

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 2004—Jet Routes

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J-20 (Revised)

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Denver, CO; Kiowa, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 140° and Virginia Key, FL, 344° radials; Virginia Key.

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J-43 (Revised)

From Miami, FL, INT Miami 313° and LaBelle, FL, 137° radials; LaBelle; St. Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste. Marie, MI.

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J-45 (Revised)

From Virginia Key, FL, INT 014° and Vero Beach, FL, 143° radial; Vero Beach; INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Macon, GA; Atlanta, GA; Nashville, TN; St Louis, MO; Des Moines, IA; Sioux Falls, SD; to Aberdeen, SD.

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J-53 (Revised)

From Miami, FL; INT Miami 020° and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Craig, FL; INT Craig 347° and Colliers, SC, 174° radials; Colliers; Spartanburg, SC; Pulaski, VA; INT of Pulaski 015° and Ellwood City, PA, 177° radials; to Ellwood City.

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J-55 (Revised)

From Miami, FL; INT Miami 332° and Gainesville, FL, 157°, radials; INT Gainesville 157° and Craig, FL, 192°, radials; Craig; INT Craig 004° and Savannah, GA, 197° radials; Savannah; Charleston, SC; Florence, SC; INT

Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

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J-73 (Revised)

From Miami, FL, INT Miami 313° and LaBelle, FL, 137° radials; LaBelle; Lakeland, FL; Tallahassee, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

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J-81 (New)

From Miami, FL; INT Miami 020° and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Cecil, INT Cecil 007° and Craig, FL, 347° radials; INT Craig 347° and Colliers, SC, 174°, radials; Colliers.

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J-85 (Revised)

From Miami, FL; INT Miami 332° and Gainesville, FL, 157° radials; Gainesville; Taylor, FL; Alma, GA; Colliers, SC; Spartanburg, SC; Charleston, WV; INT of the Charleston 357° and the DRYER, OH, 172° radials; DRYER. The portion within Canada is excluded.

J-86 (Revised)

From Boulder City, NV, via Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT of Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT of Sarasota 103° and La Belle, FL, 313° radials; La Belle; INT La Belle 137° and Miami, FL, 313° radials; to Miami.

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J-113 (New)

From Virginia Key, FL, INT Virginia Key 344° and Craig, FL, 168° radials; Craig.

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Issued in Washington, DC, on January 26, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95-2737 Filed 2-6-95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Social Security Administration****20 CFR Part 422**

RIN 0960-AD45

**Organization and Procedures;
Procedures of the Office of Hearings
and Appeals; Authority of Appeals
Officers To Deny a Request for
Appeals Council Review**

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends our regulations on the organization and procedures of the Appeals Council to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an Administrative Law Judge (ALJ) in cases in which denying the request for review gives the parties to the ALJ decision a right to seek judicial review of that decision.

EFFECTIVE DATE: This final rule is effective February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Paralegal Specialist, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965-1713. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION:**Background**

We are amending § 422.205 of our regulations to authorize Appeals Officers, as well as members of the Appeals Council, to decide whether to deny a request for review of an ALJ decision and thereby make the decision subject to judicial review under section 205(g) of the Social Security Act (the Act).

Part 422 of 20 CFR provides information regarding the organization and procedures of the Social Security Administration (SSA). Subpart C of Part 422 describes the procedures of the Office of Hearings and Appeals (OHA). Section 422.205 describes the organization and functions of the Appeals Council, a part of OHA.

By direct delegation of authority from the Secretary of Health and Human Services (the Secretary), the Appeals Council is authorized to review hearing decisions and orders of dismissal issued by SSA's ALJs. Through the exercise of this authority, the Appeals Council is responsible for ensuring that the final

decisions of the Secretary involving benefits under Titles II, XI, XVI and XVIII of the Act and Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended, are proper and in accordance with the law, regulations, and binding agency policy established in Social Security Rulings and Acquiescence Rulings.

Currently, 22 Appeals Council members, hereinafter referred to as either "Administrative Appeals Judges (AAJs)" or "members," comprise the membership of the Appeals Council. The Associate Commissioner for OHA is the Chair of the Appeals Council and is the administrative officer directly responsible to the Commissioner of Social Security for carrying out OHA's mission of holding ALJ hearings and deciding appeals. Each AAJ, other than the Chair, is assisted by an Appeals Officer who presently serves as a legal clerk. Organizationally, Appeals Officers are a part of the Appeals Council.

The Appeals Council considers appeals under titles II, XI, XVI, and XVIII of the Act, and under Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended. The regulations setting forth the responsibilities of the Appeals Council appear in 20 CFR Part 404 (Subpart J, §§ 404.967 *et seq.*), Part 410 (Subpart F, §§ 410.657 *et seq.*), Part 416 (Subpart N, §§ 416.1467 *et seq.*), and 42 CFR Part 405 (Subpart G, §§ 405.701(c) and 405.724, and Subpart H, § 405.815), Part 417 (Subpart Q, § 417.634), and Part 473 (Subpart B, §§ 473.46 and 473.48(b)). These regulations provide that after an ALJ has issued a decision or dismissed a request for a hearing, the Appeals Council may review a case on its own motion or at the request of a party to the hearing decision or dismissal. The Council may deny or dismiss a party's request for review, or it may grant the request and either issue a decision or remand the case to an ALJ. If the Appeals Council denies a request for review of a decision by an ALJ, the ALJ's decision becomes a final decision of the Secretary subject to judicial review under the provisions of section 205(g) of the Act except when judicial review is precluded in certain Medicare cases. If the Appeals Council grants a request for review and issues a decision, that decision also becomes a final decision of the Secretary subject to judicial review under section 205(g) of the Act except in certain Medicare cases.

Sections 404.970 and 416.1470 of 20 CFR describe cases involving Social Security and supplemental security income benefits payable under title II

and title XVI of the Act that the Appeals Council will review. Those sections provide that the Appeals Council will review a case if the action, findings or conclusions of the ALJ are not supported by substantial evidence; there is an error of law; or there appears to be an abuse of discretion by the ALJ. Those sections also provide that the Appeals Council will review a case that presents a broad policy or procedural issue that may affect the general public interest. The same standards apply to determine if the Appeals Council will review a case under titles XI and XVIII of the Act and under Part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended.

Over the years, there have been questions about the functions and operations of the Appeals Council. Some commenters have questioned the usefulness of review by the Appeals Council. Several studies have addressed the role of the Appeals Council, resulting in many recommendations for improving the Council's structure and operations.

In its Recommendation 87-7: A New Role for the Social Security Appeals Council (adopted December 18, 1987), the Administrative Conference of the United States (ACUS) concluded that the high volume of work of the Council (up to 500 cases per member per month) precluded it from detecting emerging problems, identifying new issues to be resolved, and identifying and developing needed policies. ACUS recommended that the Secretary and SSA restructure the Appeals Council in "a fashion that redirects the institution's goals and operations from an exclusive focus on processing the stream of individual cases and toward an emphasis on improved organizational effectiveness" (1 CFR 305.87-7). To this end, ACUS recommended that "the Appeals Council should be provided the authority to reduce significantly its caseload and also be given, as its principal mandate, the responsibility to recommend and, where appropriate, develop and implement adjudicatory principles and decisional standards for the disability determination process." ACUS also recommended that the agency enhance the status of the Appeals Council and provide law clerks to its members.

To address the workload problems ACUS discussed in its recommendation, SSA decided, in 1988, to add Appeals Officers to the Council to enable the members to focus their attention on the more complex and significant cases, including those cases presenting important policy or procedural issues.

Appeals Officers presently assist AAJs in considering recommendations made by the Council's support staff in OHA's Office of Appellate Operations. Appeals Officers, who are attorneys, also act as the AAJs' staff attorneys, researching and providing legal memoranda on issues arising from cases that come to the attention of the Appeals Council. However, because the Appeals Officers do not have authority under our existing regulations to carry out any of the decisionmaking responsibilities of the AAJs, one or more AAJs must make these decisions.

Research we have supported since we established the Appeals Officer position has persuaded us that if the Appeals Officers are authorized to assume some of the responsibilities of the AAJs, the AAJs will be able to focus more of their attention on cases that present broad policy or procedural issues. In a report commissioned by ACUS in 1989 (Report and Recommendations on the Social Security Administration's Administrative Appeals Process), Professor Frank S. Bloch discussed the Appeals Council's workload and stated that the Council could not be expected to assume a meaningful review function for all claims that might be presented to it. One of the recommendations in the report was that the Appeals Council be authorized "to use staff or lower level Council members to deny a request for review, and limit the review of cases by the Appeals Council to those raising significant policy issues." See Recommendation No. 12.

To complete the changes we contemplated when we established the Appeals Officer position, we are amending § 422.205 to authorize Appeals Officers, as well as AAJs, to deny a request for Appeals Council review of a hearing decision by an ALJ in any case in which the Act would provide an opportunity for judicial review of such hearing decision following a denial of a request for Appeals Council review. Because an ALJ's dismissal of a request for a hearing is not subject to judicial review, AAJs alone will continue to decide whether to grant or deny a request for review of a hearing dismissal. For the same reason, only AAJs will be empowered to exercise the Council's authority to dismiss a request for review or refuse a request to reopen a decision of an ALJ or the Appeals Council. The AAJs also retain exclusive authority to grant a request for review of a hearing decision or a dismissal, to decide to review a case on the Appeals Council's own motion, to remand a case to an ALJ, or to issue a final decision.

In exercising the authority provided to them under the final rule, the Appeals Officers will be required to apply the same criteria as the AAJs in determining whether to deny a request for review. The Appeals Officers will apply the standards set forth in §§ 404.970 and 416.1470, which specify when the Appeals Council will review a case, in deciding the appropriate action. The Appeals Officers will continue to receive guidance, direction and supervision from the AAJs, including instructions as to specific issues or kinds of cases requiring the attention of the AAJ.

While an Appeals Officer will have authority to deny a request for review of an ALJ decision, he or she also may refer a case to an AAJ with a recommendation if the case involves complex factual issues or complicated interpretative issues of law and/or regulation. In addition, the analysts in OHA's Office of Appellate Operations will submit all recommendations to grant review directly to the AAJs for disposition.

We believe that the amendment of § 422.205, which will provide Appeals Officers a specific and limited authority, will allow the Appeals Council to give the public a more timely response to their requests for review, increase the ability of the AAJs to carry out their important function of providing review of many ALJ decisions, and improve the quality and efficiency of the service the Appeals Council is able to provide. The revised process will expedite bringing the "close cases," which are normally more complex, to the attention of the AAJs and also allow the AAJs to focus on cases raising significant issues.

Public Comments on the Proposed Rule

We published a proposed rule to amend § 422.205 with a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on January 10, 1994, 59 FR 1363. We provided interested persons and organizations 60 days to comment. A correction to the preamble to the proposed rule was subsequently published on March 16, 1994, 59 FR 12211. We received two comments on the proposed rule from a single commenter, a legal services organization that represents Medicare beneficiaries. We have carefully considered the comments and the changes proposed by the commenter. As discussed below, we have adopted one of the changes recommended by the commenter in the final rule.

Comment: The commenter believed that the proposed rule would result in some cases being processed more quickly, but also thought that it would

add a step to the process in instances in which the Appeals Officer decides not to deny a request for review and an AAJ must then decide whether to deny or grant review. The commenter perceived this as an additional step that could actually add more time to the process and suggested that if the proposed rule were adopted, there should be time limits within which Appeals Officers must make their decisions.

Response: We are not making this suggested change. We believe the modified process involves no additional step, even in the situation of concern to the commenter, and that the process will expedite disposition of the Appeals Council's workload.

Under the regulations as amended by this final rule, AAJs will receive cases to consider for possible review in two ways. As in the past, where an analyst believes a case should be reviewed under the applicable standards, the analyst will submit a recommendation for review directly to an AAJ for disposition. In addition, where an analyst recommends denial of review and the Appeals Officer believes that the Council should review the case, or that an AAJ should consider the case for possible review, the Appeals Officer will submit the case to an AAJ with a recommendation.

Under the regulation in effect prior to the publication of this final rule, AAJs were required to consider all the cases in which analysts recommended denial of review in an effort to identify those in which review might be appropriate notwithstanding the analyst's recommendation to the contrary. Under the final rule, the AAJs will focus their attention on cases in which analysts recommend review and those additional cases that Appeals Officers decide should be brought to their attention. Where the Appeals Officer refers a case, the issues in it will be focused for the AAJ by virtue of the recommendations of the analyst and the Appeals Officer. Thus, as we stated earlier in this preamble and in the preamble to the NPRM, we believe that the revised process will expedite the bringing of "close cases" to the attention of the AAJs and increase their ability to carry out the important function of reviewing many ALJ decisions, while also allowing the Appeals Council to deny or grant the public's requests for review more promptly.

Comment: The commenter also thought that the number of cases denied review could increase because the only action the Appeals Officers could take would be to deny requests for review, and because the goal of increasing the Appeals Council's "organizational

effectiveness" seems to imply that the desired outcome is more denials of review. The commenter believed this change would occur in the context of a situation in which the number of Medicare cases the Council can consider is already limited by standards concerning the monetary amounts at issue.

The commenter was concerned that if the Appeals Council reviews fewer cases, the proposed rule would have a significant, adverse impact on low-and-moderate income Medicare beneficiaries, limiting some to seeking relief through court actions they cannot afford and denying others any further opportunity to pursue relief (because the access of Medicare beneficiaries to district court review is restricted by monetary minimums on the amount in controversy). The commenter recommended requiring that an AAJ consider all cases in which judicial review would not be possible because of the amount at issue, noting that this change would not address the concern about court costs prohibiting additional appeals.

Response: As discussed in our response to the prior comment, we believe the modified process will increase the capacity of the Appeals Council to identify and review ALJ decisions that should be reviewed pursuant to the applicable regulatory standards. The intent of the revised process provided for in the final rule is to increase the Appeals Council's organizational effectiveness by increasing its capacity to identify and review ALJ decisions that should be reviewed, including, but not limited to, those that present important policy or procedural issues. The revised process should reduce the number of individuals who must file civil actions to obtain relief.

An individual's right to an ALJ hearing in a Medicare case is contingent, in part, on whether or not the claim or claims at issue meet the amount in controversy requirements set forth in the Act. There are, however, no monetary thresholds that limit the Appeals Council's authority to consider reviewing a decision or dismissal issued by an ALJ on a Medicare claim. For example, if an ALJ dismisses a request for hearing because the amount in controversy requirement has not been met, a party may request the Appeals Council to review and vacate the dismissal action. If the request for hearing should not have been dismissed under the applicable standards, the Council will grant the request for review and vacate the hearing dismissal.

We are adopting in the final rule the commenter's recommendation to require AAJs to consider all requests for Appeals Council review in cases in which judicial review would be precluded by the monetary amount at issue. This change from the proposed rule is consistent with our overall intent, which is to empower Appeals Officers to deny requests for review of hearing decisions when such action results in a final decision on which the claimant has a right to seek judicial review under section 205(g) of the Act. To adopt this recommendation, we are making a change in the final rule to specify an additional category of cases in which the authority to deny a request for review will remain exclusively with the AAJ.

The change we are making in the final rule, see below, reserves to the AAJs exclusive authority to deny a request for review of an ALJ hearing decision in any case in which the Secretary's final decision after an ALJ hearing is not subject to judicial review. Such cases are identified in § 422.210(a) and include cases under title XI as well as cases under title XVIII.

There is no right to judicial review under section 205(g) of the Act where the Appeals Council denies a party's request that the Council review and vacate an ALJ's dismissal of a request for a hearing (because there is no final decision of the Secretary after an ALJ hearing in these instances). Where a request for a hearing is dismissed based on application of a monetary minimum and the Council denies a request for review, the monetary minimum effectively precludes judicial review. The final rule, like the proposed rule, addresses the commenter's concerns regarding the exercise of the Council's authority to deny a request for review in such cases since it provides that only AAJs will have authority to deny a request for review of an ALJ dismissal of a request for a hearing.

Change in the Final Rule

After considering the comments on the NPRM, we are publishing a final rule that differs in one respect from the proposed rule. The second sentence of § 422.205(c) as proposed stated: "The denial of a request for review of a hearing dismissal, the dismissal of a request for review, or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair." For the reasons discussed above, we are revising

that sentence in the final regulation to state: "The denial of a request for review of a hearing dismissal, the dismissal of a request for review, the denial of a request for review of a hearing decision whenever such hearing decision after such denial would not be subject to judicial review as explained in § 422.210(a), or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair."

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the rule is not subject to OMB review.

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. Individuals are not included in the definition of a small entity. However, for the purposes of the RFA, we consider the majority of Medicare providers, physicians and suppliers to be small entities.

Inasmuch as the final rule does not alter the standards for Appeals Council review, we believe that it will have little, if any, effect on providers, physicians and suppliers which request Appeals Council review of Medicare claims. Accordingly, we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared an RFA analysis.

Paperwork Reduction Act

This regulation imposes no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 Medicare-Hospital Insurance; 93.774 Medicare-Supplementary Medical Insurance; 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.804 Social Security-Special Benefits for Persons Age 72 and Over; 93.805 Social Security-Survivors Insurance; 93.806 Special Benefits for Disabled Coal

Miners; and 93.807 Supplemental Security Income.)

List of Subjects in 20 CFR Part 422

Administrative Practice and Procedure, Freedom of Information, Organization and Functions (government agencies), Social Security, Reporting and recordkeeping requirements.

Dated: November 10, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: January 31, 1995.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are amending Part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 205, 221, 1102, 1869, and 1871 of the Social Security Act; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh; sec. 413(b) of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b).

2. Section 422.205 is amended by revising paragraph (c) to read as follows:

§ 422.205 Review by Appeals Council.

* * * * *

(c) The denial of a request for review of a hearing decision concerning a determination under § 422.203(a)(1) shall be by such appeals officer or appeals officers or by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair. The denial of a request for review of a hearing dismissal, the dismissal of a request for review, the denial of a request for review of a hearing decision whenever such hearing decision after such denial would not be subject to judicial review as explained in § 422.210(a), or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.

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[FR Doc. 95-2946 Filed 2-6-95; 8:45 am]

BILLING CODE 4190-29-P