

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Bob Baker Memorial Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **AAL AK E5 Kiana, AK [New]**

Bob Baker Memorial Airport, Kiana, AK  
(Lat. 66°58’33” N., long. 160°26’12” W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Bob Baker Memorial Airport, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of 66°56’28” N 161°02’38” W and a 30-mile radius of 67°00’41” N 159°46’18” W excluding that airspace within Ambler, Selawik and Nome Class E airspace.

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Issued in Anchorage, AK, on June 16, 2005.

**Michael A. Tarr,**

*Acting Director, Alaska Flight Services Area Office.*

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## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Parts 404 and 416**

**[Regulation Nos. 4 and 16]**

**RIN 0960—AF86**

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

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** We are publishing final rules that amend the rules for the continuation of disability benefit payments under titles II and XVI of the Social Security Act (the Act) to certain individuals who recover medically while participating in an appropriate vocational rehabilitation (VR) program with a State vocational rehabilitation agency. We are amending these rules to conform with statutory amendments that extend eligibility for these continued benefit payments to certain individuals who recover medically while participating in an appropriate program of services. These include

individuals participating in the Ticket to Work and Self-Sufficiency Program or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security. We are also extending eligibility for these continued benefit payments to students age 18 through 21 who recover medically, or whose disability is determined to have ended as a result of an age-18 redetermination, while participating in an individualized education program developed under the Individuals with Disabilities Education Act with an appropriate provider of services. Providers of services we may approve include a public or private organization with expertise in the delivery or coordination of vocational rehabilitation services, employment services, or other support services; or a public, private or parochial school that provides or coordinates a program of vocational rehabilitation services, employment services, or other support services carried out under an individualized program or plan.

**DATES:** *Effective Date:* These rules are effective July 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary Hoover, Policy Analyst, Office of Program Development and Research, Social Security Administration, 128 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov), or telephone (410) 965–5651 or TTY 1–800–325–0778 for information about these regulations. 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>.

#### **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 the Social Security Administration (*i.e.*, Social Security Online): <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Statutory Background**

*The Social Security Disability Amendments of 1980*

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

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

- The individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and

- The Commissioner of Social Security determines that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual may be permanently removed from the disability benefit rolls.

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

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

- The individual's disability did not end before December 1980, the effective date of the provisions of the Act added by section 301 of the 1980 Amendments;

- The individual is participating in an appropriate program of vocational rehabilitation, that is, one that has been approved under a State plan approved under title I of the Rehabilitation Act of 1973 and that meets the requirements outlined in 34 CFR part 361 for a rehabilitation program;

- The individual began the program before his or her disability ended; and

- We have determined that the individual's completion of the program, or his or her continuation in the program for a specified period of time, will significantly increase the likelihood that the individual will not have to return to the disability benefit rolls.

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

*The Omnibus Budget Reconciliation Act of 1987*

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

*The Omnibus Budget Reconciliation Act of 1990*

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

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

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

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

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

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

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

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

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

Section 101(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 amended sections 225(b)(1) and 1631(a)(6)(A) of the Act by deleting "a program of vocational rehabilitation services" and inserting in its place "a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1148 or another program of vocational rehabilitation services, employment services, or other support services." The amended provisions of these sections now expressly authorize the continuation of benefit payments under section 225(b) or 1631(a)(6) of the Act to an individual whose disability or

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

*The Individuals With Disabilities Education Act (IDEA)*

Part B of IDEA, as amended (20 U.S.C. 1400 *et seq.*), establishes a program for assistance to States to provide special education and related services to children with disabilities. Part B of IDEA is administered by the U.S. Department of Education.

The concept of a "disability" under IDEA is distinct from the definition of disability under title II or title XVI of the Social Security Act. A person may have a disability for the purposes of part B of IDEA, but not meet or no longer meet the definition of disability under the title II or title XVI programs. In this preamble, when we use the term "individual with a disability," "student with a disability," or a similar term with reference to IDEA, we intend the term to have the same meaning as the term "child with a disability" as defined in section 602(3) of IDEA, as amended (20 U.S.C. 1401(3)).

In order for a State to receive assistance under part B of IDEA, an individualized education program (IEP) must be developed, reviewed and revised for each child with a disability. The IEP must be developed, reviewed and, if appropriate, revised by a team including, among others, the student, if appropriate, and his or her parents, a special education teacher, the student's regular education teacher, if the child is or may be participating in the regular education environment, and other individuals who have knowledge or special expertise concerning the child. For each student with a disability beginning at age 16 (or younger if determined appropriate by the IEP team), the IEP must include a statement of needed transition services for the student that promotes movement from school to post-school activities. Based on the individual student's needs, transition services might include

postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

In the NPRM, we cited language from Public Law 105-17, the IDEA Amendments of 1997, enacted on June 4, 1997. Congress made changes to IDEA in Public Law 108-446 enacted on December 3, 2004. Effective July 1, 2005, the IDEA's provision regarding transition services in an IEP will provide that "beginning not later than the first IEP to be in effect when the child is 16, and updated annually" the child's IEP must include "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training education, employment, and where appropriate, independent living skills; \* \* \* the transition services (including courses of study) needed to assist the child in reaching those goals; and \* \* \* beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

**Other Background**

*The National Longitudinal Transition Study*

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

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

In addition, the NLTS documented the importance of vocational education

and work experience programs in school:

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

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

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

#### *The New Freedom Initiative*

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

#### *Changes to the Regulations*

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

On August 1, 2003, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (68 FR 45180) and provided a 60-day period for interested parties to comment. We received comments from 201 commenters. We summarize the significant comments we received on the proposed rules and provide our responses to those comments later in this preamble under "Public Comments on the Notice of Proposed Rulemaking." As we explain below, in these final regulations, we are making certain changes from the proposed rules in response to public comments.

Subsequent to the publication of the NPRM, one of the sections that we proposed to amend (and that we are now amending in these final regulations) was redesignated as a result of a separate publication of a final rule affecting the regulations under the SSI program. Specifically, on September 11, 2003, we published a final rule in the **Federal Register** (68 FR 53506), relating to access to information held by financial institutions, that redesignated § 416.1321, "*Suspensions; general*," as § 416.1320, and added a new § 416.1321, "*Suspension for not giving us permission to contact financial institutions*," effective October 14, 2003. As a result of this change, the section identified in the NPRM as § 416.1321 is now § 416.1320. Reflecting this change, the final regulations that we are publishing today amend § 416.1320. Therefore, in explaining the changes to this section in this preamble, we identify the section affected as § 416.1320, rather than § 416.1321 as provided in the NPRM.

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

We are revising §§ 416.1320(d), 416.1331(a) and (b), 416.1338(a) and (b), and 416.1402(j) to reflect the OBRA 1987 amendment that extended the scope of section 1631(a)(6) of the Act to cover individuals receiving SSI benefits based on blindness. We are revising these sections to indicate that an individual whose eligibility for SSI benefits is based on blindness and whose blindness ends due to medical recovery while he or she is participating

in a program of vocational rehabilitation services, employment services, or other support services may be eligible for continued benefits under section 1631(a)(6) of the Act. We also are reflecting this expanded scope of the statute in new § 416.1338(e), that we discuss later in this preamble.

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

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

#### *Students Participating in an Individualized Education Program or Similar Individualized Program or Plan*

The NLTS demonstrated that there was a consistently positive relationship between staying in school and employment success, and it suggested that any efforts that encourage students with disabilities to stay in school and complete their educational and vocational training are important to improving post-school outcomes for students with disabilities. The NLTS also documented the importance of vocational education and work experience programs in school.

We are, therefore, amending our rules to encourage young people with disabilities to stay in school and complete their educational and vocational training, and to encourage the families of students with disabilities to support them in preparing for employment and self-sufficiency. This is consistent with the goals of the President's New Freedom Initiative to expand access to quality education for youth with disabilities, ensure that they receive support to transition from school to employment, and improve the high school graduation rates of students with disabilities. Specifically, we are providing that, if a student age 18 through 21 is receiving services under an IEP or similar individualized program or plan, and if the student's disability ceases as a result of a continuing disability review or an age-18 disability redetermination, we will consider that the student's completion of or continuation in the IEP will increase the likelihood that he or she will not have to return to the disability or blindness benefit rolls.

We are providing benefit continuation for students whose disability is determined to have ended as a result of an age-18 redetermination and who are receiving services under IEPs in order to encourage young people with disabilities to stay in school and complete their educational and vocational training, and to encourage their families to support them in preparing for employment and self-sufficiency. We are providing benefit continuation on this basis for students with disabilities through age 21, since each State can receive a grant of assistance under IDEA for serving individuals with disabilities through age 21.

We are revising § 416.1338(a) to indicate that individuals who receive SSI benefits based on disability and whose disability is determined to have ended under the rules in § 416.987(b) and (e)(1) as a result of an age-18 redetermination may have their benefit payments continued under section 1631(a)(6) of the Act if the individual meets all other requirements for continued benefits. Young people whose disability has ended as a result of a redetermination of their eligibility at age 18 may have no improvement in their medical condition; they are found not disabled because they do not meet the initial disability standard that we apply to adult applicants. Therefore, we are adding rules to provide that we will consider completion of or continuation by a student age 18 through 21 in such a program to be analogous to the individualized determination that completion of or continuation in other approved programs of vocational rehabilitation services will improve an individual's level of education or work experience so that he or she would be more likely to be able to do other work that exists in the national economy, despite a possible future reduction in his or her residual functional capacity. On this basis, under the rules we are adding as §§ 404.328(b) and 416.1338(e)(2), we will determine that participation in such a program will increase the likelihood that an individual age 18 through 21 who is engaged in such a program at the time his or her disability ceases will not have to return to the disability rolls.

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

We are revising and updating our regulations regarding the type of program in that an individual must be participating in order to qualify for

continued benefits. The regulations that we are revising by these final rules were based on the original provisions of sections 225(b) and 1631(a)(6) of the Act, and indicated that an individual whose impairment is no longer disabling may be considered for eligibility for continued benefits if he or she is participating in a vocational rehabilitation program provided by a State vocational rehabilitation agency. The amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act, made by OBRA 1990, extended consideration for continued benefits under sections 225(b) and 1631(a)(6) of the Act to individuals in approved non-State vocational rehabilitation programs.

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

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

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

We are revising §§ 404.316(c)(1), 404.337(c)(1), 404.352(d)(1), 404.902(s), 404.1586(g)(1), 404.1596(c)(4), 404.1597(a), 416.1320(d)(1), 416.1331(a) and (b), 416.1338(a), and 416.1402(j) to take account of the amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act. In the revisions to these sections of the regulations, we are using the term "an appropriate program of vocational rehabilitation services, employment services, or other support services" to refer to the program in which an individual must be participating in order to be considered for eligibility for continued benefits

under sections 225(b) and 1631(a)(6) of the Act, as amended.

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

- A program that is carried out under an individual work plan with an employment network under the Ticket to Work program;
  - A program that is carried out under an individualized plan for employment with a State vocational rehabilitation agency operating under a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720-751);
  - A program that is carried out under an individualized plan for employment with an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741);
  - A program of vocational rehabilitation services, employment services, or other support services that is carried out under a similar, individualized written employment plan with an agency of the Federal government (e.g., the Department of Veterans Affairs), a one-stop delivery system or specialized one-stop center described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)), or another provider of services approved by us;
  - A program of vocational rehabilitation services, employment services, or other support services that is carried out under a similar, individualized written employment plan and provided by or coordinated by a public, private, or parochial school; or
  - For a student age 18 through 21, an individualized education program (IEP) developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of individuals with disabilities under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. 1400 *et seq.*).
- We also are including an appropriate cross-reference to § 404.327(a) or § 416.1338(c) in the sections of the regulations that state the basic requirement that the individual must be participating in an appropriate program.
- In the NPRM, we included the provisions relating to a program of

services from an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities in proposed §§ 404.327(a)(3) and 416.1338(c)(3). In these final rules, we deleted these proposed sections and incorporated the provisions in §§ 404.327(a)(2) and 416.1338(c)(2). We clarify in these rules that a program of services from an organization administering such a project must be carried out under an individualized plan for employment, which is the same requirement that applies to a program of services from a State vocational rehabilitation agency. Because of this change, we renumbered the provisions that were set out in the NPRM as proposed §§ 404.327(a)(4) and (5) and 416.1338(c)(4) and (5). In the final rules, these provisions are now §§ 404.327(a)(3) and (4) and 416.1338(c)(3) and (4), respectively.

The proposed rules also provided that a program of vocational rehabilitation services, employment services, or other support services that is carried out under an individualized written employment plan similar to an individualized plan for employment would qualify as an appropriate program, if it is carried out with a provider of services approved by us. Based on public comments we received on the NPRM, we are making changes in the provisions in §§ 404.327(a)(3) and 416.1338(c)(3) of the final rules. The final rules provide that a program of such services that is carried out under an individualized written employment plan similar to an individualized plan for employment will qualify as an appropriate program if it is carried out with an agency of the Federal government (e.g., the Department of Veterans Affairs), a one-stop delivery system or specialized one-stop center described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)), or another provider of services approved by us. We also include in §§ 404.327(a)(3) and 416.1338(c)(3) of the final rules examples of service providers that we may approve under these sections. We explain that providers we may approve include, but are not limited to—

- A public or private organization with expertise in the delivery or coordination of vocational rehabilitation services, employment services, or other support services ; or
- A public, private or parochial school that provides or coordinates a program of vocational rehabilitation services, employment services, or other support services carried out under an individualized program or plan.

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

We are amending our regulations to add new §§ 404.327(b) and 416.1338(d) to explain when an individual will be considered to be “participating” in the program. Sections 225(b) and 1631(a)(6) of the Act and the regulations that we are revising by these final rules did not define the term “participating.”

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

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

In the new §§ 404.327(b) and 416.1338(d), we explain the criteria we will now use to determine whether an individual is “participating” in the program for purposes of continued benefit payments. We explain that if an individual is in an appropriate program (as described in §§ 404.327(a) and 416.1338(c)), we will consider the individual to be participating in the program if the individual is taking part in the activities and services outlined in his or her plan. If the individual is age 18 through 21 and receiving services under an IEP developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of individuals with disabilities under the Individuals with Disabilities Education Act, we will consider the individual to be

participating in the program if he or she is taking part in the activities and services outlined in the IEP.

In response to public comments, we have provided in §§ 404.327(b)(3) and 416.1338(d)(3) that an individual will be considered to be participating in his or her program during interruptions in his or her program, provided that such interruptions are temporary. We explain that, for an interruption to be considered temporary, the individual must resume taking part in the activities and services outlined in his or her individual work plan, individualized plan for employment, similar individualized written employment plan, or individualized education program, as the case may be, no more than three months after the month the interruption occurred.

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

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

- Work experience so that the individual would more likely be able to do past relevant work despite a possible future reduction in his or her residual

functional capacity (*i.e.*, the work must last long enough for the individual to learn to do it, be substantial gainful activity, and have physical and mental requirements that the individual could meet even if his or her residual functional capacity were significantly reduced); or

- An improvement in any of the vocational factors of education or skilled or semi-skilled work experience so that he or she would more likely be able to adjust to other work that exists in the national economy, despite a possible future reduction in his or her residual functional capacity.

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

Additionally, we are providing a rule in §§ 404.328 and 416.1338(e) to address that if an individual is receiving post IEP transition services, we will determine that the transition services will increase the likelihood that he or she will not have to return to the disability or blindness rolls if those services meet the requirements in §§ 404.328(a) and 416.1338(e)(1).

As a result of our revisions regarding how we will make a likelihood determination, we have eliminated the examples previously provided in §§ 404.316(c)(1)(iv) and 416.1338(a)(4) regarding making a "likelihood" decision because these examples do not directly illustrate the revised rules. Additionally, in our revisions to §§ 404.316(c), 404.337(c), 404.352(d), 404.902(s), 404.1586(g), 404.1596(c), 404.1597(a), 416.1320(d), 416.1331(b), 416.1338(a), and 416.1402(j), we have removed the modifier "significantly" from the phrase "significantly increase the likelihood" in these provisions to make the regulations conform more closely to the language of sections 225(b)(2) and 1631(a)(6)(B) of the Act.

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

We are revising §§ 404.316(c)(1), 404.337(c)(1), 404.352(d)(1), 404.1586(g)(1), 404.1596(c)(4), 416.1320(d) and 416.1338(a) to indicate that an individual's benefits may be

continued after his or her impairment is no longer disabling (or, for SSI blindness benefits, after his or her blindness ends due to medical recovery) if:

- The individual is participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in new § 404.327(a) and (b) or in new § 416.1338(c) and (d);

- The individual began participating in the program before the date his or her disability or blindness ended; and

- We have determined under new § 404.328 or new § 416.1338(e) that the individual's completion of the program, or continuation in the program for a specified period of time, will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

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

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

- The month in which the individual completes the program;

- The month in which the individual stops participating in the program for any reason; or

- The month in which we determine under § 404.328 or § 416.1338(e) that continued participation will no longer increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

We are revising the *Exception* in §§ 404.316(c)(2), 404.337(c)(2), 404.352(d)(2), and 404.1586(g)(2) by inserting the phrase "provided that you meet all other requirements for entitlement to and payment of benefits through such month" following the word "ends."

We are adding new §§ 404.327, 404.328 and 416.1338(c), (d) and (e) to our regulations. In the new §§ 404.327(a) and 416.1338(c), we explain what we mean by "an appropriate program of vocational rehabilitation services, employment services, or other support services." In new §§ 404.327(b) and 416.1338(d), we explain when we will consider an individual to be "participating" in the program.

We are adding new §§ 404.328 and 416.1338(e) to explain when we will find that an individual's completion of

or continuation in an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

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

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

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

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

“disabled” and inserting the term “or blindness” following the term “disability.”

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

We are revising § 416.1402(j) by removing “an appropriate vocational rehabilitation program” and inserting in its place “an appropriate program of vocational rehabilitation services, employment services, or other support services,” and by adding references to “blindness” and “blind.”

### Other Changes

We are also making technical changes to cross-references in § 416.987(b) to reflect our current rules. The first and third sentences of § 416.987(b) refer to specific paragraphs in § 416.920, the regulation that provides our rules for the sequential evaluation process we use for making initial determinations in adult claims. In 2003, we added a new paragraph (d) to § 416.920 and redesignated the remaining paragraphs of the section. Therefore, we must change our references in § 416.987(b) from § 416.920(f) to § 416.920(g).

### Public Comments on the Notice of Proposed Rulemaking

When we published the NPRM in the **Federal Register** on August 1, 2003 (68 FR 45180), we provided interested parties 60 days to submit comments. We received comments from 201 commenters, including national, State and community-based agencies and private organizations serving people with disabilities, parents of beneficiaries, and other individuals. We carefully considered the comments we received on the proposed rules in publishing these final regulations. The comments we received and our responses to the comments are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe that we have expressed the views accurately and have responded to all of the significant issues raised.

In addition, several of the comments were about subjects that were outside the scope of this rulemaking. Except as noted, we have not summarized and responded to these comments below.

### Comments and Responses

In general, most of the commenters supported our proposal to amend the rules to extend benefits to young people age 18 through 21 with disabilities who

are participating in IEPs when their disabilities medically improve, or when they are determined not to meet the requirements for disability as adults, noting that society would profit from this investment in young people. Many commenters also supported our proposal to extend eligibility for continuation of disability benefits to individuals participating in other programs of vocational rehabilitation services, employment services, or other support services. Additionally, many commenters supported our proposal to remove the modifier “significantly” from the phrase “significantly increase the likelihood” to make the regulations conform more closely to the language in the Act.

*Comment:* Most of the commenters supported our proposal to amend the rules to extend benefits to young people age 18 through 21 with disabilities who are receiving services under an IEP developed under the IDEA. However, many of the commenters recommended extending this rule to all young people age 18 through 21 with disabilities who are attending public, private, or parochial schools who may not be receiving services under IDEA, noting that the new regulation should protect any young person who is losing his or her SSI disability benefit at age 18 and is enrolled in a school or an appropriate employment or vocational program.

*Response:* While many young people with disabilities are placed in private schools by public agencies and may be receiving services under an IEP under IDEA when their disability ends as a result of a continuing disability review or an age-18 redetermination, other young people with disabilities attending public, private or parochial schools may not be participating in an IEP when their disability ends. Our proposed rules and these final rules do not preclude these individuals from being eligible under the general rules for continuation of disability benefits to individuals participating in other programs that qualify as an appropriate program of vocational rehabilitation services, employment services, or other support services and that we determine will increase the likelihood that the individual will not have to return to the disability benefit rolls. The final rules in §§ 404.327(a)(3) and 416.1338(c)(3) define an appropriate program to include, among others, a program of vocational rehabilitation services, employment services, or other support services that is carried out under an individualized written employment plan similar to an individualized plan for employment—which is the plan used by State vocational rehabilitation

agencies—with a provider of services approved by us. Under these rules, we may approve as a provider of services a public, private or parochial school having such a program. To make this clear, we are including provisions in final §§ 404.327(a)(3) and 416.1338(c)(3) to explain that a provider of services that we may approve under these sections may include, among others, a public, private or parochial school that provides or coordinates vocational rehabilitation services, employment services, or other support services.

*Comment:* Many commenters recommended applying the new regulations retroactively to young adults who have already lost their SSI and Medicaid benefits as a result of age-18 redeterminations, and who have been participating in vocational rehabilitation programs. They noted that SSA has been legally obligated to apply the provision for continuation of benefit payments in these cases since 1996, when Congress amended the law to require age-18 redeterminations.

Many commenters also recommended that we apply the new rules for persons in an IEP retroactively to young adults who have already lost their SSI and Medicaid benefits, have an IEP, and are not yet 22 years old.

*Response:* We have been applying the benefit continuation provision to recipients of SSI benefits whose disability was determined to have ended in an age-18 redetermination, but who were participating in a vocational rehabilitation program, under our operating guides since 1997, shortly after the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) required these redeterminations. From that time, we have had operating instructions in place that have interpreted section 1631(a)(6) of the Act to apply to SSI recipients participating in appropriate vocational rehabilitation programs whose disability ends as a result of an age-18 redetermination. These final rules incorporate into our regulations this interpretation of the Act. The final rules do not represent a change from this interpretation of the Act.

We are not adopting the commenters’ second recommendation. These final regulations establish new rules for individuals age 18 through 21 who are participating in an IEP when their disabilities end as a result of a continuing disability review or an age-18 redetermination. As is our usual practice when we promulgate new regulations, we apply the regulations to cases that are pending in our administrative review process,

including cases that are on remand from a Federal court. We do not reopen previous determinations or decisions that have become final, and that were correct under the policy then in use, to apply a new policy retroactively. Consistent with our usual practice when we amend our regulations, we will apply the new rules in determinations or decisions about continuation of benefit payments that we make on or after the effective date of these final regulations.

*Comment:* Many commenters recommended revising our proposed rules to extend benefits to individuals who complete an IEP but then continue on to another type of program of vocational rehabilitation services, employment services, or other support services. They indicated that in some instances such individuals are eligible for services under an IEP and subsequently under a vocational rehabilitation plan. They stated that there is no neat line that can be drawn between participating in a transitional program under an IEP and a continuation of that program under the auspices of the State vocational rehabilitation program. They also noted that the State VR agency is often required to coordinate with officials responsible for the public education of students with disabilities in order “to facilitate the transition of students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under the responsibility of the State vocational rehabilitation agency.” They suggested that the rule should encourage transition from special education to State vocational rehabilitation programs when that transition is appropriate—particularly for those cases where the special education student is also a client of the State vocational rehabilitation agency prior to exiting special education. The commenters recommended that we consider school and vocational rehabilitation as part of a larger whole and that benefits should be continued under this rule for special education students who transition from their high school special education program into a rehabilitation program under the auspices of the State vocational rehabilitation agency.

*Response:* We did not adopt this recommendation. Our rules do not exclude a post-IEP transition plan from qualifying as an appropriate program of vocational rehabilitation service, employment services, or other support services. However, an IEP by itself comprises a unique and comprehensive plan of both education and employment

services designed to provide the individual with the skills and training likely to keep him or her off the benefit rolls. Therefore, we have added language that completion or continuation in an IEP will increase the likelihood that you will not have to return to the disability or blindness benefit rolls. If an individual is receiving post IEP transition services, we will determine that the transition services will increase the likelihood that he or she will not have to return to the disability or blindness rolls if those services meet the requirements in §§ 404.328(a) and 416.1338(e)(1).

*Comment:* One commenter recommended that we redefine what would be considered “youth,” for example to age 25, provided that the individual was involved in either a vocational rehabilitation program or school (including post-secondary education). The commenter noted that this would allow for young people to have the supports they need to get a good start on having a career, making them less likely to be dependent on disability benefits for the majority of their adulthoods. He noted that very few people before the age of 25 have a firm grasp on careers and people with significant disabilities are often behind because of the barriers they face. For example, people with significant disabilities who are going to college may need to spend an extra year at school if they can’t handle as many courses per semester.

*Response:* We did not use the term “youth” in our proposed rules, and we are not using the term in these final rules. The final rules provide for the continuation of benefit payments to students who are participating in an IEP when their disability ends and who are age 18 through age 21. We are providing benefit continuation for those students participating in an IEP through age 21, since each State can receive a grant of assistance from the Department of Education under IDEA to serve students with disabilities under IEP’s through age 21.

The rules for continuation of benefits to individuals participating in an appropriate program of vocational rehabilitation services, employment services, or other support services are not limited to individuals in a particular age group, other than the rules for individuals participating in an IEP.

*Comment:* One commenter recommended suspending continuing disability reviews while an individual is participating in an approved and appropriate program of schooling or employment preparation, to bring these rules for continued benefit payments for

individuals who are participating in such a program into full alignment with the provision for suspending medical reviews for beneficiaries who are using a ticket under the Ticket to Work program.

*Response:* This recommendation is outside the scope of these rules and would require a statutory change. Section 221(i) of the Act requires that we conduct continuing disability reviews if a person has been determined to be under a disability. Section 1148(i) of the Act provides an exception to this requirement. That section specifically provides that “During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable State agency) may not initiate a continuing disability review or other review under section 221 of whether the individual is or is not under a disability or a review under title XVI similar to any such review under section 221.” The Act does not similarly provide for suspending continuing disability reviews for a beneficiary participating in any other approved and appropriate program of schooling or employment preparation.

*Comment:* A number of commenters noted that our current operating instructions provide that “once the VR program participation stops for more than 30 days, benefits will be ceased and cannot be resumed.” They note further that this procedure will not adequately address the reality of programs designed for children and young adults with disabilities, because “the nature of many impairments may result in times when it is not possible for the young adult to participate in the IEP for a temporary period. There also may be gaps in activity available under the IEP or a similar plan, for example, if a program is not in session during the summer months, but will resume again in the fall, or if there is a modest gap in time between one program and the next program that the person is scheduled to participate in under an IEP.”

*Response:* We agree with the commenters that our rules should account for short interruptions in an individual’s participation. We have modified our definition of “participating” in the final rules. We have added §§ 404.327(b)(3) and 416.1338(d)(3) to indicate that an individual will be considered to be participating in his or her program under § 404.327(b)(1) or (2) or § 416.1338(d)(1) or (2) during interruptions in the program, provided that such interruptions are temporary.

We explain that for an interruption to be considered temporary, the individual must resume taking part in the activities and services outlined in his or her individual work plan, individualized plan for employment, similar individualized written employment plan, or individualized education program, as the case may be, no more than three months after the month the interruption occurred.

*Comment:* One commenter requested that we describe good cause criteria for a break in participation in education or appropriate programs of vocational rehabilitation. The commenter noted that the proposed rules stated that we will stop benefits with the month the individual stops participating in the program for any reason and indicated that this could cause individuals to lose benefit continuation protection because of temporary exacerbations in their medical condition, personal emergencies, etc.

*Response:* As we explain in our previous response to comments regarding interruptions in participation, we have modified our definition of "participating" to account for temporary interruptions in a person's program, provided that the individual resumes taking part in the activities and services outlined in his or her plan or program, as appropriate, no more than three months after the month the interruption occurred.

*Comment:* A number of commenters stated that our current operating procedures provide that, for cases involving potential eligibility for benefits under section 225(b) or 1631(a)(6) of the Act, the State disability determination services (DDS) will send the case folder to SSA's Office of Disability Operations (ODO) to determine the issue of benefit continuation after releasing the notice of benefit termination to the claimant, and that ODO makes the determination before returning the case folder to the Social Security office for any necessary action to continue benefits. They express their concern that this means that there will generally be a gap in SSI benefits (and Medicaid) for people who could benefit from these rules, since the State DDS initiates the termination notice before we determine whether benefit continuation will apply. The commenters noted that unless this timing is changed for the young adult cases, it will defeat the purpose of sections 225(b) and 1631(a)(6) of the Act and undermine the effort to better coordinate the SSI, Medicaid, and educational systems.

Another commenter recommended that we determine continuing eligibility

under this provision before we notify an individual of his or her benefit termination as a result of an age-18 redetermination. The commenter suggested that this would ensure continuity of benefits and program participation for these young people by ensuring that a determination of their continued eligibility for SSI benefits will be made before notifying them of a termination of their benefits as a result of an age-18 redetermination.

*Response:* If we have information indicating an individual's potential eligibility for continued benefit payments, our operating procedures will not result in a gap in the payment of Social Security or SSI benefits to an individual eligible for continued benefit payments. Benefits are not terminated until after we have determined that an individual is not entitled to continued benefit payments because he or she is not participating in an appropriate program of vocational rehabilitation services, employment services or other support services, or because completion or continuation of this program will not increase the likelihood that the individual may be permanently removed from the disability rolls. If we find that the beneficiary is entitled to continued benefit payments and all other eligibility requirements are met, benefit payments will continue without a gap.

*Comment:* One commenter recommended that we defer making a continuing disability determination for an individual who is participating in a program through an employment network under the Ticket to Work program or through a State vocational rehabilitation agency until after we make a determination regarding continuing benefit payments because of such participation.

*Response:* We did not adopt this recommendation. Individuals are eligible for continued benefit payments under section 225(b) and/or section 1631(a)(6) of the Act only if we have determined that they are no longer medically disabled. It would impose an unnecessary administrative burden on us to make a determination on the continuation of benefits before we determine whether the individual is still medically under a disability.

*Comment:* Several commenters urged us to suspend age-18 redeterminations for SSI recipients who are participating in a special education program until these final regulations are published. They also recommended that we apply this new policy to all cases that are in the adjudicative "pipeline." These commenters indicated that halting terminations and applying the new

policy to pending cases will benefit individuals turning 18 who, under the previous rules, might be unable to qualify for continued benefit payments since they are often still in school and do not have a vocational rehabilitation plan.

One commenter stated that in furtherance of the rehabilitation goals evidenced by the proposed regulations and the Ticket to Work and Work Incentives Improvement Act of 1999, we should apply the new rules on the continuation of benefit payment to all termination cases that are in the adjudicative process.

*Response:* The Act requires us to perform a disability redetermination for every individual who is eligible for SSI for the month before the month in which he or she attains age 18. We have no authority to change this requirement through our regulations.

We will apply these new rules to all continuing disability review and age-18 redetermination cases that are pending in our administrative review process as of the effective date of these final rules for any individuals who meet the eligibility requirements under these final rules.

*Comment:* Other commenters noted their understanding that persons receiving services from a variety of State and Federal agencies might qualify under § 404.327, including but not limited to, a person with a Plan to Achieve Self-Support (PASS), a person receiving services from the Department of Veterans Affairs, a person receiving services from a One Stop funded through the Department of Labor, or a person receiving services to achieve employment from a State developmental disabilities or mental health agency. They recommended that we clarify § 404.327(a) to state that these services are appropriate programs of vocational rehabilitation services, employment services, or other support services that are carried out under a similar individualized, written employment plan with another provider of services approved by us.

*Response:* We have adopted this recommendation in part. The PASS provision is an employment support that allows an SSI recipient who is disabled or blind to set aside income or resources, or both, for a specified time for use in achieving a work goal (see §§ 416.1180 to 416.1182 and §§ 416.1225 to 416.1227 of our existing regulations), so that we do not count them as income and resources for SSI purposes. Under the PASS provision, we do not count a disabled or blind recipient's income that he or she uses or sets aside to use to fulfill a PASS, or

resources identified as necessary to fulfill a PASS, in determining the recipient's continuing eligibility for or amount of SSI benefits. The PASS provision is available for an SSI recipient who is currently disabled or blind, while the provision for continued benefits under section 1631(a)(6) of the Act applies to a person who is no longer disabled or blind. For this reason, a PASS will not qualify as an appropriate program of vocational rehabilitation services, employment services, or other support services for the purpose of the benefit continuation provision.

We are modifying the provisions in the final rules to indicate that agencies of the Federal government and one-stop delivery systems or specialized one-stop centers under the Workforce Investment Act of 1998 are approved providers of services. In §§ 404.327(a)(3) and 416.1338(c)(3) of the final rules, we provide that a program of vocational rehabilitation services, employment services, or other support services that is carried out under an individualized written employment plan similar to an individualized plan for employment will qualify as an appropriate program if it is carried out with an agency of the Federal government (e.g., the Department of Veterans Affairs), a one-stop delivery system or specialized one-stop center described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)), or another provider of services approved by us. We also include in §§ 404.327(a)(3) and 416.1338(c)(3) of the final rules examples of service providers that we may approve under these sections. We explain that providers we may approve include, but are not limited to—

- A public or private organization with expertise in the delivery or coordination of vocational rehabilitation services, employment services, or other support services; or
- A public, private or parochial school that provides or coordinates a program of vocational rehabilitation services, employment services, or other support services carried out under an individualized program or plan.

*Comment:* One commenter noted that he was opposed to extending these benefit continuation rules to include individuals who are still in school with an IEP if they are not actively enrolled in a VR plan or the Ticket to Work program. He observed that the Social Security Act, by continuing benefits to certain individuals who recover medically while participating in a VR program, provides an incentive for individuals to enroll in a program of VR services prior to age 18. Under this incentive, the individual may continue

to receive benefit payments even if the individual's disability is determined to have ended as the result of a continuing disability review or an age-18 redetermination. The commenter states that this incentive would be removed if the regulations are changed to include individuals under an IEP, because not all IEPs include a feasible vocational goal that will lead to employment as defined in the Rehabilitation Act. He noted that individuals have the opportunity to enroll in a VR plan at age 16, or earlier, providing students with the ability to build a transition with a VR service provider, to access vocational evaluation or a situational assessment in time to receive recommendations to pursue high school courses required for vocational training or higher education.

*Response:* We do not agree that extending continued benefit payment protection to individuals enrolled in an IEP will remove an incentive for individuals to enroll in a program of VR services, employment services, or other support services directed toward an employment goal prior to age 18 or will prevent such individuals from receiving necessary services to obtain the skills and education to achieve an employment goal. Rather, extending the continued benefit payment protection to individuals age 18 to 21 enrolled in an IEP, will provide such individuals with additional choices in selecting a provider of services, and will encourage students participating in an IEP to continue or complete the program, thus assisting them in efforts to obtain the necessary skills and education needed for employment and self-sufficiency. Our rules do not exclude services received through a subsequent post-IEP transition plan from qualifying as an appropriate program of vocational rehabilitation service, employment services, or other support services.

*Comment:* One commenter stated that the proposed changes in the SSA regulations that affect a VR consumer's receipt of benefits are too stringent, leave too much room for error, and could lead to discretionary purging of consumers from the benefit rolls. The commenter cited our existing operating instructions and stated that we have a narrow definition of a consumer's active participation and successful completion of a VR program. The commenter noted that our operating instructions use the term "actively involved" in a vocational rehabilitation program and define active participation in a State vocational rehabilitation program as placement in one of four State vocational rehabilitation status codes.

*Response:* We disagree with the commenter. We added new §§ 404.327(b) and 416.1338(d) to explain how we will determine when an individual is considered to be participating in the program. As the commenter noted, our operating instructions have relied on the use of State agency codes to determine "active" participation. However, under these final rules, we will consider the individual to be participating in the program if the individual is taking part in the activities and services outlined in his or her individual work plan, individualized plan for employment, similar individualized written employment plan, or individualized education program regardless of the individual's status or stage in the program. These final rules will be reflected in revised operating instructions.

*Comment:* Several commenters recommended that we consider a variety of ways and actions to publicize the new rules regarding benefit continuation to ensure that the public, field offices, disability examiners, adjudicators, and other interested and concerned parties are aware of the new rules, especially as the rules apply to age-18 redeterminations and special issues for that age group. Commenters suggested that we should aggressively publicize and promote the benefit continuation rules through instructional materials such as administrative messages, operating procedures and other instructional material to assure that beneficiaries subject to age-18 redeterminations and continuing disability reviews are aware of the continued benefit protection provisions because of participation in an appropriate program of vocational rehabilitation services, employment services or other support services.

*Response:* These recommendations concern our administrative actions rather than regulatory action, and are therefore outside the scope of the rules. However, we will undertake a variety of steps to ensure effective implementation of these final rules, including some of the actions and procedures suggested by the commenters to publicize these rules.

*Comment:* A number of commenters noted that, to maximize the benefit of this benefit continuation provision in improving the long-term outcomes for young people with disabilities, it is essential that the families of these individuals and the individuals themselves receive notice of these protections not only at the time of a redetermination at age 18, but much earlier. They note that, if we were to provide this information to the family at

regular intervals—such as annually, beginning on the child's 14th birthday—this information could help families better understand how the SSI, Medicaid, and educational systems can be coordinated to assist their child, even if the child might otherwise lose SSI at age 18. This could help to underscore the importance of developing realistic but ambitious IEPs and would be consistent with the transition start-up age in IDEA. They recommend that the final regulation be modified to provide that we will provide regular and periodic notice of these protections to parents of children receiving SSI and to the children themselves on an annual basis beginning at age 14 (or later if the child first becomes eligible for SSI after that date).

*Response:* We did not adopt this recommendation. It would not be feasible for us to send out individual notices to all beneficiaries on the disability benefit rolls to advise of the possibility of benefit continuation following a possible future determination of medical improvement or a determination that they do not meet the adult definition of disability at age 18. However, as we note in our response to the previous comment, we will undertake a number of actions to publicize these rules.

## Regulatory Procedures

### Executive Order 12866

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

### Federalism

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

## Paperwork Reduction Act

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 OMB has approved the information collection requirements contained in §§ 404.316(c), 404.327, 404.328, 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 416.1320(d), 416.1331(a) and (b), and 416.1338 of these final rules. The OMB Control Number for this collection is 0960–0282, expiring March 31, 2006.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

## List of Subjects

### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security, Vocational rehabilitation.

### 20 CFR Part 416

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

### Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

### Subpart D—[Amended]

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

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

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

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

\* \* \* \* \*

(c)(1) Your benefits, and those of your dependents, may be continued after

your impairment is no longer disabling if—

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

(2) A program that is carried out under an individualized plan for employment with—

(i) A State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720–751) under 34 CFR part 361; or

(ii) An organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741);

(3) A program of vocational rehabilitation services, employment services, or other support services that is carried out under a similar, individualized written employment plan with—

(i) An agency of the Federal Government (for example, the Department of Veterans Affairs);

(ii) A one-stop delivery system or specialized one-stop center described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)); or

(iii) Another provider of services approved by us; providers we may approve include, but are not limited to—

(A) A public or private organization with expertise in the delivery or coordination of vocational rehabilitation services, employment services, or other support services; or

(B) A public, private or parochial school that provides or coordinates a program of vocational rehabilitation services, employment services, or other support services carried out under an individualized program or plan;

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

(b) *When are you participating in the program?* (1) You are participating in a program described in paragraph (a)(1), (a)(2), or (a)(3) of this section when you are taking part in the activities and services outlined in your individual work plan, your individualized plan for employment, or your similar individualized written employment plan, as appropriate.

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

activities and services outlined in your program or plan.

(3) You are participating in your program under paragraph (b)(1) or (2) of this section during temporary interruptions in your program. For an interruption to be considered temporary, you must resume taking part in the activities and services outlined in your plan or program, as appropriate, no more than three months after the month the interruption occurred.

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

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

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

(2) Education (see § 404.1564) and/or skilled or semi-skilled work experience (see § 404.1568) so that you would more likely be able to adjust to other work that exists in the national economy (see § 404.1560(c)), despite a possible future reduction in your residual functional capacity (see § 404.1545).

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

(c) If you are receiving transition services after having completed an individualized education program as described in paragraph (b) of this section, we will determine that the transition services will increase the likelihood that you will not have to return to the disability benefit rolls if they meet the requirements in § 404.328(a).

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

#### Subpart J—[Amended]

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

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

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

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

\* \* \* \* \*

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

\* \* \* \* \*

#### Subpart P—[Amended]

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

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

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

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

\* \* \* \* \*

(g) *If you are in an appropriate program of vocational rehabilitation*

*services, employment services, or other support services.* (1) Your benefits, and those of your dependents, may be continued after your impairment is no longer disabling if—

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

##### Subpart I—[Amended]

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

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

■ 13. Section 416.987 is amended by revising the first and third sentences of paragraph (b) to read as follows:

**§ 416.987 Disability redeterminations for individuals who attain age 18.**

\* \* \* \* \*

(b) *What are the rules for age-18 redeterminations?* When we redetermine your eligibility, we will use the rules for adults (individuals age 18 or older) who file new applications explained in §§ 416.920(c) through (g). \* \* \* If you are working and we find that you are disabled under § 416.920(d) or (g), we will apply the rules in §§ 416.260ff.

\* \* \* \* \*

**Subpart M—[Amended]**

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

**Authority:** Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

■ 15. Section 416.1320 is amended by revising paragraph (d) to read as follows:

**§ 416.1320 Suspensions; general.**

\* \* \* \* \*

(d) *Exception.* Even though conditions described in paragraph (a) of this section apply because your impairment is no longer disabling or you are no longer blind under § 416.986(a)(1), (a)(2) or (b), we will not suspend your benefits for this reason if—

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

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

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

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

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

(a) *General.* The last month for which we can pay you benefits based on disability or blindness is the second month after the month in which your

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

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

\* \* \* \* \*

■ 17. Section 416.1338 is revised to read as follows:

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

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

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

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

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

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

(b) *When will we stop your benefits?*

We generally will stop your benefits with the earliest of these months—

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

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

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

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

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

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

(2) A program that is carried out under an individualized plan for employment with—

(i) A State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720–751)) under 34 CFR part 361; or

(ii) An organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741);

(3) A program of vocational rehabilitation services, employment services, or other support services that is carried out under a similar, individualized written employment plan with—

(i) An agency of the Federal government (for example, the Department of Veterans Affairs);

(ii) A one-stop delivery system or specialized one-stop center described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)); or

(iii) Another provider of services approved by us; providers we may approve include, but are not limited to—

(A) A public or private organizations with expertise in the delivery or coordination of vocational rehabilitation services, employment services, or other support services; or

(B) A public, private or parochial school that provides or coordinates a program of vocational rehabilitation services, employment services, or other support services carried out under an individualized program or plan;

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

(d) When are you participating in the program? (1) You are participating in a program described in paragraph (c)(1), (c)(2) or (c)(3) of this section when you are taking part in the activities and services outlined in your individual work plan, your individualized plan for employment, or your similar individualized written employment plan, as appropriate.

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

(3) You are participating in your program under paragraph (d)(1) or (2) of this section during temporary interruptions in your program. For an interruption to be considered temporary, you must resume taking part in the activities and services outlined in your plan or program, as appropriate, no more than three months after the month the interruption occurred.

(e) *How will we determine whether or not your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness benefit rolls?* (1) We will determine that your completion of the program, or your

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

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

(ii) Education (see § 416.964) and/or skilled or semi-skilled work experience (see § 416.968) so that you would more likely be able to adjust to other work that exists in the national economy (see § 416.960(c)), despite a possible future reduction in your residual functional capacity (see § 416.945).

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

(3) If you are receiving transition services after having completed an individualized education program as described in paragraph (e)(2) of this section, we will determine that the transition services will increase the likelihood that you will not have to return to the disability benefit rolls if they meet the requirements in paragraph (e)(1) of this section.

#### Subpart N—[Amended]

■ 18. 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).

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

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

\* \* \* \* \*

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

\* \* \* \* \*

[FR Doc. 05–12432 Filed 6–23–05; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Jacksonville 05–076]

RIN 1625–AA00

#### Safety Zone; Indian River, New Smyrna, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone around a fireworks barge as it launches fireworks in New Smyrna, Florida. The rule prohibits entry into the safety zone without the permission of the Captain of the Port Jacksonville or his designated representative. The rule is needed to protect participants, vendors, and spectators from the hazards associated with the launching of fireworks.

**DATES:** This rule is effective from 9 p.m. on June 25, 2005, until 10 p.m. on June 25, 2005.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket (COTP Jacksonville 05–076) and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Jamie Bigbie at Coast Guard Marine Safety Office Jacksonville, FL, tel: (904) 232–2640, ext. 105.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued and delay the rule's effective date, is contrary to public interest because immediate action is necessary to protect the public and waters of the United States.

For the same reasons, 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**. The Coast Guard will issue a broadcast notice to mariners and will place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.