APPENDIX A TO PART 11.—FEE SCHEDULE FOR FY 2006—Continued

State	County	(Fee/acre/yr)
	BIG HORN CROOK. PARK. TETON. WESTON.	21.08
ALL OTHER ZONES		5.92

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BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AG15

Representation of Parties; Recognition, Disqualification, and Reinstatement of Representative

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our regulations to identify additional bases upon which we may bring charges to disqualify an individual from acting as a representative before the Social Security Administration (SSA), and to set forth the conditions under which we will reinstate an individual whom we have disqualified as a representative because the individual collected or received, and retains, a fee in excess of the amount we authorized. These final rules revise our regulations on the representation of parties to implement section 205 of the Social Security Protection Act of 2004 (SSPA) and to make additional changes in these regulations that relate to the changes required by this legislation. The rules also make technical changes in our regulations on the representation of parties.

DATES: These rules are effective February 17, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

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.*

Background

Section 206(a)(1) of the Social Security Act (the Act) provides that attorneys and non-attorneys may represent claimants before SSA. Prior to enactment of the SSPA, Public Law 108–203, on March 2, 2004, section 206(a)(1) specified that ''[a]n attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts'' is entitled to represent claimants before SSA. Section 206(a)(1) also authorized SSA to prescribe rules and regulations governing recognition of individuals other than attorneys.

Section 205 of the SSPA amended section 206(a)(1) of the Act with respect to the recognition and disqualification of certain attorneys as claimants' representatives. As amended, section 206(a)(1) provides that the Commissioner of Social Security (the Commissioner), after due notice and opportunity for hearing, may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency. Section 206(a)(1) as amended further provides that the Commissioner may also, after due notice and opportunity for hearing, refuse to recognize, and may disqualify, as a non-attorney representative, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice.

Section 205 of the SSPA also amended section 206(a)(1) of the Act with respect to reinstatement of certain individuals (whether or not they are attorneys) who have been disqualified or suspended from appearing before SSA. Under the Act as amended, a representative who has been disqualified or suspended from appearing before SSA as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before SSA as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.

Regulatory Provisions Implementing SSPA Section 205 and Making Related Changes

As amended, section 206(a)(1) of the Act identifies certain specific bases upon which, after notice and opportunity for hearing, we may refuse to recognize an attorney as a representative or disqualify an attorney whom we have already recognized as a representative. We are implementing these statutory provisions by revising our regulations at 20 CFR 404.1745 and 416.1545, which describe the circumstances in which we may file charges seeking to suspend or disqualify an individual from acting in a representational capacity before us. Specifically, we are revising these sections to expand the stated bases upon which we may file such charges to include those in which we have evidence that a representative has been, by reason of misconduct—

- Disbarred or suspended from any court or bar to which he or she was previously admitted to practice, or
- Disqualified from participating in or appearing before any Federal program or agency.

Sections 404.1745 and 416.1545 as a whole pertain to our bringing of charges that may seek either to suspend or to disqualify a representative. As we explain below in connection with revisions we are making in our regulations dealing with the decisions hearing officers make on charges brought against representatives (20 CFR 404.1770 and 416.1570), disqualification is the sole sanction available if the charges against a representative are sustained because the representative has been, by reasons of

misconduct, disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency.

Sections 404.1745 and 416.1545, as revised and as they previously existed, apply with respect to both attorney and non-attorney representatives. Under these sections as revised, we have authority to bring charges to disqualify a non-attorney representative if we have evidence that the representative has been, by reason of misconduct—

- Disbarred or suspended from any court or bar to which he or she was previously admitted to practice, or
- Disqualified from participating in or appearing before any Federal program or agency.

As amended by the SSPA, section 206(a)(1) of the Act specifically provides that, after providing due notice and an opportunity for hearing, SSA ''may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice.'' Thus, the Act provides that disbarment or suspension by a court or bar may be a basis for disqualifying an individual from representational functions before SSA irrespective of whether the individual seeks to represent individuals as an attorney or non-attorney. Although it provides that we may refuse to recognize or disqualify an attorney who has been disqualified from participating in or appearing before a Federal program or agency, the Act as amended does not also state that we may refuse to recognize a non-attorney (or former attorney) who has been disqualified from participating in or appearing before any Federal program or agency. These final rules include a rule making disqualification from participating in or appearing before any Federal program or agency a basis for bringing charges to disqualify a non-attorney in order to make our rules, with respect to recognition of non-attorneys, consistent with our rules for attorneys. By making this a basis for bringing charges against non-attorneys as well as attorneys, we ensure that the additional protections provided by the SSPA are available for all claimants, regardless of whether their representatives are attorneys or non-attorneys.

We are promulgating this rule regarding non-attorney representatives under the general authority of the Commissioner, as set forth in section 206(a)(1) of the Act, to prescribe rules and regulations ''governing the recognition'' of non-attorney representatives and to require such representatives to ''show that they are of good character and in good repute'' and capable of providing claimants valuable services. Under this rule, if we determine, after providing due notice and opportunity for a hearing, that a non-attorney individual has been disqualified from participating in or appearing before a Federal program or agency for reasons of misconduct, we will disqualify the individual as having failed to show that he or she is of good character and in good repute and will thereafter, absent reinstatement in accordance with the provisions of 20 CFR 404.1799 and 416.1599, refuse to recognize the individual as a representative. The effect of this rule is to require a non-attorney whom we charge with having been disqualified from participating in or appearing before a Federal program or agency for reasons of misconduct to show, in accordance with our rules at 20 CFR 404.1750ff. and 416.1550ff. on hearing and deciding charges against representatives, that he or she has not been disqualified from participating in or appearing before a Federal program or agency for reasons of misconduct and is thus, in that respect, of good character and in good repute.

This rule codifies a practice we currently apply under Program Operations Manual System section GN 03970.011, which sets forth a non-exclusive list of circumstances in which we may bring charges (under §§ 404.1745 and 416.1545) to suspend or disqualify a non-attorney from practice before us for lack of good character and reputation. We believe we should codify that disqualification by a Federal program or agency may be a basis for bringing charges against a non-attorney representative because the Act as amended by the SSPA is silent on that issue, even though it provides that we may bring charges against a non-attorney for disbarment or suspension by a court or bar. Our codification of this particular basis for bringing charges based on a lack of good character and reputation does not limit our discretion to bring charges against a non-attorney representative, as we do at present, whenever we believe that we have evidence that a non-attorney fails to meet the qualification requirement concerning good character and reputation included in the provisions of §§ 404.1705 and 416.1505 on ''Who may be your representative.''

Under §§ 404.1745 and 416.1545 as revised, we have discretion in determining whether to bring charges when we have evidence that an individual has been disbarred, suspended or disqualified by a court, bar, Federal program or agency. One factor we will consider in determining whether to bring charges is whether the individual has been reinstated by the court, bar, Federal program or agency that disbarred, suspended or disqualified the individual. Reinstatement will not necessarily preclude the bringing of charges. Further, we may also bring charges if the disbarment, suspension or disqualification by a court, bar, Federal program or agency became final prior to the enactment of section 205 of the SSPA.

We are revising 20 CFR 404.1755 and 416.1555, the sections of our regulations that deal with the withdrawal of charges that have been filed against a representative, to clarify the existing provisions and to set forth specific criteria we apply in determining whether to withdraw charges where we have filed charges against a representative based on disbarment, suspension or disqualification by a court, bar or Federal program or agency and subsequently learn that the representative has been reinstated by the court, bar or Federal program or agency that took the action against the representative. We describe these revisions and our reasons for making them below under Public Comments.

Under the Act as amended by the SSPA, we have discretionary authority to refuse to permit an individual to function as a representative before us because that individual has been disbarred, suspended or disqualified by a court, bar or Federal program or agency. To implement that authority, we are revising §§ 404.1770 and 416.1570 to explain that in deciding whether to impose that sanction we will consider the reasons for the disbarment, suspension, or disqualification action of the court, bar or Federal program or agency and will not disqualify the individual from acting as a representative before SSA if the court, bar, or Federal program or agency action was taken for reasons unrelated to misconduct (e.g., solely for administrative reasons such as failure to pay dues or failure to complete continuing legal education requirements). Sections 404.1770 and 416.1570 as revised also explain that this exception to disqualification will not apply if the administrative action was taken by the court, bar or Federal program or agency in lieu of disciplinary proceedings (e.g., the acceptance of a voluntary resignation pending disciplinary action), and that although we will consider the reasons

for the disbarment, suspension, or disqualification action in determining whether to disqualify an individual from appearing before us as a representative, we will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension or disqualification action.

As revised, §§ 404.1770 and 416.1570 also explain what we mean by the terms ''disqualified,'' ''Federal program,'' and ''Federal agency'' for the purposes of deciding whether an individual has been disqualified from participating in or appearing before any Federal program or agency. For that purpose, ''disqualified'' refers to any action that prohibits an individual from participating in or appearing before the program or agency, regardless of how long the prohibition lasts or the specific terminology used. The program or agency need not use the term ''disqualified'' to describe the action. For example, an agency may use analogous terms such as ''suspend,'' ''decertify,'' ''exclude,'' ''expel,'' or ''debar'' to describe the individual's disqualification from participating in the program or the agency. For the purposes of deciding whether an individual has been disqualified from participating in or appearing before any Federal program or agency, ''Federal program'' refers to any program established by an Act of Congress or administered by a Federal agency and ''Federal agency'' refers to any authority of the executive branch of the Government of the United States.

As previously noted, we are also revising §§ 404.1770 and 416.1570 to provide that disqualification will be the only sanction that may be applied if charges against a representative (attorney or non-attorney) are sustained because the representative has been, by reason of misconduct, disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency. The Act, as amended by the SSPA, states only that we may ''refuse to recognize'' and, where recognition has already occurred, ''disqualify'' an individual who has been disbarred, suspended or disqualified by a court, bar or Federal program or agency. Under our rules on reinstatement, a suspended representative is automatically reinstated at the end of the period of suspension (20 CFR 404.1797 and 416.1597). By contrast, under §§ 404.1799 and 416.1599 of our rules, if an individual has been disqualified, reinstatement can occur only if the individual asks the Appeals Council of our Office of Hearings and Appeals for permission to serve as a representative again and the Appeals Council decides that it is reasonable to expect that the individual will, in the future, act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. We cannot ensure that reinstatement is warranted on that basis in cases in which the sanction imposed by us is a suspension. Based on the above, and for reasons further explained below under Public Comments, we believe that disqualification is the only appropriate sanction where charges are sustained because we find that a representative has been, by reason of misconduct, disbarred, suspended or disqualified by a court, bar or Federal program or agency.

We are also revising §§ 404.1770 and 416.1570 to state that, if the charges against the representative are sustained because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized, disqualification will be the only sanction available. This change is intended to ensure that such a representative is barred from appearing before SSA until full restitution has been made, as required by the Act as amended by the SSPA. Sections 404.1770 and 416.1570 as revised recognize that restitution is required only where the representative has not already made full restitution at the time at which we sustain charges of collecting or receiving an unauthorized fee. The representative ''retains'' an unauthorized fee that has been collected or received if full restitution has not been made for any reason. If a representative makes full restitution before the charges against the representative have been sustained, we are not precluded from finding that the representative has charged, collected, or retained a fee in violation of §§ 404.1740(c)(2) and/or 416.1540(c)(2), and suspending or disqualifying that representative from practice.

We are revising 20 CFR 404.1790 and 416.1590, which deal with decisions made by the Appeals Council where a party to the hearing requests review of a hearing officer's decision in a sanction case, to conform these sections to the changes made in §§ 404.1770 and 416.1570 to limit the sanction available to disqualification where charges are sustained either because the representative has been, by reason of misconduct, disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency, or because the representative has collected or received, and retains, a fee in excess of the amount authorized. As revised, §§ 404.1790 and 416.1590 provide that the Appeals Council may not modify a hearing officer's decision to impose a suspension, instead of a disqualification, when disqualification is the only sanction available under §§ 404.1770 and 416.1570.

We are also revising our rules on reinstatement in §§ 404.1799 and 416.1599 to provide that, if the representative has been disqualified because he or she was disbarred or suspended from a court or bar, the Appeals Council will grant reinstatement to the individual as a representative only if the individual not only satisfies the Council with respect to the required expectation of future behavior, but also shows that he or she has been admitted (or readmitted) to and is in good standing with the court or bar from which he or she had been disbarred or suspended. This provision ensures that an individual will not be reinstated as a representative unless the individual can satisfy the court or bar that disbarred or suspended the individual that he or she is fit to act in a representational capacity again.

Sections 404.1799 and 416.1599 as revised include a similar rule for reinstatement of a representative who has been disqualified because he or she was disqualified from participating in or appearing before any Federal program or agency. This rule provides that such an individual must not only satisfy the Appeals Council with respect to the required expectation of future behavior, but also show that he or she is once again qualified to participate in or appear before that Federal program or agency.

As revised, §§ 404.1799 and 416.1599 also state that, if a representative has been disqualified as a result of collecting or receiving, and retaining, a fee for representational services in excess of the amount authorized, full restitution of the excess fee must be made before the person may be considered for reinstatement. This provision implements the provision of the SSPA requiring us to bar from appearing before us, until full restitution is made, a representative who has been disqualified or suspended from appearing before us as a result of collecting or receiving a fee in excess of the amount authorized.

Other Changes

We are making a technical change to 20 CFR 404.1750(e)(2) and 416.1550(e)(2), which explain how a representative must answer a notice containing a statement of charges. Our

rules have heretofore directed that the answer be filed with Special Counsel Staff in SSA's Office of Hearings and Appeals. This component no longer exists. (See 68 FR 59231 and 68 FR 61240.) The notice containing a statement of charges provides specific instructions on how and where to file an answer. Therefore, we are revising this rule to reflect that the representative must file the answer with SSA, at the address specified in the notice, within the 30-day time period.

We are also making technical changes in §§ 404.1755 and 416.1555. These technical changes are in addition to the previously noted changes made to these sections (i.e., the clarification of existing provisions and inclusion of the criteria we apply in deciding whether to withdraw charges when we learn of the reinstatement of a representative after we file charges against the representative based on disbarment, suspension, or disqualification for misconduct). The technical changes we are making in §§ 404.1755 and 416.1555 include specifying that the Deputy Commissioner for Disability and Income Security Programs, or his or her designee is, as the official who decides to initiate a representative sanction proceeding, also the official who may withdraw charges against a representative. This change is needed because questions have arisen about who in the agency has authority to withdraw charges. As we discuss below under Public Comments, we are also making additional technical changes in these sections to clarify our existing practices and rules regarding the withdrawal of charges against a representative.

Finally, we are also making a technical change to §§ 404.1765(l) and 416.1565(l) to state that the Office of the General Counsel will represent the Deputy Commissioner for Disability and Income Security Programs in all representative sanction proceedings, including those involving a request for reinstatement by a suspended or disqualified individual. This amendment is necessary because the former Special Counsel Staff previously represented the Deputy Commissioner. (See 56 FR 24129.)

Public Comments

We published these regulatory provisions in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 13, 2005 (70 FR 19361). We provided the public with a 60-day comment period. Two individuals and an organization submitted comments.

Because some of the comments submitted by the organization were detailed, we have condensed, summarized, or paraphrased them below. However, we have tried to summarize the views presented in these comments accurately and to respond to the significant issues raised in the comments that were within the scope of the proposed rules. We have not summarized the comments submitted by the two individuals because those comments were not within the scope of the proposed rulemaking.

Comment: The organization expressed support for our proposal to make disqualification from appearing before any Federal program or agency a basis for bringing charges to disqualify non-attorneys as well as attorneys.

Response: Comment noted.

Comment: Observing that the proposed rules stated in §§ 404.1770(a)(3)(ii) and 416.1570(a)(3)(ii) that disqualification would be the sole sanction available if charges against a representative are sustained because the representative has been disbarred or suspended from a court or bar or disqualified from participating in or appearing before any Federal program or agency, and that the statutory language says that SSA ''may'' refuse to recognize an individual in such instances, the commenter suggests that the final rules explain why SSA has decided to make disqualification mandatory.

Response: The rules make disqualification mandatory only if SSA has brought and sustained charges based on disbarment, suspension or disqualification due to misconduct. SSA has exercised discretion by narrowing, through these rules, the basis upon which charges of disbarment, suspension or disqualification may be sustained. Section 205 of the SSPA provides SSA with the discretion to disqualify representatives from practice before SSA if the representative has been suspended or disbarred by a court or bar, or has been disqualified from participating in or appearing before a Federal program or agency. SSA has in these rules elected to narrow the circumstances under which it will disqualify a representative to those disbarments, suspensions, or disqualifications that were based on misconduct. SSA will also exercise discretion under these rules in deciding when to bring charges.

As we explained in the preamble to the NPRM and above, because our rules on reinstatement after suspension provide for automatic reinstatement at the end of a period of suspension, we believe it is necessary to make disqualification the only available sanction where charges of disbarment, suspension or disqualification for misconduct are sustained in order to ensure that we have an opportunity to determine if reinstatement is warranted. We believe it is mandatory that we have the opportunity to decide that issue in these cases, considering the seriousness of the representative's offense in instances in which we have sustained charges of disbarment, suspension or disqualification for misconduct by the representative.

SSA's decision to disqualify representatives who have been adjudged to have committed misconduct by a court, bar or Federal program or agency is also consistent with SSA's long-standing policy and practice. Social Security Ruling (SSR) 74–29 stated the policy that SSA could disqualify non-attorney representatives who had been disbarred by a court because such a disbarment would appear to be inconsistent with the requirement in section 206(a)(1) of the Act that a non-attorney have a good character and be in good repute to be eligible to practice before SSA. Program Operations Manual System section GN 03970.011 also states that suspension or disbarment by a court or disqualification by a Federal agency is evidence that a non-attorney representative is not qualified to be a representative under the good character and reputation requirement.

The appropriate place to set forth the explanation for regulatory provisions is in the preambles to rules, not in the rules themselves. We have explained in the preamble to the proposed rules, and above, the rationale for the provision making disqualification the sole sanction available where charges of disbarment, suspension or disqualification based on misconduct are sustained. Accordingly, we are not including an explanation of this provision in the final rules.

Comment: The commenter recommends that the regulations should be expanded to include provisions specifying that a representative's reinstatement by a court, bar or agency will not preclude us from bringing charges against a representative. While recognizing that the rules as proposed would permit us to proceed with filing charges in these instances, the commenter believes that we should put representatives on notice of that fact by making the regulations explicit in this respect. The commenter also thought that the regulations should address the situation in which reinstatement occurs after charges are brought but before a hearing is held.

Response: Sections 404.1745(d) and 416.1545(d) as proposed for revision authorized us to file charges against a

representative where we have evidence that the representative ''has been'' disbarred or suspended by a court or bar by reason of misconduct. Sections 404.1745(e) and 416.1545(e) as proposed authorized us to file charges against a representative where we have evidence that a representative ''has been'' disqualified from participating in or appearing before a Federal program or agency by reason of misconduct. As proposed for revision, these sections included no language indicating that our authority to bring charges in these circumstances is conditional on the absence or presence of any other circumstances. We believe that the proposed language puts representatives on notice that charges may be brought against them if they have been disbarred, suspended or disqualified, even though reinstatement may have occurred, and that no change in the language is required in the final rules to clarify that point. The preamble to the proposed rules and the preamble to these final rules state that we are not precluded from filing charges where reinstatement has occurred.

We agree with this commenter that the regulations should include provisions addressing situations in which SSA files charges against a representative based on disbarment, suspension or disqualification and then receives evidence, before a hearing is held, that the representative has been reinstated to practice before the court, bar, or Federal agency or program. We believe that the necessary guidance should address situations in which we learn after filing charges of a possible reinstatement irrespective of whether the reinstatement occurred before or after our filing of charges.

We are providing such guidance in these final rules by adding to §§ 404.1755 and 416.1555 new third and fourth sentences that describe specific criteria we apply when we determine whether to withdraw charges of disbarment, suspension or disqualification because the representative may have been reinstated before or after our filing of charges. The criteria we apply in these situations are the same criteria that the Appeals Council applies to determine whether a disqualified representative should be reinstated. Those criteria are whether the representative has proven that he or she has been reinstated to the court, bar, or Federal program or agency that disbarred, suspended or disqualified the representative, and that the reinstatement is currently in effect (i.e., the individual remains in good standing with the court or bar involved or, if the adverse action was by a Federal program or agency, the individual is currently qualified to participate in or appear before that program or agency); and whether SSA can reasonably expect the representative to comply with section 206 of the Act and our rules and regulations in the future.

In adding these specific criteria for withdrawing charges of disbarment, suspension or disqualification based on possible reinstatement of the representative, we have determined that we should also clarify the second sentence of §§ 404.1755 and 416.1555, which has heretofore stated: ''We will [withdraw charges against a representative] if the representative files an answer, or we obtain evidence, that satisfies us that there is reasonable doubt about whether he or she should be suspended or disqualified from acting as a representative in dealings with us.'' The ''reasonable doubt'' discussed in the second sentence of §§ 404.1755 and 416.1555 is concerned with the extent of our discretion to decide not to pursue charges and is contingent on whether the representative's answer or the available evidence ''satisfies us'' that the charges should be withdrawn. However, that language could be misunderstood to indicate that we will withdraw charges if the representative establishes a reasonable doubt that he or she is no longer disbarred, suspended or disqualified, and will not violate section 206 of the Act and our rules and regulations in the future. To prevent such a misunderstanding, we are revising the final clause of the second sentence of §§ 404.1755 and 416.1555 to state: ''* * * if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative in dealings with us.''

This clarification also precludes any possibility that the provisions of the second sentence could be misunderstood to imply that we sustain charges brought against a representative only if the charges have been proven ''beyond a reasonable doubt.'' Any criminal charges that might be brought against representatives must be proven beyond a reasonable doubt. However, in the decisions made under §§ 404.1770 and 416.1570 in response to administrative charges brought against a representative under §§ 404.1745 and 416.1545, hearing officers decide findings of fact based on the preponderance of the evidence.

To further address situations in which we consider withdrawing charges that have been filed, we are also making additional technical changes in §§ 404.1755 and 416.1555 that clarify our existing practices and rules with respect to withdrawing charges. These changes, which we are setting forth in a new fifth sentence included in §§ 404.1755 and 416.1555, specify that our action regarding withdrawal of charges is solely that of the Deputy Commissioner for Disability and Income Security Programs, or his or her designee, and is not reviewable, or a matter for consideration in decisions on charges that are made against a representative under §§ 404.1770, 404.1790, 416.1570 or 416.1590.

Comment: Observing that the possibility that the same action could lead to disbarment in one State, but not in another, the commenter recommends that the final rules should address this situation.

Response: We believe that we do not need to address this issue in the final rules because the rules as proposed support the intended policy, which is that we disqualify a representative whenever we bring and sustain charges that the representative has been disbarred or suspended for reasons of misconduct by any court or bar before which he or she was previously admitted to practice. In the Social Security ruling discussed above, SSR 74–29, SSA cited the U.S. Supreme Court's opinion in *Selling* v. *Radford*, 243 U.S. 46 (1917), for the proposition that, ''the effect of [a State court's] disbarment, as long as the State court action stands unreversed, has been characterized as destroying the condition of fair private and professional character which an individual must possess to continue as a member of the Federal bar.'' SSA policy reflects this holding by the Supreme Court in Program Operations Manual System section GN 03970.011. SSA has long accepted the decisions of different State courts and bar associations to disbar or suspend individuals for misconduct as conclusive evidence that these individuals are no longer qualified to practice before SSA irrespective of the specific misconduct or governing law that is the basis for the disbarment or suspension. As previously stated, we believe that any individual who has been proven to have violated applicable laws, regulations, or rules should be prohibited from practice before SSA until that individual is found to be fit to practice before the court that disbarred or suspended the individual and has proven fitness to be reinstated to practice before SSA. While local court rules may vary, each attorney has the obligation to follow those rules.

Comment: The commenter expresses support for the provision of §§ 404.1770(a)(2) and 416.1570(a)(2) that an individual will not be disqualified for disbarment, suspension or disqualification if the action against the representative was taken solely for administrative reasons. The commenter also asks that, if possible, additional guidance should be provided in the final rules regarding this exception to disqualification.

Response: The proposed rules provided guidance on the application of the exception regarding adverse actions taken solely for administrative reasons by providing two examples of instances in which the exception would apply—i.e., when the adverse action was taken for failure to pay dues or to complete continuing legal education requirements. The proposed rules provided further guidance by specifying that the exception does not apply if the administrative action was taken in lieu of disciplinary proceedings (e.g., acceptance of a voluntary resignation pending disciplinary action). Finally, the proposed rules provided additional guidance by stating that in deciding whether a representative should be disqualified by reason of disbarment, suspension or disqualification, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the adverse action. In our judgment, the guidance in the proposed rules provides specific guidance while at the same time not interfering with the ability of the hearing officer to exercise appropriate discretion in assessing and making decisions based on the complete facts of the particular case. In addition, of course, the representative in each case will have an opportunity to offer evidence and argument to show that any disbarment, suspension, or disqualification is unrelated to misconduct and administrative in nature.

We further note that where an adverse action against a representative has been taken solely for administrative reasons and thus will not support disqualification of the representative under the provisions of §§ 404.1745 and 416.1545 concerning disbarment, suspension or disqualification by a court, bar or Federal program or agency, we are not precluded from considering the behavior of the representative that caused the adverse action in connection with charges that we might bring against the representative under other provisions of §§ 404.1745 and 416.1545. Thus, for example, we could consider the fact that a representative failed to take needed continuing education courses in connection with charges brought against a representative under §§ 404.1745(b) or 416.1745(b) for violation of the affirmative duty of representatives to provide claimants competent representation. No change in the rules as proposed is required to ensure this authority because the proposed rules dealt with behavior such as failure to complete continuing education only as it can affect disqualification of a representative because of disbarment, suspension, or disqualification of the representative by a court, bar or Federal program or agency.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these rules in accordance with Executive Order 12866, as amended by Executive Order 13258. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

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 affect only individuals. Thus, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The final rules contain information collection activities at 20 CFR 404.1750(e)(2) and 416.1550(e)(2). However, the activities are exempt under 44 U.S.C. 3518(c) from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Public Law 104–13 (May 22, 1995), the Paperwork Reduction Act of 1995.

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

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: October 19, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

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

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

Subpart R—[Amended]

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

Authority: Secs. 205(a), 206, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 406, and 902(a)(5)).

■ 2. Amend § 404.1745 by removing the word ''or'' at the end of paragraph (b), changing the period to a semicolon at the end of paragraph (c), and adding new paragraphs (d) and (e) to read as follows:

§ 404.1745 Violation of our requirements, rules, or standards.

* * * * *

(d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see § 404.1770(a)); or

(e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see § 404.1770(a)).

■ 3. Amend § 404.1750 by revising paragraph (e)(2) to read as follows:

§ 404.1750 Notice of charges against a representative.

* * * * *

(e) * * *

(2) File the answer with the Social Security Administration, at the address specified on the notice, within the 30-day time period.

* * * * *

■ 4. Revise § 404.1755 to read as follows:

§ 404.1755 Withdrawing charges against a representative.

The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, may withdraw charges against a representative. We will do this if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative in dealings with us. When we consider withdrawing charges brought under § 404.1745(d) or (e) based

on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or agency that suspended, disbarred, or disqualified the representative, the Deputy Commissioner for Disability and Income Security Programs, or his or her designee, will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the Deputy Commissioner, or his or her designee, is so satisfied, the Deputy Commissioner, or his or her designee, will withdraw those charges. The action of the Deputy Commissioner, or his or her designee, regarding withdrawal of charges is solely that of the Deputy Commissioner for Disability and Income Security Programs, or his or her designee, and is not reviewable, or subject to consideration in decisions made under §§ 404.1770 and 404.1790. If we withdraw the charges, we shall notify the representative by mail at his or her last known address.

■ 5. Amend § 404.1765(l) by adding a second sentence, to read as follows:

§ 404.1765 Hearing on charges.

* * * * *

(l) *Representation.* * * * The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will be represented by one or more attorneys from the Office of the General Counsel.

* * * * *

■ 6. Amend § 404.1770 by redesignating existing paragraphs (a)(2) and (a)(3) as (a)(3) and (a)(4), by adding a new paragraph (a)(2), and by revising redesignated paragraph (a)(3)(ii), to read as follows:

§ 404.1770 Decision by hearing officer.

(a) * * *

(2) In deciding whether an individual has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (*e.g.*, failure to pay dues or to complete continuing legal education requirements), that will not disqualify the individual from acting as a representative before SSA. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (*e.g.*, acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether an individual should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension or disqualification. For purposes of determining whether an individual has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency—

(i) *Disqualified* refers to any action that prohibits an individual from participating in or appearing before a Federal program or agency, regardless of how long the prohibition lasts or the specific terminology used.

(ii) *Federal program* refers to any program established by an Act of Congress or administered by a Federal agency.

(iii) *Federal agency* refers to any authority of the executive branch of the Government of the United States.

(3) * * *

(ii) Disqualify the representative from acting as a representative in dealings with us until he or she may be reinstated under § 404.1799. Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

* * * * *

■ 7. Amend § 404.1790 by revising paragraph (b) to read as follows:

§ 404.1790 Appeals Council's decision.

* * * * *

(b) The Appeals Council, in changing a hearing officer's decision to suspend a representative for a specified period, shall in no event reduce the period of suspension to less than 1 year. In modifying a hearing officer's decision to disqualify a representative, the Appeals Council shall in no event impose a period of suspension of less than 1 year. Further, the Appeals Council shall in no event impose a suspension when disqualification is the sole sanction available in accordance with § 404.1770(a)(3)(ii).

* * * * *

■ 8. Amend § 404.1799 by revising paragraph (d) to read as follows:

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(d)(1) The Appeals Council shall not grant the request unless it is reasonably satisfied that the person will in the future act according to the provisions of section 206(a) of the Act, and to our rules and regulations.

(2) If a person was disqualified because he or she had been disbarred or suspended from a court or bar, the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court or bar from which he or she had been disbarred or suspended.

(3) If a person was disqualified because he or she had been disqualified from participating in or appearing before a Federal program or agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she is now qualified to participate in or appear before that Federal program or agency.

(4) If the person was disqualified as a result of collecting or receiving, and retaining, a fee for representational services in excess of the amount authorized, the Appeals Council will grant the request only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that full restitution has been made.

* * * * *

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

Subpart O—[Amended]

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

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

■ 10. Amend § 416.1545 by removing the word ''or'' at the end of paragraph (b), changing the period to a semicolon at the end of paragraph (c), and adding

new paragraphs (d) and (e) to read as follows:

§ 416.1545 Violation of our requirements, rules, or standards.

* * * * *

(d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see § 416.1570(a)); or

(e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see § 416.1570(a)).

■ 11. Amend § 416.1550 by revising paragraph (e)(2) to read as follows:

§ 416.1550 Notice of charges against a representative.

* * * * *

(e) * * *

(2) File the answer with the Social Security Administration, at the address specified on the notice, within the 30-day time period.

* * * * *

■ 12. Revise § 416.1555 to read as follows:

§ 416.1555 Withdrawing charges against a representative.

The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, may withdraw charges against a representative. We will do this if the representative files an answer, or we obtain evidence, that satisfies us that we should not suspend or disqualify the representative from acting as a representative in dealings with us. When we consider withdrawing charges brought under § 416.1545(d) or (e) based on the representative's assertion that, before or after our filing of charges, the representative has been reinstated to practice by the court, bar, or Federal program or agency that suspended, disbarred, or disqualified the representative, the Deputy Commissioner for Disability and Income Security Programs, or his or her designee, will determine whether such reinstatement occurred, whether it remains in effect, and whether he or she is reasonably satisfied that the representative will in the future act in accordance with the provisions of section 206(a) of the Act and our rules and regulations. If the representative proves that reinstatement occurred and remains in effect and the Deputy Commissioner, or his or her designee, is so satisfied, the Deputy Commissioner, or his or her designee, will withdraw those charges. The action of the Deputy Commissioner, or his or her designee, regarding withdrawal of charges is solely that of the Deputy Commissioner for Disability and Income Security Programs, or his or her designee, and is not reviewable, or subject to consideration in decisions made under §§ 416.1570 and 416.1590. If we withdraw the charges, we shall notify the representative by mail at his or her last known address.

■ 13. Amend § 416.1565(l) by adding a second sentence, to read as follows:

§ 416.1565 Hearing on charges.

* * * * *

(l) *Representation.* * * * The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will be represented by one or more attorneys from the Office of the General Counsel.

* * * * *

■ 14. Amend § 416.1570 by redesignating existing paragraphs (a)(2) and (a)(3) as (a)(3) and (a)(4), by adding a new paragraph (a)(2), and by revising redesignated paragraph (a)(3)(ii), to read as follows:

§ 416.1570 Decision by hearing officer.

(a) * * *

(2) In deciding whether an individual has been, by reason of misconduct, disbarred or suspended by a court or bar, or disqualified from participating in or appearing before any Federal program or agency, the hearing officer will consider the reasons for the disbarment, suspension, or disqualification action. If the action was taken for solely administrative reasons (*e.g.*, failure to pay dues or to complete continuing legal education requirements), that will not disqualify the individual from acting as a representative before SSA. However, this exception to disqualification does not apply if the administrative action was taken in lieu of disciplinary proceedings (*e.g.*, acceptance of a voluntary resignation pending disciplinary action). Although the hearing officer will consider whether the disbarment, suspension, or disqualification action is based on misconduct when deciding whether an individual should be disqualified from acting as a representative before us, the hearing officer will not re-examine or revise the factual or legal conclusions that led to the disbarment, suspension or disqualification. For purposes of determining whether an individual has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency—

(i) *Disqualified* refers to any action that prohibits an individual from participating in or appearing before a Federal program or agency, regardless of how long the prohibition lasts or the specific terminology used.

(ii) *Federal program* refers to any program established by an Act of Congress or administered by a Federal agency.

(iii) *Federal agency* refers to any authority of the executive branch of the Government of the United States.

(3) * * *

(ii) Disqualify the representative from acting as a representative in dealings with us until he or she may be reinstated under § 416.1599. Disqualification is the sole sanction available if the charges have been sustained because the representative has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or disqualified from participating in or appearing before any Federal program or agency, or because the representative has collected or received, and retains, a fee for representational services in excess of the amount authorized.

* * * * *

■ 15. Amend § 416.1590 by revising paragraph (b) to read as follows:

§ 416.1590 Appeals Council's decision.

* * * * *

(b) The Appeals Council, in changing a hearing officer's decision to suspend a representative for a specified period, shall in no event reduce the period of suspension to less than 1 year. In modifying a hearing officer's decision to disqualify a representative, the Appeals Council shall in no event impose a period of suspension of less than 1 year. Further, the Appeals Council shall in no event impose a suspension when disqualification is the sole sanction available in accordance with § 416.1570(a)(3)(ii).

* * * * *

■ 16. Amend § 416.1599 by revising paragraph (d) to read as follows:

§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(d)(1) The Appeals Council shall not grant the request unless it is reasonably satisfied that the person will in the future act according to the provisions of section 206(a) of the Act, and to our rules and regulations.

(2) If a person was disqualified because he or she had been disbarred or suspended from a court or bar, the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this

section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court or bar from which he or she had been disbarred or suspended.

(3) If a person was disqualified because he or she had been disqualified from participating in or appearing before a Federal program or agency, the Appeals Council will grant the request for reinstatement only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she is now qualified to participate in or appear before that Federal program or agency.

(4) If the person was disqualified as a result of collecting or receiving, and retaining, a fee for representational services in excess of the amount authorized, the Appeals Council will grant the request only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that full restitution has been made.

[FR Doc. 06–433 Filed 1–17–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218–AC14

[Docket No. S–775 A]

Steel Erection; Slip Resistance of Skeletal Structural Steel

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document revokes a provision within the Steel Erection Standard which addresses slip resistance of skeletal structural steel. The Agency received comments that suggest there has been no significant progress regarding the suitability of the test methods referenced in the provision for testing slip resistance or the availability of coatings that would meet the slip resistant requirements of the provision. Most significantly, there is a high probability that the test methods will not be validated through statements of precision and bias by the effective date and that ASTM, an industry standards association, is likely to withdraw them shortly thereafter. As a result employers will be unable to comply with the provision. Therefore, the Agency has decided to revoke it.

DATES: This final rule is effective January 18, 2006.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–5445, as the recipient of petitions for review of the final standard.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Kevin Ropp, OSHA Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Tressi Cordaro, Office of Construction Standards and Guidance, Directorate of Construction, Room N–3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020.

For additional copies of this notice, contact OSHA's Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this notice, as well as news releases and other relevant documents, are available on OSHA's Web site at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

References: References to documents and materials are found throughout this **Federal Register** document. Materials in the docket of this rulemaking are identified by their exhibit numbers, as follows: ''Exhibit 2–1'' means exhibit number 2–1 and ''Exhibit 2–1–1'' means number exhibit 2–1, attachment 1 in Docket S–775A. A list of exhibits is available in the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627), and on OSHA's Web site at *http://www.osha.gov.*

References to the Code of Federal Regulations are identified as follows: ''29 CFR 1926.750'' means chapter 29 of the Code of Federal Regulations, section 750 of part 1926.

I. Background

On January 18, 2001, OSHA published a new construction standard for steel erection work, 29 Code of Federal Regulation Subpart R (Sections 1926.750 through 1926.761 and Appendices A through H) (''2001 final rule'') (66 FR 5196). It was developed through negotiated rulemaking, together with notice and comment under section 6(b) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 655) and section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704). In the course of that rulemaking, OSHA received evidence that workers were slipping and falling when working on painted or coated structural steel surfaces that were wet from rain or condensation. The Agency decided that requiring such coatings to be slip-resistant would help to address the falling hazard. During the rulemaking, OSHA received evidence both in support of and in opposition to the technical feasibility of such a requirement.

The relevant provisions of the 2001 final rule are 29 CFR 1926.754(c)(3) and appendix B of subpart R of part 1926. Paragraph (c)(3) of § 1926.754 establishes a slip-resistance requirement for the painted and coated top walking surface of any structural steel member installed after July 18, 2006.

Appendix B to subpart R is entitled ''Acceptable Test Methods for Testing Slip-Resistance of Walking/Working Surfaces (§ 1926.754(c)(3)). Non-Mandatory Guidelines for Complying with § 1926.754(c)(3).'' The Appendix lists two acceptable test methods: Standard Test Method for Using a Portable Inclineable Articulated Strut Slip Tester (PIAST) (ASTM F1677–96); and Standard Test Method for Using a Variable Incidence Tribometer (VIT) (ASTM F1679–96).

The crux of the slip resistance requirement in § 1926.754(c)(3) is that the coating used on the structural steel walking surface must have achieved a minimum average slip resistance of 0.50 (when wet) when measured by an English XL tribometer or by another test device's equivalent value, using an appropriate ASTM standard test method. In the preamble to the final rule, OSHA noted that the two ASTM standard test methods listed in Appendix B (ASTM F1677–96 and ASTM F1679–96) had not yet been validated through statements of precision and bias. (A precision and bias statement is documentation that the test method, in laboratory tests, has been shown to have an acceptable degree of repeatability and reproducibility). In addition, representatives of the coatings industry indicated that it would take time to develop new coatings to meet the requirement. For these reasons, the Agency delayed the provision's effective date until July 18, 2006, because the evidence in the record indicated that it was reasonable to expect these