

statement is made: "Comments to Airspace Docket No. 00-ASO-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Scottsboro, AL. A GPS SIAP, helicopter point in space approach, has been developed for Jackson County Hospital. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

ASO AL E5 Scottsboro, AL [New]

Jackson County Hospital
Point in Space Coordinates
(Lat. 34°39'47" N, long. 86°01'54" W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (Lat. 34°39'47" N, long. 86°01'54" W) serving Jackson County Hospital.

* * * * *

Issued in College Park, Georgia, on April 24, 2000.

Nancy B. Shelton,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 00-11708 Filed 5-9-00; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 403

RIN 0960-AE95

Testimony by Employees and the Production of Records in Legal Proceedings

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Social Security Administration (SSA) is proposing to establish procedures governing testimony by SSA employees and the production of official records and information in legal proceedings to which SSA is not a party. This proposed rule provides procedures, requirements, and information on how SSA will handle these matters and expressly prohibits any production or testimony except as approved by the Commissioner of Social Security or as Federal law otherwise provides. This proposed rule will conserve and ensure more efficient use of SSA's resources in meeting the Agency's mission, promote consistency in decisionmaking, minimize the possibility of involving SSA in issues not related to its mission, maintain SSA's impartiality, protect sensitive and confidential information and the deliberative processes of SSA, and enhance SSA's ability to respond efficiently to requests for records, information, or testimony in a legal proceeding.

DATES: Your comments will be considered if we receive them no later than July 10, 2000.

ADDRESSES: Submit comments in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703; send by telefax to (410) 966-2830; send by E-mail to regulations@ssa.gov; or deliver to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

Electronic Version: The electronic file of this document is available on the date of publication in the Federal Register on the Internet site for the Government Printing Office at: <http://www.access.gpo.gov/sudocs/aces/aces140.html>. It is also available on the Internet site for SSA at: <http://www.ssa.gov>.

FOR FURTHER INFORMATION CONTACT: Brad Howard, General Attorney, Office of the General Counsel, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-1817, for information about this rule. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778.

SUPPLEMENTARY INFORMATION:

Clarity of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

Background

Until March 31, 1995, SSA was part of the Department of Health and Human Services (DHHS). SSA followed the DHHS regulations at 45 CFR part 2 regarding requests for records, information, or testimony in legal proceedings where the United States was not a party. The Social Security Independence and Program Improvements Act of 1994 (SSPIA), Pub. L. 103-296, established SSA as an independent agency in the executive branch of the Federal government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under § 106(b) of the SSPIA, DHHS regulations in effect immediately before March 31, 1995, that relate to functions vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until the Commissioner modifies, suspends, terminates, or repeals them. In this notice, we propose to establish a new part 403 of our regulations, which would set forth the SSA rules for responding to requests for information, records, or testimony in legal proceedings. Once these rules take

effect, the DHHS regulations at 45 CFR part 2 will no longer apply to SSA.

These rules, issued under the authority of 5 U.S.C. 301, are similar to rules issued by numerous government agencies and departments. Section 301 of Title 5, the "housekeeping statute," authorizes the head of an executive agency to issue "regulations for the government of his department, the conduct of its employees, the distribution and performance of its business and the custody, use, and preservation of its records, papers, and property." In *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), the Supreme Court upheld the authority of Federal agencies to establish procedures similar to those proposed here pursuant to § 301. Federal courts have consistently held that a person seeking testimony or records from an agency must comply with the agency's "Touhy regulation" before seeking judicial enforcement of a subpoena. In addition, under section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), the Commissioner has authority to promulgate regulations necessary to the efficient administration of SSA functions.

Explanation of Proposed Regulations

SSA administers a wide variety of programs that affect almost 50 million beneficiaries and the general public. SSA maintains records on virtually every individual in the United States. The documents that SSA obtains or generates and our employees' expertise frequently are sought for use in legal proceedings in which SSA is neither involved nor has an interest. Each year, SSA receives thousands of requests for records and testimony. This proposed rule establishes SSA policies and procedures applicable to requests for official Agency information, records, or testimony in legal proceedings.

Scope

With some limited exceptions, this proposed rule would apply to all requests arising out of a legal proceeding for:

- (1) SSA information or records; or
- (2) Testimony from SSA employees concerning information acquired while performing official duties or because of the employees' official capacity.

A request for both testimony and records or other information is treated as two separate requests—one for testimony and one for records or other information—because some procedures apply only to requests for testimony.

This proposed rule applies to a broad range of legal proceedings. It adopts the definition of "record" found in SSA

disclosure regulations; clarifies that "testimony" encompasses all types of sworn statements; and expands the definition of SSA "employee" to include past employees, persons acting on the Agency's behalf, and persons subject to the Agency's disclosure regulations.

Note: These definitions do not expand the Federal Government's obligation to provide legal representation.

The proposed rule explains that SSA employees may disclose records or other information only as permitted under the Agency's disclosure regulations and explains that SSA employees may provide testimony (even testimony related to records that the Agency may disclose) only with the Commissioner's explicit approval. The Commissioner may delegate this authority.

This proposed rule would not apply to requests for testimony:

- In an SSA administrative proceeding;
- Related to a case to which SSA is a party;
- From the United States Department of Justice;
- In a criminal proceeding to which the United States is a party;
- In a legal proceeding initiated by state or local authorities arising from an investigation or audit initiated by, or conducted in cooperation with, SSA's Office of the Inspector General;
- From either house of Congress;
- In a law enforcement proceeding related to threats or acts against SSA, its employees, or its operations; or
- Where Federal law or regulations expressly require a Federal employee to provide testimony.

These exceptions refine those listed in the DHHS regulations to focus more on specific SSA goals. For example, instead of the broad exceptions related to criminal or civil proceedings where the United States or any Federal agency is a party (45 CFR 2.1(d)(1)), we would provide more specific exceptions related to cases where SSA is a party, requests from the Department of Justice, and criminal proceedings to which the United States is a party. These changes address SSA's goals of full participation in cases when it is a party, and full cooperation and comity with the Agency's legal representatives (the Department of Justice). At the same time, the more narrowly tailored exceptions advance SSA goals of: (1) Not providing any unfair advantage to private litigants related to SSA testimony, and (2) making a full and fair evaluation of each applicant's need for testimony. Similarly, we have not included the exceptions found in the

DHHS regulations that concern DHHS agencies and employees, and we have clarified the relationship between this proposed rule and SSA's disclosure regulations (20 CFR parts 401 and 402) and added exceptions to enhance our ability to assist those protecting and furthering the interests of SSA.

Certification

Because we can certify copies of records in SSA's possession, the Commissioner generally would not authorize testimony intended only to authenticate those records. We propose to adopt certification rules different from those in the DHHS regulations to explain that SSA would not certify copies of records that have been released previously or have been otherwise outside SSA's control.

Fees

We charge a fee for production of records or information and certification. The fee schedules for these services are established in 20 CFR 401.95, and 20 CFR 402.155–185, as appropriate. We propose to charge for testimony. These fees will be calculated to reimburse the Federal government for the full cost of providing testimony, such as, but not limited to, salary or wages of the witness for time needed to prepare for testimony, any necessary travel time, and the cost of travel and attendance at the legal proceeding.

Relation to SSA Disclosure Regulations (20 CFR Parts 401 and 402)

The DHHS regulations at 45 CFR part 2 do not apply to matters covered in the SSA disclosure regulations at 20 CFR part 401. *See* 45 CFR 2.1(d)(6). The proposed part 403 would apply to such matters to the extent necessary to ensure that requests for testimony related to records receive the same treatment as other requests for testimony and to provide notice to requesters or courts when current law prohibits the disclosure of a requested record.

Nothing in this proposed rule affects the application of the rules in SSA's disclosure regulations. As provided in proposed § 403.105, if you request records or information in any legal proceeding covered by this proposed rule, SSA employees will not disclose the requested records or information unless authorized by SSA disclosure regulations. If the disclosure is not authorized, the decision to deny the request would be made by the appropriate SSA official under the SSA disclosure regulations. However, if disclosure is not authorized and your request states that a response is due on a particular date, we would make every

reasonable effort to provide you with the written notification described in proposed § 403.145 on or before the specified date. We will also send you any notices required by part 401 or 402. If disclosure of records or information is authorized by the disclosure regulations but you request testimony concerning those matters, your request would be subject to the process for applying for testimony described in proposed §§ 403.120 through 403.140. By focusing a requestor on the disclosure regulations (which usually require the consent of the individual to whom the requested record pertains) and the procedures for obtaining the Commissioner's permission for testimony, these regulations emphasize the most efficient means for obtaining information, records, or testimony.

Subpoenas Duces Tecum

Under the DHHS regulations, subpoenas duces tecum were deemed to be requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and were to be processed under the DHHS FOIA regulations. *See* 45 CFR 2.5. SSA has concluded that a more useful approach given the nature of SSA's records and operations would be to treat subpoenas duces tecum as requests for records within the scope of this proposed rule. Accordingly, SSA would apply the procedures in this proposed rule in responding to such subpoenas duces tecum.

Procedures for Requesting Testimony

In proposed § 403.120, we explain the process for requesting testimony. We would change the procedures used under the DHHS regulations for requesting testimony from an SSA employee to standardize the procedures and to make them more administratively efficient.

To obtain the testimony of an SSA employee in a legal proceeding, you must file a written application. As in the DHHS regulations, this proposed rule requires that the application set out the nature of the testimony sought, explain why the information is not available by other means, and explain why it is in SSA's interest to provide the testimony. In addition, this proposed rule requires you to explain in the application the relevance of the testimony to the issues involved in the legal proceeding and state the date and time when you need the testimony and the location where the testimony would be presented. Another change from the DHHS regulations would require you to submit the application for testimony to us at least 30 days in advance of the date when you need the testimony, or

explain in your application why your application is not timely and why it is in SSA's interest to review the untimely application. Failure to submit a complete and timely application could result in the denial of the application or could cause delay in the decision on the application.

Unlike the DHHS regulations, this proposed rule would establish a central address for all applications for testimony by SSA employees for use in legal proceedings. This proposed rule would require that all applications (except applications involving the Office of the Inspector General) be sent to our Office of the General Counsel in Baltimore, Maryland. By using a central location, we can issue quicker responses and handle applications more efficiently and consistently.

Deciding Whether To Approve an Application for Testimony—Factors We Consider

Once we receive a complete application for testimony under this proposed rule, the Commissioner would consider whether to approve it. The Office of the General Counsel or another component of SSA may review your application. In consultation with these offices, the Commissioner would make a final decision on your application and notify you of that decision. *See* proposed § 403.135. To decide whether to approve the application, and therefore to authorize an SSA employee to provide testimony, the Commissioner would consider a number of factors such as:

- Whether providing the testimony would violate a statute, Executive Order, or regulation;
- Whether providing the testimony would unduly expend for private purposes the resources of the United States (including the time of SSA employees otherwise needed for official duties);
- Whether providing the testimony is in SSA's interest;
- Whether providing the testimony is consistent with SSA's policy of impartiality among private litigants;
- Whether providing the testimony will put confidential, sensitive, or privileged information at risk;
- Whether the testimony is available in a less burdensome form or from another source;
- Whether the testimony sought is limited to the purpose of the request;
- Whether providing the testimony sought is necessary to prevent a miscarriage of justice or to preserve the rights of an accused individual to due process in a criminal proceeding;

- Whether you previously have requested the same testimony in the same or a related proceeding;
 - Whether another government agency is involved in the proceeding; and
 - Whether you need the testimony to prevent fraud or similar misconduct.
- See proposed § 403.130.

Under this proposed rule, if the Commissioner approves your application, the Commissioner decides the form by which SSA will provide the testimony. For example, if the Commissioner decides that SSA can meet your needs satisfactorily with a sworn written statement, he will not authorize oral testimony.

Procedures When the Commissioner Denies Your Application or Does Not Act by the Return Date Specified in the Application or When Disclosure Is Not Authorized

Under the DHHS regulations, if the Agency head denied approval for an employee to comply with a subpoena for testimony, or did not act by the return date in the subpoena, the employee was to appear at the stated time and place unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate. The only actions the employee was authorized to take at this appearance were to provide a copy of the regulations and to respectfully decline to testify or produce any documents. See 45 CFR § 2.4(b). Our experience suggests that under the prior procedures, SSA incurred the substantial cost of sending individuals to hearings, and that these appearances did not provide any significant service or information to the tribunal or the parties involved.

Proposed § 403.145 would provide that, in cases where SSA cannot respond to a request by the date specified in the application, SSA will make every reasonable effort to provide a statement to the requesting party and/or the court or other tribunal conducting the proceeding by the specified date. The statement would explain the following: compliance with the request is not authorized without the Commissioner's approval and approval has not yet been given; the requirements for obtaining approval; and, if the request complies with proposed § 403.120, the estimated time necessary for reaching a decision. If 20 CFR part 401 or 402 does not authorize disclosure of the requested records or information, the statement would explain the requirements for disclosure. Generally, if a response to a request for

information, records, or testimony is due before the conditions of this part or 20 CFR part 401 or 402 are met, no SSA employee would appear before the tribunal or the parties involved in the proceeding.

Waiving the Requirements of This Proposed Rule

Under certain circumstances, this proposed rule would permit the Commissioner to grant an exception from any requirement related to your application for testimony. For example, proposed § 403.120(b) provides that if you apply for testimony by an SSA employee, you must submit the application at least 30 days before the date the testimony is needed. If, however, the Commissioner believes that a waiver of this requirement would be in the interests of SSA or would be necessary to prevent a miscarriage of justice, an exception may be granted. In addition, SSA employees may resolve requests for information informally (as they currently do in the ordinary course of business) by writing letters to claimants or other members of the public explaining procedures or other matters encompassed by the Social Security Act. Such letters may include information about an individual, if that person has provided written consent to disclosure as required in 20 CFR part 401. Such informal activity is not a waiver of the procedures described in this proposed rule since it does not involve a sworn statement by an SSA employee, but is an alternative means of assisting a person without providing employee testimony.

Requests Involving the Office of the Inspector General

This proposed rule provides that if you seek records or information of the Office of the Inspector General or the testimony of an employee of the Office of the Inspector General, the regulations in part 403 apply with two exceptions. The Inspector General or his or her designee would make any determination that the Commissioner would make. A separate address is provided for requests for Office of the Inspector General records or information or applications for the testimony of an employee of the Office of the Inspector General.

Procedural Nature of the Regulations

This proposed rule would be procedural, not substantive. Nevertheless, failure to comply with the procedures may be a basis for denying a request. This proposed rule does not create a right to obtain information, records, or the testimony of an SSA employee nor does it create any

additional right or privilege not already available to SSA to deny such a request. Furthermore, this proposed rule creates no independent right of action against SSA or any of its employees.

Regulatory Procedures

Executive Order 12866

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

There is a reporting requirement in section 403.120(a),(b), and (c), which establishes the requirements for applying for the testimony of an SSA employee. As required by 44 U.S.C. 3507(d), we have submitted a copy of this information collection requirement to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for SSA.

The public burden for this collection of information is estimated to average 30 minutes per application. This includes the time it will take to understand what is needed, gather the necessary facts, and provide the information. We expect that there will be approximately 40 applicants for testimony each year. Therefore, the annual reporting burden is expected to be 20 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235.

SSA is soliciting comments from the public in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology (e.g., permitting electronic submission of responses).

(Catalog of Federal Domestic Assistance Program Nos. 93.773 Medicare-Hospital Insurance; 93.774 Medicare-Supplementary Medical Insurance; 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; and 96.006 Supplemental Security Income).

List of Subjects in 20 CFR Part 403

Courts, Government employees.

Dated: April 26, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For reasons set out in the preamble, Chapter III of Title 20 of the Code of Federal Regulations is amended by adding a new part 403 to read as follows:

PART 403—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF RECORDS AND INFORMATION IN LEGAL PROCEEDINGS

Sec.

- 403.100 When can an SSA employee testify or produce information or records in legal proceedings?
- 403.105 What is the relationship between this part and 20 CFR parts 401 and 402?
- 403.110 What special definitions apply to this part?
- 403.115 When does this part apply?
- 403.120 How must I request testimony?
- 403.125 How will requests for records, information, or testimony involving SSA's Office of the Inspector General be handled?
- 403.130 What factors may the Commissioner consider in determining whether SSA will grant my application for testimony?
- 403.135 What happens to my application for testimony?
- 403.140 If the Commissioner authorizes testimony, what will be the scope and form of that testimony?
- 403.145 What will SSA do if I have not satisfied the conditions in this part or in 20 CFR part 401 or 402?
- 403.150 Must I pay a fee if my request is granted?
- 403.155 Does SSA certify records?

Authority: Secs. 702(a)(5) and 1106 of the Social Security Act, 42 U.S.C. 902(a)(5) and 1306; 5 U.S.C. 301; 31 U.S.C. 9701.

§ 403.100 When can an SSA employee testify or produce information or records in legal proceedings?

An SSA employee can testify concerning any function of SSA or any information or record created or acquired by SSA as a result of the discharge of its official duties in any legal proceeding covered by this part only with the prior authorization of the Commissioner. An SSA employee can provide records or other information in a legal proceeding covered by this part only to the extent that doing so is consistent with 20 CFR parts 401 and 402. A request for both testimony and records or other information is considered two separate requests—one for testimony and one for records or other information. SSA maintains a policy of strict impartiality with respect to private litigants and seeks to minimize the disruption of official duties.

§ 403.105 What is the relationship between this part and 20 CFR parts 401 and 402?

(a) *General.* Disclosure of SSA's records and information contained in those records is governed by the regulations at 20 CFR parts 401 and 402. SSA employees will not disclose records or information in any legal proceeding covered by this part except as permitted by 20 CFR parts 401 and 402.

(b) *Requests for information or records that do not include testimony.*

(1) If you do not request testimony, §§ 403.120–403.140 do not apply.

(2) If 20 CFR part 401 or 402 permits disclosure to you of any requested record or information, we will make every reasonable effort to provide the disclosable information or record to you on or before the date specified in your request.

(3) If neither 20 CFR part 401 nor 402 permits disclosure of information or a record you request, we will notify you as provided in § 403.145. We will also send you any notices required by part 401 or 402.

§ 403.110 What special definitions apply to this part?

The following definitions apply:

(a) *Application* means a written request for testimony that conforms to the requirements of § 403.120.

(b)(1) *Employee* includes—

- (i) Any person employed in any capacity by SSA, currently or in the past;
- (ii) Any person appointed by, or subject to the supervision, jurisdiction,

or control of SSA, the Commissioner of Social Security, or any other SSA official, currently or in the past; and

(iii) Any person who is not described elsewhere in this definition but whose disclosure of information is subject to the regulations at 20 CFR part 401 currently or in the past.

(2) For purposes of this paragraph (b), a person subject to SSA's jurisdiction or control includes any person hired as a contractor by SSA, any person performing services for SSA under an agreement (such as an officer or employee of a State agency involved in determining disability for SSA), and any consultant (including medical or vocational experts or medical services or consultative examination providers), contractor, or subcontractor of such person. Such a person would also include any person who has served or is serving in any advisory capacity, formal or informal.

(3) For purposes of this paragraph (b), a person employed by SSA in the past is considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at SSA; where the matter concerns official information that the employee acquired while working, such as sensitive or confidential agency information; where the person purports to speak for SSA; or where significant SSA resources would be required to prepare the person to testify. Such a person would not be considered an employee when the person will rely only on expertise or general knowledge he or she acquired while working at SSA.

(c) *Commissioner* means the Commissioner of Social Security or his or her designee(s).

(d) *Legal proceeding* includes any pretrial, trial, and post-trial stage of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. *Legal proceeding* also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony by an attorney or any other person.

(e) *Record* has the same meaning as "record" in 20 CFR 402.30.

(f) *Request* means any attempt to obtain the production, disclosure, or release of information, records, or the testimony of an SSA employee, including any order, subpoena, or other command issued in a legal proceeding as well as any informal or other attempt (by any method) by a party or a party's representative.

(g) *SSA* means the Social Security Administration.

(h) *Testimony* includes any sworn statement (oral or written), including (but not limited to)—

(1) Any statement provided through personal appearance; deposition; or recorded interview; or provided by telephone, television, or videotape;

(2) Any response during discovery or other similar proceedings that would involve more than the mere physical production of records; and

(3) Any declaration made under penalty of perjury or any affidavit.

(i) *We* or *our* means the Social Security Administration.

(j) *You* means an individual or entity that submits a request for records, information or testimony.

§ 403.115 When does this part apply?

(a) Except as specified in paragraph (b) of this section, this part applies to any request in connection with any legal proceeding for SSA records or other information or for testimony from SSA or its employees. This part applies to requests for testimony related to SSA's functions or to any information or record created or acquired by SSA as a result of the discharge of its official duties.

(b) This part does not apply to requests for testimony—

(1) In an SSA administrative proceeding;

(2) In a legal proceeding to which SSA is a party ("SSA" here includes the Commissioner and any employee acting in his or her official capacity);

(3) From the United States Department of Justice;

(4) In a criminal proceeding in which the United States is a party;

(5) In a legal proceeding initiated by state or local authorities arising from an investigation or audit initiated by, or conducted in cooperation with, SSA's Office of the Inspector General;

(6) From either house of Congress;

(7) In a law enforcement proceeding related to threats or acts against SSA, its employees, or its operations ("SSA" here includes the Commissioner and any employee acting in his or her official capacity); or

(8) Where Federal law or regulations expressly require a Federal employee to provide testimony.

§ 403.120 How must I request testimony?

(a) You must submit a written application for testimony of an SSA employee. Your application must—

(1) Describe in detail the nature and relevance of the testimony sought in the legal proceeding;

(2) Include a detailed explanation as to why you need the testimony, why

you cannot obtain the information you need from an alternative source, and why providing it to you would be in SSA's interest; and

(3) Provide the date and time that you need the testimony and the place where SSA would present it.

(b) You must submit a complete application to SSA at least 30 days in advance of the date that you need the testimony. If your application is submitted fewer than 30 days before that date, you must provide, in addition to the requirements set out above, a detailed explanation as to why—

(1) You did not apply in a timely fashion; and

(2) It is in SSA's interest to review the untimely application.

(c) You must send your application for testimony to: Office of the General Counsel, Social Security Administration, Post Office Box 17706, Baltimore, MD 21235-7760. (If you are requesting testimony of an employee of the Office of the Inspector General, send your application to the address in § 403.125.)

(d) The Commissioner has the sole discretion to waive any requirement in this section.

(e) If your application does not include each of the items required by paragraph (a) of this section, we may return it to you for additional information. Unless the Commissioner waives one or more requirements, we will not process an incomplete or untimely application.

§ 403.125 How will requests for records, information, or testimony involving SSA's Office of the Inspector General be handled?

A request for records or information of the Office of the Inspector General or the testimony of an employee of the Office of the Inspector General will be handled in accordance with the provisions of this part, except that the Inspector General or the Inspector General's designee will make those determinations that the Commissioner would make. Send your request for records or information pertaining to the Office of the Inspector General or your application for testimony of an employee of the Office of the Inspector General to: Office of the Inspector General, Social Security Administration, 300 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235.

§ 403.130 What factors may the Commissioner consider in determining whether SSA will grant my application for testimony?

In deciding whether to authorize the testimony of an SSA employee, the Commissioner will consider applicable law and factors relating to your need

and the burden to SSA. The considerations include, but are not limited to—

(a) Whether providing the testimony would violate a statute (such as 26 U.S.C. 6103 or section 1106 of the Social Security Act, 42 U.S.C. 1306), Executive Order, or regulation (such as 20 CFR part 401);

(b) Whether granting the application would unduly expend for private purposes the resources of the United States (including the time of SSA employees needed for official duties);

(c) Whether it is in SSA's interest to provide the testimony;

(d) Whether providing the testimony maintains SSA's policy of impartiality among private litigants;

(e) Whether providing the testimony will put confidential, sensitive, or privileged information at risk;

(f) Whether the testimony is available in a less burdensome form or from another source;

(g) Whether the testimony is limited to the purpose of the request;

(h) Whether providing the testimony is necessary to prevent a miscarriage of justice or to preserve the rights of an accused individual to due process in a criminal proceeding;

(i) Whether you have previously requested the same testimony in the same or a related proceeding;

(j) Whether another government agency is involved in the proceeding; or

(k) Whether you need the testimony to prevent fraud or similar misconduct.

§ 403.135 What happens to my application for testimony?

(a) If 20 CFR part 401 or 402 do not permit disclosure of information about which you seek testimony from an SSA employee, we will notify you under § 403.145.

(b) If 20 CFR part 401 or 402 permit disclosure of the information about which you seek testimony,

(1) The Commissioner makes the final decision on your application;

(2) All final decisions are in the sole discretion of the Commissioner; and

(3) We will notify you of the final decision on your application.

§ 403.140 If the Commissioner authorizes testimony, what will be the scope and form of that testimony?

The employee's testimony must be limited to matters that were specifically approved. We will provide testimony in the form that is least burdensome to SSA unless you provide sufficient information in your application for SSA to justify a different form. For example, we will provide an affidavit or declaration rather than a deposition and a deposition rather than trial testimony.

§ 403.145 What will SSA do if I have not satisfied the conditions in this part or in 20 CFR part 401 or 402?

(a) We will provide the following information, as appropriate, to you or the court or other tribunal conducting the legal proceeding if your request states that a response is due on a particular date and the conditions prescribed in this part, or the conditions for disclosure in 20 CFR part 401 or 402, are not satisfied or we anticipate that they will not be satisfied by that date:

(1) A statement that compliance with the request is not authorized under 20 CFR part 401 or 402, or is prohibited without the Commissioner's approval;

(2) The requirements for obtaining the approval of the Commissioner for testimony or for obtaining information, records, or testimony under 20 CFR part 401 or 402; and

(3) If the request complies with § 403.120, the estimated time necessary for a decision. We will make every reasonable effort to provide this information in writing on or before the date specified in your request.

(b) Generally, if a response to a request for information, records, or testimony is due before the conditions of this part or the conditions for disclosure in 20 CFR part 401 or 402 are met, no SSA employee will appear.

(c) SSA will seek the advice and assistance of the Department of Justice when appropriate.

§ 403.150 Must I pay a fee if my request is granted?

(a) *General.* Unless the Commissioner grants a waiver, you must pay fees for our services in providing information, records, or testimony. You must pay the fees as prescribed by the Commissioner. In addition, the Commissioner may require that you pay the fees in advance as a condition of providing the information, records, or testimony. Make fees payable to the Social Security Administration by check or money order.

(b) *Records or information.* Unless the Commissioner grants a waiver, you must pay the fees for production of records or information prescribed in 20 CFR 401.95 and 20 CFR 402.155 through 402.185, as appropriate.

(c) *Testimony.* Unless the Commissioner grants a waiver, you must pay fees calculated to reimburse the United States government for the full cost of providing the testimony. Those costs include, but are not limited to—

(1) The salary or wages of the witness and related costs for the time necessary to prepare for and provide the testimony and any travel time, and

(2) Other travel costs.

(d) *Waiver or reduction of fees.* The Commissioner may waive or reduce fees for providing information, records, or testimony under this part. The rules in 20 CFR 402.185 apply in determining whether to waive fees for the production of records. In deciding whether to waive or reduce fees for testimony or for production of information that does not constitute a record, the Commissioner may consider other factors, including but not limited to—

(1) The ability of the party responsible for the application to pay the full amount of the chargeable fees;

(2) The public interest, as described in 20 CFR 402.185, affected by complying with the application;

(3) The need for the testimony or information in order to prevent a miscarriage of justice;

(4) The extent to which providing the testimony or information serves SSA's interest; and

(5) The burden on SSA's resources required to provide the information or testimony.

§ 403.155 Does SSA certify records?

We can certify the authenticity of copies of records we disclose pursuant to 20 CFR parts 401 and 402, and this part. We will provide this service only in response to your written request. If we certify, we will do so at the time of the disclosure and will not certify copies of records that have left our custody. A request for certified copies of records previously released is considered a new request for records. Fees for this certification are set forth in 20 CFR 402.165(e).

[FR Doc. 00-11592 Filed 5-9-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD08-00-005]

RIN 2115-AE47

Drawbridge Operation Regulation; Chef Menteur Pass, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulation governing the operation of the U.S. Highway 90 bridge across Chef Menteur Pass, mile 2.8 at Lake Catherine, Orleans Parish, Louisiana. The proposal would change the current regulation which provides for a two-hour morning closure period

between 5:30 a.m. and 7:30 a.m. Mondays through Fridays except Federal holidays and require the draw to open on the hour and half-hour between 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. This change would accommodate the navigation needs of commercial fishing vessels.

DATES: Comments and related material must reach the Coast Guard on or before July 31, 2000.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or deliver them to room 1313 at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, 504-589-2965.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08-00-005), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold