

1. It may be appropriate to provide a process for a Federal agency to conduct a single NMSA consultation on a series or class of actions similar in type and effect. Would the public and other Federal agencies find this useful and, if so, how might the ONMS best identify the most appropriate actions that could be subject to this arrangement?

2. Beyond simply describing the action and its potential effects on sanctuary resources, what additional information, if any, should be included in the written statement provided to the ONMS by the Federal action agency to ensure that the consultation fully addresses the effects of the activity on sanctuary resources?

3. The ONNS anticipates there may be circumstances where a sanctuary resource statement might need to be supplemented, such as when the scope of the proposed action changes prior to the conclusion of the consultation process. The ONMS seeks comment on what other circumstances might require a supplemental statement and if this issue should be addressed through regulation.

4. The ONNS desires that 304(d) consultations be integrated as efficiently as possible with the other statutory requirements that may apply to a Federal agency action. Should regulations address how 304(d) consultations can be best integrated or otherwise coordinated with, for example, actions required by the National Environmental Policy Act (NEPA), consultations conducted pursuant to section 7 of the Endangered Species Act and section 305(b)(2) of the Magnuson Stevens Fisheries Conservation and Management Act (Essential Fish Habitat provision)? If so, what considerations should be made by the ONNS and Federal agencies when integrating NNSA consultations with these other requirements?

5. When multiple Federal agencies are involved with a project, the ONNS believes it may be helpful to consider designating a lead agency to conduct 304(d) consultations on behalf of the other agencies. Do agencies and the public believe this would be useful and, if so, how should this designation be determined and what procedures should govern this arrangement?

6. The ONNS believes that the ONNS permit and NNSA consultation processes should be integrated for Federal activities that trigger both the 304(d) and NNSA permit requirements. Would additional information on how this integration could work be helpful and, if so, should it be described via regulation?

7. Section 304(d) states that if a Federal agency takes action other than what was recommended, and a sanctuary resource is destroyed, lost, or injured, the agency taking action should "prevent and mitigate further damage and restore or replace the sanctuary resource" in a manner approved by ONNS. Would it be helpful to Federal agencies and the public to have regulations to implement this statutory directive?

8. If the circumstances under which a consultation was completed change (i.e., if new information becomes available, there are changes to the proposed action, or the results of monitoring show injury or loss to sanctuary resources), a previously completed NNSA consultation might need to be reopened in order to protect sanctuary resources in accordance with the NNSA. Should regulatory procedures be developed to govern how and when a consultation should be re-opened?

9. Are there any other ideas that should be considered in order to best facilitate and improve the NNSA consultation requirements and process?

Comments received will help NOAA determine its next steps. If NOAA decides that regulations are appropriate for the implementation of NNSA section 304(d), they will be promulgated in compliance with the Administrative Procedure Act, NEPA and other relevant statutes and executive orders.

*Classification:* This Advanced Notice of Proposed Rulemaking has been determined to be significant for purposes of Executive Order 12866.

Dated: August 19, 2008.

**John H. Dunnigan,**

*Assistant Administrator for Oceans and Coastal Zone Management.*

[FR Doc. E8-19662 Filed 8-25-08; 8:45 am]

**BILLING CODE 3510-NK-M**

## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Parts 404 and 416**

**[Docket No. SSA-2008-0030]**

**RIN 0960-AG82**

#### **Authorization of Representative Fees**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to revise our rules regarding payment of representative fees to allow representatives to charge and receive a fee from third parties without requiring our authorization in certain instances. We also propose to eliminate the requirement that we authorize fees for

legal guardians or court-appointed representatives who provide representational services in claims before us if a court has already authorized their fees. We are proposing these revisions to reflect changes in representatives' business practices, and in the ways in which claimants obtain representation, and to make more efficient the way we process representative fees.

**DATES:** To make sure that your comments are considered, we must receive them no later than September 25, 2008.

**ADDRESSES:** You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA-2008-0030 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at <http://www.regulations.gov>. (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the "Comment or Submission" section of the webpage, type "SSA-2008-0030", select "Go", and then click "Send a Comment or Submission." The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966-2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

*Caution:* All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov>. Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

**FOR FURTHER INFORMATION CONTACT:**

Marg Handel, Supervisory Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-4639. 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:****Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

**Explanation of Changes****Authority**

We may issue regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1). Specifically, we may issue regulations allowing attorneys and non-attorneys to represent claimants before us. We also may set the maximum fees for those services. 42 U.S.C. 406(a)(1) and 1383(d)(2). Based on this authority, we are proposing new rules to revise our current regulations on fees paid to claimant representatives found in part 404 subpart R and part 416 subpart O.

**Current Regulations on Fees Paid by Third Parties**

We require all representatives to obtain our approval before charging or receiving a fee for representational services. 20 CFR 404.1720 and 416.1520. We also prohibit representatives from charging or receiving fees that are more than the amount we approve regardless of whether the fee is charged to, or received from, claimants or third parties. 20 CFR 404.1720(b)(3) and 416.1520(b)(3). However, under our long-standing interpretation of these regulations, if certain criteria are met, we need not approve a fee if a nonprofit organization pays the fee out of funds provided by a government entity. Social Security Ruling (SSR) 85-3.

**Proposed Changes**

We propose to revise our current policy and allow representatives, in certain cases, to be paid fees for providing representational services without requiring our authorization. The primary reason that we set maximum fees is to protect claimants and beneficiaries. Our current regulations carry out this purpose. Nevertheless, when a party other than a

claimant or beneficiary incurs the liability for the cost of the representative's services, there is little risk that the individual may be charged an unreasonable fee. Often third parties, such as insurance companies, have provided claimants representation and have paid the representatives' fees without any liability to the claimants. We do not believe that we need to continue approving fee arrangements between representatives and third parties when the amount of claimants' benefits will not be affected.

Similarly, there is no reason to require legal guardians or court-appointed representatives to obtain our approval for fee arrangements if a court has already authorized their fees. Because courts, when authorizing guardians' fees, generally consider the wards' best interests and have reviewed and approved the legal guardian's accounting, there is little risk to the beneficiary that the fee approved is unreasonable. Thus, under our current subregulatory instructions, we do not require legal guardians or court-appointed representatives to obtain our approval for fee arrangements if a court has already authorized their fees for representation before us, regardless of who bears the liability for paying the fee.

We propose to define "legal guardian or court-appointed representative" as "a court-appointed person, committee, or conservator who is lawfully invested with the power and charged with the duty of taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs" in §§ 404.1703 and 416.1503.

In both of the situations addressed in these proposed rules, eliminating the requirement that we review these fee arrangements would not adversely affect the interests of our beneficiaries and would allow our resources and the resources of the representatives to be used to serve claimants and beneficiaries in other ways. However, to ensure that the interests of our beneficiaries are not adversely affected, we are including criteria in proposed §§ 404.1720(e) and 416.1520(e) that are similar to the criteria we currently have in SSR 85-3. Under these proposed regulations, our approval would not be necessary when the fees are paid by a third party, the claimant is free from any liability for a fee, and the representative waives the right to charge and collect a fee. As we previously noted, our approval of the fee request would also not be necessary where a court has already authorized the fee in cases where legal guardians or court-

appointed representatives provide representational services in claims before us. Our experience has been that these criteria adequately ensure that the cases where our prior approval of a fee is not needed are limited to ones where claimants and beneficiaries are already protected from unreasonable attorney fees.

We also propose to make minor conforming changes to paragraph (b)(3) in §§ 404.1720 and 416.1520.

Please note that in another proposed rule document that we are publishing separately, Revisions to Rules on Representation of Parties, RIN 0960-AG56, we propose different revisions to §§ 404.1703, 404.1720, 416.1503, and 416.1520. When we publish any final rules following the public comment period, we will coordinate revisions to these sections.

Lastly, SSR 85-3 explains that we do not need to authorize a representative's fee if the fee is paid by a nonprofit organization or an agency out of funds provided or administered by a government entity and not paid by the claimant or beneficiary. The proposed rules would codify this policy. In accordance with our usual practice, we will rescind SSR 85-3 as obsolete if and when we adopt these rules in final.

**Clarity of These Rules**

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

*For example:*

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules 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 rules easier to understand?

*When Will We Start To Use These Rules?*

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will

apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

### Regulatory Procedures

#### *Executive Order 12866, as Amended*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Therefore, they were reviewed by OMB.

### *Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities. These proposed rules do not place significant costs on small entities because they will relieve some small entities of the need to obtain SSA approval of a fee. It is anticipated that the cost to small entities will either be minimal, or it will result in cost savings as a result of increased efficiency. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

### *Paperwork Reduction Act*

We are proposing revisions to our rules on obtaining approval for charging a fee for representing claimants. These proposed rules contain public reporting requirements that must be approved by OMB. The chart below lists these sections, describes their content, and provides their burden. We previously accounted for these public reporting burdens in the Information Collection Requests for the various forms the public uses to submit the information to SSA. Consequently, we are inserting a 1-hour placeholder burden in these sections.

Regulation sections and description	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.1720; 416.1520 ..... The representative submits to us a form we prescribe waiving the right to charge and collect a fee.	.....	.....	.....	1

We have submitted an Information Collection Request 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. You can call, e-mail or write to the addresses/phone numbers listed below to request a copy of the Information Collection Request package or to comment.

Office of Management and Budget, Attn: Desk Officer for SSA, *Fax Number:* 202-395-6974, *E-mail address:* [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).  
Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410-965-6400, *E-mail address:* [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

You can submit comments on the paperwork burdens associated with this rule for up to 60 days after publication of this notice; however, they will be most useful if received within 30 days of publication. This does not affect the deadline for the public to comment to SSA on the proposed regulations. These information collection requirements will not become effective until approved by OMB. When OMB has approved these information collection requirements, SSA will publish a notice in the **Federal Register**.

(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; and 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; Penalties; Reporting and recordkeeping requirements; Social Security.

#### *20 CFR Part 416*

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

Dated: May 27, 2008.

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

**Editorial Note:** This document was received at the Office of the Federal Register on August 20, 2008.

For the reasons set out in the preamble, we propose to amend 20 CFR parts 404 and 416 as set forth below:

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

#### **Subpart R—[Amended]**

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

**Authority:** Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a-6); sec. 303, Pub. L. 108-203, 118 Stat. 493.

2. Amend § 404.1703 by adding a definition for “legal guardian or court-

appointed representative” in alphabetical order to read as follows:

#### **§ 404.1703 Definitions.**

\* \* \* \* \*

*Legal guardian or court-appointed representative* means a court-appointed person, committee, or conservator who is lawfully invested with the power and charged with the duty of taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.

\* \* \* \* \*

3. Amend § 404.1720 by revising paragraph (b) heading and (b)(3) and by adding paragraph (e) to read as follows:

#### **§ 404.1720 Fee for a representative's services.**

\* \* \* \* \*

(b) *Charging and receiving a fee under the fee petition process.* \* \* \*

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have approved it, and a representative must not charge or receive any fee that is more than the amount we approve.

\* \* \* \* \*

(e) *When we need not authorize a fee.* We do not need to authorize a fee when:

(1) A non-profit organization, a Federal, State, county, or city government agency, or a third party that is a business entity independent of your representative pays from its funds the representative fees and expenses and both of the following conditions apply:

(i) You (including any auxiliary beneficiaries) are free of any liability to

pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a form we prescribe waiving the right to charge and collect a fee and any expenses from you and the auxiliary beneficiaries, if any, directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative who, in your case, is your legal guardian or a court-appointed representative.

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

### **Subpart O—[Amended]**

4. The authority citation for subpart O of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a-6 and 1383(d)); sec. 303, Pub. L. 108-203, 118 Stat. 493.

5. Amend § 416.1503 by adding a definition for “legal guardian or court-appointed representative” in alphabetical order to read as follows:

#### **§ 416.1503 Definitions.**

\* \* \* \* \*

*Legal guardian or court-appointed representative* means a court-appointed person, committee, or conservator who is lawfully invested with the power and charged with the duty of taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.

\* \* \* \* \*

6. Amend § 416.1520 by revising paragraph (b) heading and (b)(3) and by adding paragraph (e) to read as follows:

#### **§ 416.1520 Fee for a representative's services.**

\* \* \* \* \*

(b) *Charging and receiving a fee under the fee petition process.* \* \* \*

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have approved it, and a representative must not charge or receive any fee that is more than the amount we approve.

\* \* \* \* \*

(e) *When we need not authorize a fee.* We do not need to authorize a fee when:

(1) A non-profit organization, a Federal, State, county, or city government agency, or a third party that is a business entity independent of your representative pays from its funds the representative fees and expenses and both of the following conditions apply:

(i) You are free of any liability to pay a fee or any expenses, or any part

thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a form we prescribe waiving the right to charge and collect a fee and any expenses from you if any, directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative who, in your case, is your legal guardian or a court-appointed representative.

[FR Doc. E8-19674 Filed 8-25-08; 8:45 am]

BILLING CODE 4191-02-P

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 924**

**[SATS No. MS-018-FOR; Docket No. OSM-2008-0017]**

#### **Mississippi Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of revisions to a previously proposed amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposes a revision to its regulations regarding valid existing rights as it pertains to designation of lands as unsuitable for surface coal mining operations. Mississippi intends to revise its program to be consistent with SMCRA.

This document gives the times and locations that the Mississippi program and proposed amendment to that program are available for your inspection and the comment period during which you may submit written comments on the revisions to the amendment.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.t., September 10, 2008.

**ADDRESSES:** You may submit comments by either of the following two methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule is listed under the agency name “OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT” and has been assigned Docket ID: OSM-2008-0017. If you would like to submit comments through

the Federal eRulemaking Portal, go to <http://www.regulations.gov> and do the following. Click on the “Advanced Docket Search” button on the right side of the screen. Type in the Docket ID OSM-2008-0017 and click the submit button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on the OSM-2008-0017, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

• *Mail/Hand Delivery/Courier:* Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Please include the Docket ID (OSM-2008-0017) with your comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above will be included in the docket for this rulemaking and considered.

For additional information on the rulemaking process and the public availability of comments, see “III. Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document.

You may receive one free copy of the amendment by contacting OSM’s Birmingham Field Office. See below **FOR FURTHER INFORMATION CONTACT**.

You may review a copy of the amendment during regular business hours at the following locations:

Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290-7282, [swilson@osmre.gov](mailto:swilson@osmre.gov).

Michael B. E. Bograd, Director, Mississippi Department of Environmental Quality, 2380 Highway 80 West, P.O. Box 20307, Jackson, Mississippi 39289-1307, Telephone: (601) 961-5500.

**FOR FURTHER INFORMATION CONTACT:** Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290-7282. E-mail: [swilson@osmre.gov](mailto:swilson@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

I. Background on the Mississippi Program  
II. Description of the Proposed Amendment  
III. Public Comment Procedures  
IV. Procedural Determinations

#### **I. Background on the Mississippi Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and