



DEPARTMENT OF HOMELAND SECURITY

Secret Service

31 CFR Part 408

Restricted Buildings and Grounds

AGENCY: U.S. Secret Service, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This final rule repeals outdated U.S. Secret Service (“USSS”) regulations concerning the designation of and access to a temporary residence of the President or other USSS protectee. Due to amendments to the relevant statutory authority, the USSS regulations are no longer necessary. This final rule removes these outdated regulations, thereby bringing the CFR into alignment with the terms of the statutory authority and eliminating unnecessary provisions.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Catherine Milhoan, USSS Office of Government and Public Affairs, (202) 406-5708.

SUPPLEMENTARY INFORMATION:

Background

As part of the Omnibus Crime Control Act of 1970, Congress enacted 18 U.S.C. 1752 (Temporary residence of the President) (“Section 1752”), making it unlawful to willfully and knowingly enter or remain in any building or grounds designated by the Secretary of the Treasury as a temporary residence of the President or the temporary

offices of the President and his staff. Pub. L. 91-644, Title V, Sec. 18, 84 Stat. 1891-92 (Jan. 2, 1971). Subsection (d) of Section 1752 further authorized the Secretary of the Treasury:

- (1) to designate by regulation the buildings and grounds which constitute the temporary residences of the President and the temporary offices of the President and his staff, and
- (2) to prescribe regulations governing ingress or egress to such buildings and grounds and to posted, cordoned off, or otherwise restricted areas where the President is or will be temporarily visiting.

Department of Treasury regulations designating the temporary residence of the President and the temporary offices of the President and his staff and governing ingress and egress to those buildings and grounds are set forth in Chapter IV, part 408 of title 31 of the Code of Federal Regulations and consist of sections 408.1 – 408.3 (31 CFR 408.1 – 408.3).

Section 1752 has been amended several times since its enactment in 1971. For example, amendments in 1982 modified subsection (d) to include the authority to issue regulations concerning the residences of USSS protectees in addition to the President. But further modifications in 2006 have eliminated the need for implementing regulations and have removed provisions regarding the issuance of regulations.

Need for Correction

In 2006, the Secret Service Authorization and Technical Modification Act of 2005, Pub. L. 109-177, Title VI, Sec. 602, 120 Stat. 252 (Mar. 9, 2006), amended Section 1752 to eliminate any reference to regulations. Subsection (d), which authorized the

Secretary of the Treasury to issue regulations, was stricken. References to residences as “designated” were also eliminated throughout the text. Instead, the offense conduct was described as willfully and knowingly entering or remaining in any posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the USSS is or will be temporarily visiting or in any posted, cordoned off, or otherwise restricted area of a building or grounds so restricted in conjunction with an event designated as an event of national significance. With those amendments, the regulations found at 31 CFR part 408 became obsolete.

While Section 1752 was amended again in 2012, the authorization to the promulgate regulations was not reintroduced, and the statute in its current form makes no reference to regulation. Those amendments, made in the Federal Restricted Buildings and Grounds Improvement Act of 2011, Pub. L. 112-98, Sec. 2, 126 Stat. 263 (Mar. 8, 2012), reflect the most recent expression of Congressional intent. As in 2006, the 2012 amendments to Section 1752 reflect that the offense conduct is fully described in the text of the statute itself. Rather than identifying restricted residences and offices through regulation, the 2012 statutory amendments define those venues as any posted, cordoned off, or otherwise restricted of the White House or its grounds, the Vice President’s official residence and its grounds, the building or grounds where a Secret Service protectee is or will be temporarily visiting, or a building or grounds that is restricted in conjunction with an event designated as a special event of national significance. There have been no amendments to Section 1752 since 2012.

The regulations found in part 408 were not removed after the enactment of the Secret Service Authorization and Technical Modification Act of 2005 or the Federal

Restricted Buildings and Grounds Improvement Act of 2011. The regulations have also not been updated since 1984, well before the statutory language was changed in 2006 to eliminate all references to regulation. For instance, the regulations currently list the President's designated temporary residence in Santa Barbara County, California, as it was in the Reagan Administration.

The existing regulations are now obsolete and retaining them maintains an inconsistency between the terms of the statute itself and the outdated regulations. As a result, USSS is repealing part 408 in its entirety. This change will align the provisions of the CFR with the express language of the statute and eliminate any potential confusion as to the offense conduct at issue in Section 1752.

Executive Orders 13563, 12866, and 13771

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") directs agencies to reduce regulation and control regulatory costs. This rule is not a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

DHS considers this final rule to be an Executive Order 13771 deregulatory action. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

This rule will serve to remove obsolete provisions and will eliminate any inconsistency between the offense conduct set forth in Section 1752 and the outdated regulatory provisions. This rule will not affect the current application of the terms of the statute. Instead, the rule will provide greater clarity for the public of its application. Therefore, this rule will not impose any costs on USSS or the public. DHS believes that removing the obsolete regulations will reduce confusion for the public and that streamlining the regulations will provide non-monetized efficiencies.

Inapplicability of Notice and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find that notice and public comment procedure on a rule is impracticable, unnecessary, or contrary to the public interest. Part 408 of 31 CFR contains obsolete regulations, which are no longer required pursuant to statutory authority. Further, USSS believes that maintaining outdated regulations causes confusion for the public. Therefore, USSS has determined that it would be unnecessary and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment.

Under 5 U.S.C. 553(d)(3) of the APA, USSS has, for the same reasons, determined that there is good cause for this final rule to become effective immediately upon publication. USSS currently applies the terms of Section 1752 as they appear in the

text of the statute as a matter of law. The repeal of obsolete regulations will serve to align the Code of Federal Regulations with the terms of the authorizing statute itself.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). The Regulatory Flexibility Act applies only to rules subject to notice and comment rulemaking requirements under the APA or any other law (5 U.S.C. 553(a)(2)). Because this rule is not subject to such notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act do not apply. However, as discussed above in the “Executive Orders 13563, 12866, and 13771” section, this rule will impose no costs on the public, including small entities, because it merely eliminates outdated USSS regulations.

Signing Authority

Prior to March 1, 2003, USSS was a component of the Department of the Treasury. On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., Pub. Law 107–296, (the “HSA”), establishing the Department

of Homeland Security (“DHS”). Pursuant to section 821 of the HSA, the USSS was transferred from Treasury to DHS effective March 1, 2003. Accordingly, this final rule to repeal Treasury regulations impacting USSS functions may be signed by the Secretary of Homeland Security.

List of Subjects in 31 CFR Part 408

Federal buildings and facilities, Security measures.

PART 408—[REMOVED AND RESERVED]

Under 18 U.S.C. 1752 and for the reasons discussed in the preamble, amend 31 CFR chapter IV by removing and reserving part 408.

Claire M. Grady,
Acting Deputy Secretary.

[FR Doc. 2018-09230 Filed: 4/30/2018 8:45 am; Publication Date: 5/1/2018]