.

§ 404.1592d How do I request reinstatement?

(a) You must make your request for reinstatement in writing.

(b) You must have filed your request on or after January 1, 2001.

(c) You must provide the information we request so that we can determine whether you meet the requirements for reinstatement as indicated in § 404.1592c.

(d) If you request reinstatement under § 404.1592c(a)—

(1) We must receive your request within the consecutive 60-month period that begins with the month in which your entitlement terminated due to doing substantial gainful activity. If we receive your request after the 60-month period we can grant you an extension if we determine you had good cause under the standards explained in § 404.911 for not filing the request timely; and

(2) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit you are requesting to be reinstated, and that you are unable to do substantial gainful activity because of your medical condition.

§ 404.1592e How do we determine provisional benefits?

(a) You may receive up to 6 consecutive months of provisional cash benefits and Medicare during the provisional benefit period, while we determine whether we can reinstate your disability benefit entitlement under § 404.1592c—

(1) We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month you file your

request for reinstatement under § 404.1592c(a).

(2) We will pay you a monthly provisional benefit amount equal to the last monthly benefit payable to you during your prior entitlement, increased by any cost of living increases that would have been applicable to the prior benefit amount under § 404.270. The last monthly benefit payable is the amount of the monthly insurance benefit we determined that was actually paid to you for the month before the month in which your entitlement was terminated, after we applied the reduction, deduction and nonpayment provisions in § 404.401 through § 404.480.

(3) If you are entitled to another monthly benefit payable under the provisions of title II of the Act for the same month you can be paid a provisional benefit, we will pay you an amount equal to the higher of the benefits payable.

(4) If you request reinstatement for more than one benefit entitlement, we will pay you an amount equal to the higher of the provisional benefits payable.

(5) If you are eligible for Supplemental Security Income payments, including provisional payments, we will reduce your provisional benefits under § 404.408b if applicable.

(6) We will not reduce your provisional benefit, or the payable benefit to other individuals entitled on an earnings record, under § 404.403, when your provisional benefit causes the total benefits payable on the earnings record to exceed the family maximum.

(b) You cannot receive provisional cash benefits or Medicare a second time under this section when—

(1) You request reinstatement under § 404.1592c(a);

(2) You previously received provisional cash benefits or Medicare under this section based upon a prior request for reinstatement filed under § 404.1592c(a); and

(3) Your requests under paragraphs (b)(1) and (b)(2) are for the same previous disability entitlement referred to in § 404.1592c(a)(2).

(4) *Examples:*

Example 1—Mr. K files a request for reinstatement in April 2004. His disability benefit had previously terminated in January 2003. Since Mr. K meets other factors for possible reinstatement (*i.e.*, his prior entitlement was terminated within the last 60 months because he was engaging in substantial gainful activity), we start paying him provisional benefits beginning April 2004 while we determine whether he is

disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. In July 2004 we determine that Mr. K cannot be reinstated because he is not disabled under the medical improvement review standard; therefore we stop his provisional benefits. Mr. K does not request review of that determination. In January 2005 Mr. K again requests reinstatement on the entitlement that terminated in January 2003. Since this request meets all the factors for possible reinstatement, and his request is still within 60 months from January 2003, we will make a new determination on whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. Since the January 2005 request and the April 2004 request both request reinstatement on the same entitlement that terminated in January 2003, and since we already paid Mr. K provisional benefits based upon the April 2004 request, we will not pay additional provisional benefits on the January 2005 request for reinstatement.

Example 2—Assume the same facts as shown in Example 1 of this section, with the addition of these facts. We approve Mr. K's January 2005 request for reinstatement and start his reinstated benefits beginning January 2005. Mr. K subsequently returns to work and his benefits are again terminated due to engaging in substantial gainful activity in January 2012. Mr. K must again stop work and requests reinstatement in January 2015. Since Mr. K meets other factors for possible reinstatement (*i.e.*, his prior entitlement was terminated within the last 60 months because he was engaging in substantial gainful activity) we start paying him provisional benefits beginning January 2015 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2012.

(c) We will not pay you a provisional benefit for a month when an applicable nonpayment rule applies. Examples of when we will not pay a benefit include, but are not limited to—

(1) If you are a prisoner under § 404.468;

(2) If you have been removed/deported under § 404.464; or

(3) If you are an alien outside the United States under § 404.460.

(d) We will not pay you a provisional benefit for any month that is after the earliest of the following months—

(1) The month we send you a notice of our determination on your request for reinstatement;

(2) The month you do substantial gainful activity;

(3) The month before the month you attain full retirement age; or

(4) The fifth month following the month you requested expedited reinstatement.

(e) You are not entitled to provisional benefits if—

(1) Prior to starting your provisional benefits, we determine that you do not meet the requirements for reinstatement under §§ 404.1592c(a); or

(2) We determine that your statements on your request for reinstatement, made under § 404.1592d(d)(2), are false.

(f) Determinations we make regarding your provisional benefits under paragraphs (a) through (e) of this section are final and are not subject to administrative and judicial review under subpart J of part 404.

(g) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission. We can recover Medicare premiums you owe from your provisional benefits.

(h) If we determine you are not entitled to reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (d) of this section will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 404.1592c. If we inadvertently pay you provisional benefits when you are not entitled to them because we have already made a determination described in paragraph (e) of this section, they will be subject to recover as an overpayment under subpart F of part 404.

§ 404.1592f How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 404.1592c(a), we will then consider in which month to reinstate your entitlement. We will reinstate your entitlement with the earliest month, in the 12-month period that ends with the month before you filed your request for reinstatement, that you would have met all of the requirements under § 404.1592c(a) if you had filed your request for reinstatement in that month. Otherwise, you will be entitled to reinstated benefits beginning with the month in which you filed your request for such benefits. We cannot reinstate your entitlement for any month prior to January 2001.

(b) When your entitlement is reinstated, you are also entitled to Medicare benefits under the provisions of 42 CFR part 406.

(c) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs

of §§ 404.201 through 404.480 with certain exceptions—

(1) We will reduce your reinstated benefit due in a month by the amount of the provisional benefit we already paid you for that month. If your provisional benefit paid for a month exceeds the reinstated benefit, we will treat the difference as an overpayment under §§ 404.501 through 404.527.

(2) If you are reinstated on your own earnings record, we will compute your primary insurance amount with the same date of onset we used in your most recent period of disability on your earnings record.

(d) We will not pay you reinstated benefits for any months of substantial gainful activity during your initial reinstatement period. During the initial reinstatement period, the trial work period provisions of § 404.1592 and the reentitlement period provisions of § 404.1592a do not apply. The initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you do not do substantial gainful activity in that month and when the non-payment provisions in subpart E of part 404 also do not apply. If the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider that month a payable month. When we determine if you have done substantial gainful activity in a month during the initial reinstatement period, we will consider only your work in, or earnings for, that month. We will not apply the unsuccessful work attempt provisions of §§ 404.1574(c) and 404.1575(d) or the averaging of earnings provisions in § 404.1574a.

(e) After you complete the 24-month initial reinstatement period as indicated in paragraph (d) of this section, your subsequent work will be evaluated under the trial work provisions in § 404.1592 and then the reentitlement period in § 404.1592a.

(f) Your entitlement to reinstated benefits ends with the month before the earliest of the following months—

(1) The month an applicable terminating event in § 404.301 through 404.389 occurs;

(2) The month in which you reach retirement age;

(3) The third month following the month in which your disability ceases; or

(4) The month in which you die.

(g) Determinations we make under §§ 404.1592f are initial determinations under § 404.902 and subject to review under subpart J of part 404.

(h) If we determine you are not entitled to reinstated benefits we will consider your request filed under § 404.1592c(a) your intent to claim benefits under § 404.630.

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

Subpart I—[Amended]

■ 5. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b; 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, 423 note, and 1382h note).

■ 6. Add new §§ 416.999 through 416.999d to read as follows:

§ 416.999 What is expedited reinstatement?

The expedited reinstatement provision provides you another option for regaining eligibility for benefits when we previously terminated your eligibility for disability benefits due to your work activity. The expedited reinstatement provision provides you the option of requesting that your prior eligibility for disability benefits be reinstated, rather than filing a new application for a new period of eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must not be able to do substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard that we use in our continuing disability review process. The advantage of using the medical improvement review standard is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the medical improvement review standard process applies. We explain the rules for expedited reinstatement in §§ 416.999a through 416.999d.

§ 416.999a Who is eligible for expedited reinstatement?

(a) You can have your eligibility to benefits reinstated under expedited reinstatement if—

(1) You were previously eligible for a benefit based on disability or blindness as explained in § 416.202;

(2) Your disability or blindness eligibility referred to in paragraph (a)(1) of this section was terminated because of earned income or a combination of earned and unearned income;

(3) You file your request for reinstatement timely under § 416.999b; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition, as determined under paragraph (c) of this section,

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous eligibility referred to in paragraph (a)(2) of this section,

(iii) You are disabled or blind, as determined under the medical improvement review standard in §§ 416.994 or 416.994a, and

(iv) You meet the non-medical requirements for eligibility as explained in § 416.202.

(b) You are eligible for reinstatement if you are the spouse of an individual who can be reinstated under § 416.999a if—

(1) You were previously an eligible spouse of the individual;

(2) You meet the requirements for eligibility as explained in § 416.202 except the requirement that you must file an application; and

(3) You request reinstatement.

(c) We will determine that you are not able to do substantial gainful activity because of your medical condition, under paragraph (a)(4)(i) of this section, when:

(1) You certify under § 416.999b(e) that you are unable to do substantial gainful activity because of your medical condition;

(2) You do not do substantial gainful activity in the month you file your request for reinstatement; and

(3) We determine that you are disabled under paragraph (a)(4)(iii) of this section.

§ 416.999b How do I request reinstatement?

(a) You must make your request for reinstatement in writing.

(b) You must have filed your request on or after January 1, 2001.

(c) You must provide the information we request so that we can determine

whether you meet the eligibility requirements listed in § 416.999a.

(d) We must receive your request within the consecutive 60-month period that begins with the month in which your eligibility terminated due to earned income, or a combination of earned and unearned income. If we receive your request after the 60-month period, we can grant you an extension if we determine you had good cause, under the standards explained in § 416.1411, for not filing the request timely.

(e) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the eligibility you are requesting to be reinstated, that you are unable to do substantial gainful activity because of your medical condition, and that you meet the non-medical requirements for eligibility for benefits.

§ 416.999c How do we determine provisional benefits?

(a) You may receive up to six consecutive months of provisional cash benefits and Medicaid during the provisional benefit period, while we determine whether we can reinstate your disability benefit eligibility under § 416.999a—

(1) We will pay you provisional benefits beginning with the month after you file your request for reinstatement under § 416.999a(a).

(2) If you are an eligible spouse, you can receive provisional benefits with the month your spouse's provisional benefits begin.

(3) If you do not have an eligible spouse, we will pay you a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual under §§ 416.401 through 416.435 with the same kind and amount of income as you have.

(4) If you have an eligible spouse, we will pay you and your spouse a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual and eligible spouse under § 416.401 through 416.435 with the same kind and amount of income as you and your spouse have.

(5) Your provisional benefits will not include state supplementary payments payable under §§ 416.2001 through 416.2176.

(b) You cannot receive provisional cash benefits or Medicaid a second time under this section when—

(1) You request reinstatement under § 416.999a;

(2) You previously received provisional cash benefits or Medicaid under this section based upon a prior

request for reinstatement filed under § 416.999a(a); and

(3) Your requests under paragraphs (b)(1) and (b)(2) are for the same previous disability eligibility referred to in § 416.999a(a)(2) of this section.

(4) Examples:

Example 1—Mr. K files a request for reinstatement in April 2004. His disability benefit had previously terminated in January 2003. Since Mr. K meets the other factors for possible reinstatement (i.e., his prior eligibility was terminated within the last 60 months because of his work activity) we start paying him provisional benefits beginning May 2004 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. In July 2004 we determine that Mr. K cannot be reinstated because he is not disabled under the medical improvement review standard; therefore we stop his provisional benefits. Mr. K does not request review of the determination. In January 2005 Mr. K again requests reinstatement on the eligibility that terminated in January 2003. Since this request again meets all the other factors for possible reinstatement mentioned above, and his request is still within 60 months from January 2003, we will make a new determination on whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. Since the January 2005 request and the April 2004 request both request reinstatement on the same benefit that terminated in January 2003, and since we already paid Mr. K provisional benefits based upon the April 2004 request, we will not pay additional provisional benefits on the January 2005 request for reinstatement.

Example 2—Assume the same facts as shown in Example 1 of this section, with the addition of these facts. We approve Mr. K's January 2005 request for reinstatement and start his reinstated benefits beginning February 2005. Mr. K subsequently returns to work and his benefits are again terminated due to his work activity in January 2008. Mr. K again stops work and requests reinstatement in January 2010. Since Mr. K meets the other factors for possible reinstatement (i.e., his prior eligibility was terminated within the last 60 months because of his work activity) we start paying him provisional benefits beginning February 2010 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2008.

(c) We will not pay you a provisional benefit for a month where you are not eligible for a payment under §§ 416.1322, 416.1323, 416.1325, 416.1327, 416.1329, 416.1330, 416.1334, and 416.1339.

(d) We will not pay you a provisional benefit for any month that is after the earliest of either: the month we send

you notice of our determination on your request for reinstatement; or, the sixth month following the month you requested expedited reinstatement.

(e) You are not eligible for provisional benefits if—

(1) Prior to starting your provisional benefits we determine that you do not meet the requirements for reinstatement under §§ 416.999a(a); or

(2) We determine that your statements on your request for reinstatement, made under § 416.999b(d)(2), are false.

(f) Determinations we make regarding your provisional benefits under paragraphs (a) through (e) of this section are final and are not subject to administrative and judicial review under subpart N of part 416.

(g) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission.

(h) If we determine you are not eligible to receive reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (d) of this section will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 416.999a. If we inadvertently pay you provisional benefits when you are not entitled to them because we have already made a determination described in paragraph (e) of this section, they will be subject to recover as an overpayment under subpart E of part 416.

§ 416.999d How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 416.999a(a), we will reinstate your benefits with the month after the month you filed your request for reinstatement. We cannot reinstate your eligibility for any month prior to February 2001.

(b) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs in §§ 416.401 through 416.435. We will reduce your reinstated benefit due in a month by a provisional benefit we already paid you for that month. If your provisional benefit paid for a month equals or exceeds the reinstated benefit due, we will treat the difference as an overpayment under § 416.536.

(c) Once you have been reinstated under § 416.999a you cannot be reinstated again until you have completed a 24-month initial reinstatement period. Your initial reinstatement period begins with the

month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you are due a cash benefit of any amount for the month based upon our normal computation and payment rules in § 416.401 through § 416.435 or if you are considered to be receiving SSI benefits in a month under section 1619(b) of the Social Security Act. If your entire benefit payment due you for a month is adjusted for recovery of an overpayment under § 416.570 and § 416.571 or if the amount of the provisional benefit already paid you for a month exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider the month a payable month.

(d) Your eligibility for reinstated benefits ends with the month preceding the earliest of the following months—

(1) The month an applicable terminating event in §§ 416.1331 through 416.1339 occurs;

(2) The third month following the month in which your disability ceases; or

(3) The month in which you die.

(e) Determinations we make under this section are initial determinations under § 416.1402 and are subject to review under subpart N of part 416.

(f) If we determine you are not eligible for reinstated benefits, we will consider your request filed under § 416.999a(a) your intent to claim benefits under § 416.340.

Subpart N—[Amended]

■ 7. 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).

■ 8. Amend § 416.1403 by revising paragraphs (a) (19) and (20), adding paragraph (a) (21), and revising paragraphs (b)(1) and (2) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(19) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 416.590 and 422.310 of this chapter);

(20) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title

XVI of the Social Security Act (see part 422, subpart E, of this chapter); and

(21) Determining when provisional benefits are payable, the amount of the provisional benefit payable, and when provisional benefits terminate (see § 416.999c).

(b) * * *

(1) If you receive an emergency advance payment; presumptive disability or presumptive blindness payment, or provisional payment, we will provide a notice explaining the nature and conditions of the payments.

(2) If you receive presumptive disability or presumptive blindness payments, or provisional payments, we shall send you a notice when those payments are exhausted.

* * * * *

[FR Doc. 05-19529 Filed 9-29-05; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Powered Industrial Trucks

CFR Correction

In Title 29 of the Code of Federal Regulations, Parts 1900 to § 1910.999, revised as of July 1, 2005, in § 1910.178, on page 545, remove paragraphs (m)(12)(i), (ii), and (iii).

[FR Doc. 05-55511 Filed 9-29-05; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-05-107]

RIN 1625-AA08

Special Local Regulations for Marine Event; John H. Kerr Reservoir, Clarksville, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for “Clarksville Hydroplane Challenge”, a power boat race to be held on the waters of the John H. Kerr Reservoir adjacent to Clarksville, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the

event. This action is intended to restrict vessel traffic in portions of the John H. Kerr Reservoir adjacent to Clarksville, Virginia during the power boat race.

DATES: This rule is effective from 7:30 a.m. to 6:30 p.m. on October 1 and 2, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-05-107 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 1, 2005, we published a notice of proposed rulemaking (NPRM) entitled “Special Local Regulations for Marine Events; John H. Kerr Reservoir, Clarksville, VA” in the **Federal Register** (70 FR 52052). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

Background and Purpose

On October 1 and 2, 2005, the Virginia Boat Racing Association will sponsor the “Clarksville Hydroplane Challenge”, on the waters of the John H. Kerr Reservoir. The event will consist of approximately 60 inboard hydroplanes racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.