

Issued in Fort Worth, Texas, on March 4, 2011.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2011-0008]

RIN 0960-AH29

Protecting the Public and Our Employees in Our Hearing Process

AGENCY: Social Security Administration.

ACTION: Interim final rules with request for comments.

SUMMARY: We are clarifying our regulatory procedures to ensure the safety of the public and our employees in our hearing process. Due to increasing reports of threats to our hearing office employees, we are taking steps to explicitly increase the level of protection we provide to our staff and to the public during the hearing process. We expect these changes to result in a safer work environment for our employees, while at the same time ensuring that our claimants continue to receive a full and fair hearing on their claims for benefits.

DATES: *Effective Date:* This final rule is effective March 14, 2011.

Comment date: To ensure that your comments are considered, we must receive them no later than May 13, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2011-0008 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as SSN or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA-2011-0008. The system will issue a tracking number to confirm your

submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966-2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Glen Colvin, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041-3260, 703-605-8444, for information about this final rule. 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:

Background

We touch the lives of virtually every American, often during times of personal hardship, transition, and uncertainty. In FY2010, we had 45 million visits to our field offices, 738,000 hearings before an administrative law judge (ALJ), and over 67 million calls to our 800 number. Most interactions occur without incident, and 90% of visitors responding to our annual surveys rated the service as excellent, very good or good. However, some people who visit or call our offices make inappropriate statements to and against our employees. Unfortunately, some people go beyond verbal threats and physically assault our employees and guards. As our workloads have risen in recent years, the number of reported threats to our employees has increased significantly. In FY2010, we received 2,777 reports of threats to our employees across all offices, an increase of 43% from FY2009. We take these incidents very seriously, and we promptly investigate them and refer them to law enforcement for further action, when appropriate. We have increased security measures in our field and hearing offices and are using the resources provided by Congress to handle benefit claims more quickly and accurately. We expect these actions will minimize the anxiety that claimants may experience when they seek

disability benefits from us. In deciding what further actions we should take, we must balance the risks to the public and our employees against our service delivery obligations.

We are addressing concerns about security agency-wide, and many of the actions we are taking do not require regulatory changes. However, some of the actions we need to take require us to change the regulations that govern our hearing process.

Explanation of Changes

Agencies have the inherent authority to enforce reasonable restrictions on access to Federally owned property. In addition, courts have held that an individual's right of access to Federal property can reasonably be limited in the interest of public safety.¹ In developing these final rules, we are balancing the individual's right to obtain services against the threat that the individual poses to the safety of our employees and our visitors.

In these final rules, we describe the process we will follow when one of our hearing office employees requests that we provide additional security at a hearing because the claimant or another individual poses a threat to the safety of our employees or other participants in the hearing. When one of our employees makes such a request, the Hearing Office Chief Administrative Law Judge (HOCALJ) will determine whether the individual poses a reasonable threat to the safety of our employees or other participants in the hearing. The HOCALJ will make this finding when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat. The threats that we will consider under these procedures would include, but are not limited to, a declaration of intent to injure another person, or deface or destroy property by some unlawful act. For example, we would use the procedures in these rules when a claimant or other individual makes a threat of physical harm or death against the ALJ, the ALJ's family, Social Security employees, the claimant's

¹ See *Downing v. Kunzig*, 454 F.2d 1230, 1232 (6th Cir. 1972) (noting that, "federal buildings housing federal courts and other governmental agencies are designed to be used strictly for governmental purposes. Although members of the public ordinarily have free access to such buildings, * * * responsible agencies are free to adopt and enforce reasonable rules restricting such public use. * * *"); cf. *United States v. Cassiagnol*, 420 F.2d 868, 875 (4th Cir. 1970) ("Even where government property is generally open to the public, reasonable nondiscriminatory regulation is appropriate to prevent interference with the designated and intended governmental use thereof.")

representative, the witnesses at a hearing, the disability determination services, or the security staff in the hearing office.

The HOCALJ will determine whether the individual poses a reasonable threat to the safety of our employees or other participants in the hearing based on the available evidence and after consultation with the presiding ALJ. Based on the HOCALJ's finding, we will take the necessary steps to protect the public and our employees. In making this finding, the HOCALJ will consider the evidence in the claimant's record and any other information we have regarding the claimant's or other individual's past conduct. If the HOCALJ determines that the individual poses a reasonable threat to the safety of our employees or other participants in the hearing, we will either require the presence of a guard at the hearing or require that the claimant's hearing be held by video or telephone. We expect to exercise this authority infrequently; the vast majority of hearings will continue to be conducted under our standard procedures.

In some cases, because of the claimant's past actions, we will have banned him or her from our facilities. If we have banned a claimant from any of our facilities, he or she will be provided with the opportunity for a telephone hearing, at which he or she may testify and question any witnesses. While the Social Security Act provides a claimant with the opportunity for a hearing, we believe that, under these extraordinary circumstances, the opportunity for a telephone hearing fulfills this mandate.

The HOCALJ's findings as to whether or not an individual poses a reasonable threat and how we will conduct the hearing are not initial determinations and not subject to further review under 20 CFR 404.903 and 416.1403.

Clarity of These Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires each agency to write all rules in plain language. In addition to your substantive comments on this final rule, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When will we start to use this rule?

We will start to use this final rule on the date shown under the "Effective Date" section earlier in this preamble. However, we are also inviting public comments on the changes made by this rule. We will consider any relevant comments we receive, and plan to publish another final rule document to respond to any such comments we receive, and to make any changes to the rules as appropriate based on the comments.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B).

As we noted above, the number of reported threats to our employees and property has risen dramatically in recent years. In light of this increase, we believe we must take immediate action in order to implement this rule as quickly as possible. The changes we are making in these final rules will increase our ability to protect our claimants, employees, and other visitors to our hearing offices, while at the same time ensuring that claimants are provided with the opportunity for a full and fair hearing. Accordingly, we find that prior public comment would be contrary to the public interest. However, we are inviting public comment on these final rules and will consider any substantive comments we receive within 60 days of the publication of these final rules.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this rule provided for in 5 U.S.C. 553(d)(3). For the reasons

stated above, we find it contrary to the public interest to delay the effective date of the changes we are making in this final rule. Accordingly, we are making this final rule effective upon publication.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this interim final rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities as it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(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; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: March 8, 2011.

Michael J. Astrue,
Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart J of part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations as set forth below:

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

Subpart J—[Amended].

■ 1. 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, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Add § 404.937 to read as follows:

§ 404.937 Protecting the safety of the public and our employees in our hearing process.

(a) Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to ensure the safety of the public and our employees in our hearing process.

(b)(1) At the request of any hearing office employee, the Hearing Office Chief Administrative Law Judge will determine, after consultation with the presiding administrative law judge, whether a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing. The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat. In making a finding under this paragraph, the Hearing Office Chief Administrative Law Judge will consider all relevant evidence, including any information we have in the claimant's record and any information we have regarding the claimant's or other individual's past conduct.

(2) If the Hearing Office Chief Administrative Law Judge determines that the claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing, the Hearing Office Chief Administrative Law Judge will either:

- (i) Require the presence of a security guard at the hearing; or
- (ii) Require that the hearing be conducted by video teleconference or by telephone.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by telephone.

(d) The actions of the Hearing Office Chief Administrative Law Judge taken under this section are final and not subject to further review.

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

Subpart N—[Amended].

■ 3. The authority citation for subpart N 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); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. Add § 416.1437 to read as follows:

§ 416.1437 Protecting the safety of the public and our employees in our hearing process.

(a) Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to ensure the safety of the public and our employees in our hearing process.

(b)(1) At the request of any hearing office employee, the Hearing Office Chief Administrative Law Judge will determine, after consultation with the presiding administrative law judge, whether a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing. The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat. In making a finding under this paragraph, the Hearing Office Chief Administrative Law Judge will consider all relevant evidence, including any information we have in the claimant's record and any information we have regarding the claimant's or other individual's past conduct.

(2) If the Hearing Office Chief Administrative Law Judge determines that the claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing, the Hearing Office Chief Administrative Law Judge will either:

- (i) Require the presence of a security guard at the hearing; or
- (ii) Require that the hearing be conducted by video teleconference or by telephone.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by telephone.

(d) The actions of the Hearing Office Chief Administrative Law Judge taken under this section are final and not subject to further review.

[FR Doc. 2011–5750 Filed 3–11–11; 8:45 am]

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**DEPARTMENT OF HOMELAND
SECURITY**

Coast Guard

33 CFR Part 3

[Docket No. USCG–2009–0929]

RIN 1625–ZA29

**Ninth Coast Guard District Sector
Realignment; Northern Lake Michigan
and Lake Huron**

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: This rule makes nonsubstantive, technical changes to Title 33 of the CFR to reflect the realignment of boundaries shared among Sector Lake Michigan, Sector Detroit, and Sector Sault Ste. Marie. This action is taken to rebalance workload and span of control among Ninth District sector commands. These changes affect internal Coast Guard organization and functioning only and will have no substantive effect on mariners or other members of the public.

DATES: This final rule is effective at 12:00:01 EDT on April 1, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0929 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0929 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Doug McCann, Ninth District Resources Planning Branch, U.S. Coast Guard, telephone 216–902–6008, e-mail douglas.a.mccann@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: