

Register, 800 North Capitol Street, NW., suite 1700, Washington, DC.

(h) This amendment becomes effective on May 16, 2003.

Issued in Fort Worth, Texas, on April 22, 2003.

Mark R. Schilling,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AF79

Claimant Identification Pilot Projects

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our regulations that pertain to the processing of initial claims for disability benefits under title II (Social Security Disability Insurance) and title XVI (Supplemental Security Income) of the Social Security Act (the Act). We will be conducting pilot projects wherein we will request photographic identification from individuals filing for title II and title XVI disability and blindness benefits in specified geographic areas covered by the pilot projects. In addition, we will require individuals to allow us to take their photograph and we will make these photographs a part of the claims folder. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This process will strengthen the integrity of the disability claims process by helping to ensure that the individual filing the application is the same individual examined by the consultative examination (CE) physician.

DATES: These regulations are effective May 31, 2003.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at ssa.gov.

FOR FURTHER INFORMATION CONTACT:

Martin Sussman, Regulations Officer, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, regulations@ssa.gov, 410-965-1767 or TTY 410-966-5609 for

information about these rules. For information on eligibility or filing for benefits: call our national toll-free numbers, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet web site, Social Security Online, at ssa.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Pilot Projects

The purpose of the claimant identification pilots is to test and gather information in the use of photographic identification to address the issue of complicit impersonation in the disability claims process. Complicit impersonation is accomplished when an individual, posing as the intended claimant, and with the consent of the claimant, responds to a consultative examination appointment in order to misrepresent the claimant's true medical condition or provides false or misleading information that affects eligibility during interviews with SSA field office employees. SSA and the Office of the Inspector General (OIG) have noticed an upward trend in the number of such instances. It has become apparent that we need to strengthen our procedures for identity verification. We believe that the technology for the photographic identification process is currently available and could be implemented over a short time frame. The photographic identification process should give SSA an economical yet effective means of providing improved identity documents to CE physicians. We anticipate that it will be readily accepted by the public. We will evaluate the results of the pilot and expand or modify the procedures accordingly.

How We Will Conduct the Pilot Projects

We propose to conduct the pilots in the following designated geographic areas:

- (1) All SSA field offices in the State of South Carolina.
- (2) The Augusta, Georgia SSA field office.
- (3) All SSA field offices in the State of Kansas.
- (4) Selected SSA field offices located in New York City.

The pilots will be in effect for a six-month period of time and will begin no earlier than the first day of the month following the month that the rules become effective.

Who Will Be Affected

Individuals filing for title II and/or title XVI disability or blindness benefits at a Social Security office in the designated areas noted above will be required to participate in the claimant identification pilots. Individuals filing via the Internet or by telephone will also

be included. We will be monitoring any possible impact that the pilot procedures might have on SSA's initiative to encourage the filing of applications online via the Internet.

Providing Photographic Identification

While not part of the regulatory requirement, each individual will be asked to provide some form of photographic identification. This identification will be photocopied and the copy made a part of the SSA claims folder. SSA personnel will continue to follow regular identification procedures by asking the individuals questions based on information in the SSA database to ensure that the individuals are who they hold themselves out to be. SSA personnel will obtain additional identifying information if there is a doubt about the identity of the individual. If the individual does not have photographic identification available or does not wish to provide it to us, SSA personnel will not require it but will still follow regular identification procedures as before the pilots went into effect.

Photographs Taken by SSA

Also as part of the claimant identification pilots, each individual filing for disability or blindness benefits at a location participating in the pilot program will be required to have a photograph taken by SSA personnel, regardless of whether the individual provides the photographic identification discussed above. A copy will be made of this image and placed in the SSA claims folder. Images will also be stored electronically and accessed by authorized SSA and Disability Determination Service (DDS) personnel.

If We Request a Consultative Examination

If DDS personnel request a consultative examination for the individual, a hard copy image of the photograph will be made available to the person conducting the CE. This will help to determine whether the individual presenting himself or herself for examination is the same individual who presented himself or herself as the individual filing for disability or blindness benefits. We will ask the CE physician to copy the individual's own photographic identification when the physician was not provided with a photo or a copy of a photographic identification previously taken by SSA personnel.

Other Situations

This same procedure will be used to verify the identity of pilot participants in the following situations:

- If the claim is allowed, subsequent interviews for payment purposes.
- Continuing Disability Reviews.
- SSI redeterminations.
- If the claim is denied, appeals and any associated CE.

Explanation of Proposed Changes

Section 404.617 *Pilot program for photographic identification of disability benefit applicants in designated geographic areas*. In this new section, individuals filing for title II disability benefits will be required to have their photograph taken by the Social Security Administration. We will permit an exception to the photograph requirement when an individual has a sincere religious objection.

Section 416.327 *Pilot program for photographic identification of disability benefit applicants in designated geographic areas*. In this new section, individuals filing for title XVI disability or blindness benefits will be required to have their photograph taken by the Social Security Administration. We will permit an exception to the photograph requirement when an individual has a sincere religious objection.

Proposed Rules

On November 15, 2002, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (67 FR 69161–69164) that led to these final rules. We have made one minor change from what we published. We have added the words “and blindness” in § 416.327 to clarify that we intended to include all such cases in the pilot.

Public Comments

During the comment period that began on November 15, 2002, and ended on January 14, 2003, we received seven comments on the proposed rules. All of them were generally supportive of the proposed rules and six of the comments included suggestions. They came from interested persons, a State agency, and professional associations. We carefully considered all of the comments relevant to the Claimant Identification Pilot Projects and provide our responses to those comments below. While we have condensed, summarized or paraphrased the comments, we have tried to present all views adequately and to respond to all the relevant issues raised by the commenters.

Comments That SSA Should Not Permit an Exception to the Photograph Requirement Based on a Sincere Religious Objection

Comment: Two commenters believed that the rules should not allow for any exception to the photograph requirement, even on religious grounds.

Response: We are providing for an exception in order to accommodate those persons who have a sincere religious objection to having their picture taken. We note that the Supreme Court upheld a decision by a court of appeals that a person with a sincere religious objection against having her picture taken could not be denied a driver's license. See *Quaring v. Peterson*, 728 F.2d 1121 (8th Cir. 1984), *aff'd by an equally divided Court sub nom. Jensen v. Quaring*, 472 U.S. 478 (1985). An objection based on personal beliefs that are as sincere as a religious objection also may be accommodated, as the government may not distinguish among religions or between those who hold traditional religious beliefs and those who have sincere beliefs not based on a traditional religion. The Supreme Court has recognized as a valid objection to a government requirement those beliefs that occupy the same place in a person's life as belief in a traditional deity, noting that there is a vast diversity of religious beliefs in our country. See *United States v. Seeger*, 380 U.S. 163 (1965), cited in *Quaring v. Peterson*. As part of the pilot study, we will learn how many people might object for this reason to our taking their picture and how our accommodating their objection may affect our program.

Comments About Including Additional Exceptions to the Photograph Requirement

Comment: Three commenters thought the exception to the photograph requirement should be broadened to include other “good cause” exceptions, such as individuals who would have difficulty traveling to an office to have a picture taken and individuals with medical conditions or behavioral problems that might be affected by having to visit an office and have a photograph taken. More specifically, one commenter believed that the need to bring individuals into an office for the photograph could present a problem if they were under the care of government agencies, public or private institutions, or other types of organizations. It could possibly disrupt the ongoing treatment and/or routine of individuals with certain types of impairments.

Response: We believe that in order for the photograph requirement to be a deterrent for complicit impersonation, the provision must be as inclusive as possible. It is also important to strike a balance between the degree of burden imposed and the overall effectiveness of the process. While we acknowledge that government agencies and other organizations might experience additional responsibilities because of the photographs, we believe that it is a prudent requirement. Since the number of individuals filing and/or receiving disability benefits increases substantially every year, it becomes even more essential for SSA to be cautious and vigilant in the verification of claimants' identities. It is important to note that the pilot regulations will be in effect for only a six month period of time in a limited geographic area. We will be gathering information on the acceptability of the photograph requirement and exploring possible changes that might be needed to the exceptions if the procedures are later implemented on a nationwide basis.

Comments About the Fact That Many Individuals Do Not Have Photographic Identification Readily Available

Comment: Two commenters believed that the procedures should not result in adverse actions against individuals who cannot produce photographic identification. They point out that many individuals will not have acceptable photographic identification readily available.

Response: The pilot regulations state that providing some form of photographic identification for SSA to copy is not a mandatory requirement. No adverse actions will result if an individual does not provide a photographic identification. The purpose of including this request as part of the pilot is to gather information on the general availability and usability of photographic identifications among the individuals we serve.

Comments About the Fact That the Photographs Taken by SSA During the Pilot Should be Subject to Privacy Act Protections

Comment: Two commenters stated that SSA should state that the photographs taken by SSA during the pilot will be subject to the provisions of the Privacy Act.

Response: We are preparing a **Federal Register** notice amend the *Claims Folders System* that is maintained by SSA in order to permit the storage of photographs of individuals taken during the pilot. This will explain that the photographs are covered by the Privacy

Act. We will also provide each claimant with a Private Act notice handout.

Comments Suggesting That the Photographs Taken by SSA Be Used as Evidence of Disability

Comment: One commenter suggested that the photographs taken by SSA should be used for evidence of disability for the individuals that file applications.

Response: The intent of the pilot regulations is to address the problem of complicit impersonation and to improve our ability to detect and prevent identity fraud in SSA applications and programs. We want to limit the use of photographs to the purpose stated in the pilot at this time.

Federal Register Notice for Modifying Privacy Act System of Records

A formal notice that will modify the Privacy Act system of records for the Claims Folder Systemf will be published in the **Federal Register** to reflect the new information to be collected during the pilot projects.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with Executive Order 12866, as amended by Executive Order 13258. Because of the pilot's short time duration and limited geographic coverage, we expect any costs or savings to be negligible (*i.e.*, less than \$2.5 million).

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

As part of the claimant identification pilot project SSA is requesting clearance of two associated public use forms that will collect pilot performance and tracking data. Listed below is the title and summary of the 2 proposed forms:

The Claimant ID Pilot Flag

The claimant ID Pilot Flag will be used by SSA to track and identify case disposition of disability claims filed at the pilot offices. Respondents are Disability Determination Service (DDS) personnel.

Consultative Examination Evaluation Form

The Consultative Examination Evaluation Form is designed to elicit feedback data about the photographic identification process from physicians that conduct consultative examinations within the designated pilot areas. Respondents to the collection are consultative examination providers participating in the pilot.

Both the Claimant ID Pilot Flag and the Consultative Examination Evaluation Form will be used by SSA to provide evaluation data and measure the effectiveness of the pilots. Burden information concerning the use of these forms is shown in the following table.

Form	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Claimant ID Pilot Flag	27,990	1	1	467
Consultative Examination Evaluation Form	11,196	1	2	373
Total	39,186	840

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments can be mailed or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503. Fax No. 202-395-6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. Fax No. 410-965-6400.

Comments can be received up to 30 days after publication of this notice. (Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security

Disability Insurance and 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and record keeping requirements, Social security.

20 CFR Part 416

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

Dated: March 12, 2003.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending part 404, subpart G and part 416, subpart C of chapter III, title 20 of the Code of Federal Regulations as follows:

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

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

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

■ 2. Add new § 404.617 under the existing heading, **Applications**, to read as follows:

Applications

* * * * *

§ 404.617 Pilot program for photographic identification of disability benefit applicants in designated geographic areas.

(a) To be eligible for Social Security disability insurance benefits in the designated pilot geographic areas during the time period of the pilot, you or a person acting on your behalf must give SSA permission to take your photograph and make this photograph a part of the claims folder. You must give us this permission when you apply for benefits

and/or when we ask for it at a later time. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This pilot will be in effect for a six-month period after these final rules become effective.

(b) *Designated pilot geographic areas means:*

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

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

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

Authority: Secs. 702(a)(5), 1611, and 1631(a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383(a), (d), and (e)).

■ 4. Add new § 416.327 under the existing heading, **Applications**, to read as follows:

Applications

* * * * *

§ 416.327 Pilot program for photographic identification of disability benefit applicants in designated geographic areas.

(a) To be eligible for SSI disability or blindness benefits in the designated pilot geographic areas during the time period of the pilot, you or a person acting on your behalf must give SSA permission to take your photograph and make this photograph a part of the claims folder. You must give us this permission when you apply for benefits and/or when we ask for it at a later time. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This pilot will be in effect for a six-month period after these final rules become effective.

(b) *Designated pilot geographic areas means:*

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300 and 1310

[Docket No. DEA-137F1]

RIN 1117-AA31

Exemption of Chemical Mixtures Containing the List I Chemicals Ephedrine, N-Methylephedrine, N-Methylpseudoephedrine, Norpseudoephedrine, Phenylpropanolamine, and Pseudoephedrine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: On September 16, 1998, the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (NPRM) to implement provisions of the Controlled Substances Act (CSA) pertaining to the regulation of chemical mixtures which contain any of 34 listed chemicals. The NPRM was published to implement CSA requirements that only those chemical mixtures identified by regulation be exempt from applicable regulatory controls.

The NPRM proposed criteria for the determination of whether a chemical mixture shall qualify for automatic exemption from CSA regulatory controls. Additionally, the NPRM defined an application process by which manufacturers may apply for an exemption for chemical mixtures that do not qualify for automatic exemption.

Due to concerns regarding the potential illicit use of chemical mixtures which contain ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine (as precursor material for the production of methamphetamine and related amphetamines), DEA is hereby finalizing the portion of the NPRM pertaining to these six chemicals. Final regulations for all remaining listed chemicals will be published under separate rulemaking, upon completion of a thorough review of applicable comments.

DATES: Effective June 2, 2003. Persons seeking registration must apply on or before June 30, 2003 in order to continue their business pending final action by DEA on their application.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement

Administration, Washington, DC 20537, telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule addresses the List I chemicals ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine as they occur in chemical mixtures. The rule establishes a concentration limit for each of these six listed chemicals. If the concentration of the listed chemical is at or below the limit, in a chemical mixture, then the mixture will be automatically exempted from the registration, reporting, recordkeeping and security requirements of the Controlled Substances Act. All chemical mixtures containing any of these six List I chemicals above the established concentration levels are subject to the requirements of the CSA. This final rule primarily addresses these chemicals as encountered in dietary and nutritional supplements. Actions taken in this final rule will not adversely impact the public's access to these products.

DEA originally proposed a concentration level of two percent for chemical mixtures containing ephedrine and/or pseudoephedrine. However, based on the comments received from the NPRM (63 FR 49506, Sept. 16, 1998), DEA has determined that a two percent concentration level would create significant regulatory burdens for the affected industry. Therefore, based on comments received, DEA has determined that a five percent concentration level will permit access to these products, while ensuring that these products are unlikely to be subject to diversion for the illegal manufacture of methamphetamine.

This final rule also establishes an exemption for the category of products consisting of unaltered harvested plant material, which DEA believes are not subject to diversion regardless of the concentration of the List I chemical in the product. Finally, this rule provides for a process whereby a manufacturer of a product which would otherwise be subject to regulation may request an exemption for that specific product. This process will allow chemical mixtures not automatically exempt by the concentration limit to be considered for exempt status under the CSA.