

from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(2) We may request additional existing records (see § 416.912);

(3) We may ask you to undergo a consultative examination at our expense (see §§ 416.917 through 416.919t); or

(4) We may ask you or others for more information.

(d) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

■ 13. Amend § 416.927 as follows:

■ a. Revise paragraph (b);

■ b. Remove paragraph (c);

■ c. Redesignate paragraphs (d) through (f) as (c) through (e);

■ d. In newly redesignated paragraph (c) introductory text remove “(d)(2)” and add in its place “(c)(2)”;

■ e. In newly redesignated paragraph (c)(2) introductory text remove “(d)(2)(i) and (d)(2)(ii)” and add in its place “(c)(2)(i) and (c)(2)(ii)” and remove “(d)(3) through (d)(6)” and add in its place “(c)(3) through (c)(6)”;

■ f. In newly redesignated paragraph (d)(3) remove “(e)(1) and (e)(2)” and add in its place “(d)(1) and (d)(2)”;

■ g. In newly redesignated paragraph (e) introductory text remove “(a) through (e)” and add in its place “(a) through (d)”;

■ h. In newly redesignated paragraph (e)(2)(ii) remove “(a) through (e)” and add in its place “(a) through (d)”;

■ i. In newly redesignated paragraph (e)(2)(iii) remove “(a) through (e)” and add in its place “(a) through (d)”, to read as follows:

**§ 416.927 Evaluating opinion evidence.**

\* \* \* \* \*

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See § 416.920b.

\* \* \* \* \*

■ 14. Amend § 416.945 by revising the fifth sentence of paragraph (a)(3) to read as follows:

**§ 416.945 Your residual functional capacity.**

(a) \* \* \*

(3) \* \* \* (See §§ 416.912(d) through (e).) \* \* \*

\* \* \* \* \*

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**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 416**

[Docket No. SSA-2011-0008]

RIN 0960-AH29

**Protecting the Public and Our Employees in Our Hearing Process**

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

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

**DATES:** These final rules are effective February 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Glen Colvin, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041-3260, 703-605-8444, for information about this final rule. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background**

With one minor change, we are making final the rules protecting the public and our employees in our hearing process that we published as interim final rules in the **Federal Register** on March 14, 2011 (76 FR 13506). The preamble to the interim final rules discussed the new rules and our reasons for proposing those additions. Interested readers may refer to the preamble to the interim final rules.<sup>1</sup>

<sup>1</sup> The interim final rules are available at <http://www.regulations.gov/#!documentDetail;D=SSA-2011-0008-0001>.

**Explanation of Changes**

We are revising our regulations at §§ 404.937 and 416.1437 to further describe when the Hearing Office Chief Administrative Law Judge will find a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing. We are making these changes to respond to public comments we received.

**Public Comments on the Interim Final Rules**

In the interim final rules, we provided the public a 60-day comment period, which ended on May 13, 2011. We received three public comments. Since the comments were long, we have condensed, summarized, and paraphrased them. We summarized the commenters' views and responded to the significant issues raised by the commenters that were within the scope of this rule.

*Comment:* Two commenters wanted to make sure that the regulation consistently used the term “poses a threat” instead of any reference to “has made a threat” as the grounds for applying the regulation.

*Response:* We expanded this section to clarify that the Hearing Office Chief Administrative Judge will find that an individual poses a threat if the individual either has made a threat and there is reasonable likelihood that the claimant or other individual could act on the threat, or if evidence suggests that the claimant or other individual poses a threat.

*Comment:* Another commenter agreed with the goal of our interim final rules, but wanted to make sure that the regulation will not result in discrimination against claimants based on their disabilities, national origin, or primary language.

*Response:* These regulations are designed to protect our employees and the public we serve regardless of their disabilities, national origin or primary language. Nothing in these regulations increases the likelihood of discrimination against any claimant or other individual based disability, national origin or primary language. Rather, the regulations focus solely on the conduct of the individual posing a threat and the consequences of such activity.

**Regulatory Procedures**

**Executive Order 12866 as Supplemented by Executive Order 13563**

We consulted with the Office of Management and Budget (OMB) and

determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed these final rules.

**Regulatory Flexibility Act**

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

**Paperwork Reduction Act**

These rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

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

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors and disability insurance; Reporting and recordkeeping requirements; Social Security.

*20 CFR Part 416*

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

**Michael J. Astrue,**  
*Commissioner of Social Security.*

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

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

**Subpart J—[Amended]**

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

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.937 by revising the second sentence of paragraph (b)(1) to read as follows:

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

\* \* \* \* \*

(b)(1) \* \* \* The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat or when evidence suggests that a claimant or other individual poses a threat. \* \* \*

\* \* \* \* \*

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

**Subpart N—[Amended]**

■ 3. The authority citation for subpart N continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. Amend § 416.1437 by revising the second sentence of paragraph (b)(1) to read as follows:

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

\* \* \* \* \*

(b)(1) \* \* \* The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat or when evidence suggests that a claimant or other individual poses a threat. \* \* \*

\* \* \* \* \*

[FR Doc. 2012–4178 Filed 2–22–12; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 1**

[Docket No. FDA–2002–N–0153] (Formerly Docket No. 2002N–0277)

**RIN 0910–AG73**

**Establishment, Maintenance, and Availability of Records: Amendment to Record Availability Requirements**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations on establishment, maintenance, and availability of records. FDA is issuing this interim final rule (IFR) to amend FDA’s regulation on the record availability requirements to implement the amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) made by the FDA Food Safety Modernization Act (FSMA). The FSMA amendment expands FDA’s former records access authority beyond records relating to the specific suspect article of food to records relating to any other article of food that the Secretary of Health and Human Services (the Secretary) reasonably believes is likely to be affected in a similar manner. In addition, the FSMA amendment permits FDA to access records relating to articles of food for which the Secretary believes that there is a reasonable probability that the use of or exposure to the article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals. This expanded records access authority will further help improve FDA’s ability to respond to, and further contain threats of serious adverse health consequences or death to humans or animals.

**DATES:** *Effective date:* This interim final rule is effective March 1, 2012.

*Comment date:* Interested persons may submit either electronic or written comments on this interim final rule by May 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** William A. Correll, Jr., Office of Compliance (HFS–607), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1611.