Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Bombardier BD–100–1A10 airplanes. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Model BD–100–1A10 airplanes. It is not a rule of general applicability, and affects only the applicant which applied to the FAA for approval of these features on the airplane. The FAA has determined that notice and opportunity for public comment are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. The FAA is satisfied that new comments are unlikely and finds, therefore, that good cause exists for making these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model BD–100–1A10 airplane.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2003.

Ali Bahrami,

Assistant Director, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2422 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AE97

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration

AGENCY: Social Security Administration (SSA).

ACTION: Final rules with request for comment.

SUMMARY: We are revising our rules to allow us to conduct hearings before administrative law judges (ALJs) at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by video teleconferencing (VTC). The revised rules provide that if we schedule your hearing as one at which you would appear by VTC, rather than in person, and you object to use of that procedure, we will reschedule your hearing as one at which you may appear in person before the ALJ. These revisions will provide us with greater flexibility in scheduling and holding hearings, improve hearing process efficiency, and extend another service delivery option to individuals requesting a hearing. Although we are issuing these rules as final rules, we are also requesting comments on a provision of the rules that involves a significant change from the proposed rules we previously published concerning our use of VTC.

DATES: These rules are effective March 5, 2003. To be sure your comments are considered, we must receive them by April 4, 2003.

ADDRESSES: You may give us your comments by using our Internet site facility (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations;* by e-mail to *http://www.regulations@ssa.gov;* by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401 between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, Office of Regulations, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1767 or TTY 1–800–966–5906, for information about this notice. 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.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Nationally, over 500,000 requests for a hearing before an ALJ are filed with us each year. Hearings have traditionally been held with all participants (the party(ies) to the hearing, the ALJ, any representative(s) appointed by the party(ies), any witness(es), any translator(s), and any other persons whom the ALJ considers necessary or proper to the hearing) present at the same location: either a hearing office or a remote hearing site. ALJs hold

hearings at remote hearing sites, which are generally at least 75 miles from a hearing office, to accommodate those individuals who do not live near a hearing office.

Approximately 40 percent of hearings are held at remote hearing sites.

To make travel to remote hearing sites as cost effective as possible, hearing offices wait until they have a sufficient number of requests for hearing to schedule a full day or, if travel to a remote hearing site requires an overnight stay, several days of hearings. Because of the need to accrue a docket, ALJs travel to some remote hearing sites infrequently. Because many remote hearing sites are in less-populous areas, it can be difficult to find a needed medical and/or vocational expert witness(es) to travel to these sites, and this difficulty may further delay scheduling a hearing. ALJs also travel from their assigned hearing offices to assist other hearing offices when the need arises.

Whether to conduct hearings at remote sites or assist other hearing offices, the time ALJs spend traveling could be used to perform other adjudicatory responsibilities.

In 1996 we published Social Security Ruling (SSR) 96–10p, Electronic Service Delivery (61 FR 68808, December 30 1996). In SSR 96–10p, we explained that we planned to explore ways for claimants to interact with us electronically. We also explained that we would not require claimants to work with us electronically, but that we would use technology to provide options for different service deliveries. VTC was one of the technologies we identified as having the potential to improve claimant service. VTC provides real-time transmission of audio and video between two or more locations and permits individuals to see, hear, and speak with each other as though they were at the same location.

As we explained in the Notice of Proposed Rulemaking (NPRM) that we published concerning these rules (66 FR 1059, January 5, 2001), we decided to propose conducting hearings by VTC based on testing conducted in the State of Iowa that demonstrated that VTC procedures can be effectively used where large scale, high quality VTC networks exist and claimants want to participate in VTC procedures because doing so reduces the distances they must travel to their hearings. In reaching that decision, we considered and discounted the results at two other test sites, Albuquerque-El Paso and Huntington-Prestonburg, because the tests at those sites offered no travel benefits to the claimants and resulted in low participation rates.

In the testing of VTC that we have been conducting since 1996 in the State of Iowa, which has a large VTC network, no one electing use of VTC procedures has had to travel more than about 20 miles from his or her home to have a hearing, and the travel typically required of claimants currently is only about 5 miles. The rate of claimant participation in the Iowa test currently exceeds 95 percent; that is, over 95 percent of the claimants offered a hearing using VTC procedures agree to the use of those procedures.

In a survey of participants in the Iowa test, a large percentage of the respondents rated hearings using VTC procedures as ''convenient'' or ''very convenient,'' and overall service as either ''good'' or ''very good.'' Test data showed that processing time for these hearings was substantially less than for hearings conducted in person at remote sites during the same time period, and that the ratio of hearings held to hearings scheduled was significantly higher for hearings using VTC procedures than for hearings conducted in person. Being able to hold hearings as scheduled increases our efficiency because we do not have to recontact the individual to determine why he or she did not appear at a scheduled hearing nor reschedule the hearing (which can be time consuming, especially when an expert witness(es) has been scheduled to testify). Further, an ALJ does not spend time waiting for someone who does not appear, as would be the case in a hearing conducted in person at a remote site.

Based on all these factors—claimant satisfaction, ability to provide more timely hearings, savings in ALJ travel time, faster case processing, and higher ratio of hearings held to hearings scheduled—we decided that conducting hearings by VTC is an efficient service delivery alternative. We also decided that scheduling a hearing for use of VTC, rather than asking someone to elect a hearing using VTC, as we have been doing in our testing of VTC, would improve hearing office efficiency and would permit us to provide faster access to a hearing for some individuals.

We plan to begin using VTC facilities in the servicing area of a hearing office when the Associate Commissioner for Hearings and Appeals determines that appearances at hearings conducted in the area can be conducted more efficiently by VTC than in person. We foresee initially scheduling VTC appearances where absent use of VTC:

- We would need to accrue a docket for a remote hearing site.
- An ALJ would need to travel to assist another hearing office.
- An expert witness(es) or appropriate medical specialist(s) would not be available for a hearing site. (In such a case, all participants could be at different locations; for example, the ALJ at a hearing office, the individual at a remote hearing site or another hearing office, and the expert witness(es) at a third location.)

At first, we plan to locate most remote sites for using VTC to conduct appearances either in space where we have a long-term lease or in another federal building. We are investigating sharing VTC facilities with other federal agencies and states, and, if we can ensure privacy, we may eventually rent commercial space to expand use of VTC as a service delivery option. Calling into SSA's VTC network from private facilities, such as facilities owned by a law firm, may also be possible. Regardless of the type of facility, we will make certain that:

- The individual has the same access to the hearing record when appearing by VTC as he or she would have if appearing in person before the ALJ.
- There is a means of transmitting and receiving additional evidence between all locations and all participants.
- An assistant is present at the VTC site to operate the equipment and provide other help, as required.
- The audio/video transmission is secure and the individual's privacy is protected.

We will follow the same procedures for audiotaping hearings that we conduct using VTC that we do for hearings where all the participants appear in person. We have no plans to videotape hearings in which a party or a witness appears by VTC. Should there be a problem with the VTC equipment, before or during a hearing, we will reschedule the hearing as we do now when unforeseen circumstances require us to reschedule a hearing: at the earliest time possible based on the request for hearing filing date.

We reserve the right not to schedule an appearance by VTC for someone who asks to appear by VTC. In many locations, especially in the near term, we may not have the capability to accommodate the request, and the ALJ may determine that an appearance must be conducted in person even where VTC capability exists. As access to VTC expands, we will generally accommodate requests to appear by VTC as space and time permit.

Despite the fact that conducting hearings by VTC has the potential to improve service, we will not require any

individual to appear at his or her hearing by VTC if the individual objects to that procedure at the earliest possible opportunity before the time scheduled for the hearing. Under these final rules, if a party so objects to making his or her appearance by VTC, we will reschedule the hearing as one at which the individual may appear in person.

When we reschedule a hearing because a party objects to making his or her appearance by VTC, we will reschedule the hearing at the earliest time possible based on the request for hearing filing date. Where necessary, to expedite the rescheduling, we will give the party the opportunity to appear in person at the hearing office or any other hearing site within the service area of the hearing office at which we are first able to schedule a hearing. The party's travel expenses to the remote site or to the hearing office, and the travel expenses of his or her appointed representative, if any, and the travel expenses of any unsubpoenaed witnesses we determine to be reasonably necessary, will be reimbursed in accordance with the provisions of 20 CFR 404.999a–404.999d and 416.1495–416.1499.

To ensure that a party fully understands the right to decline to appear by VTC, a notice scheduling an individual to appear at his or her hearing by VTC will clearly state:

- What it means to appear by VTC;
- That we have scheduled the individual's appearance to be by VTC;
- That we will schedule a hearing at which the individual may appear in person if the individual tells us that he or she does not want to appear by VTC; and
- How to tell us that.

We will evaluate hearings using VTC procedures to ensure that there is no significant difference in the outcome of hearings conducted using VTC and those conducted in person and that we maintain a high degree of accuracy in decisions made based on hearings using VTC. We will also ensure that individuals:

- Understand that they are not required to appear at their hearings by VTC;
- Know how to tell us if they do not want to appear by VTC;
- Receive a full and fair hearing; and
- Are satisfied with the VTC process in relation to their appearance and the appearances of any witnesses.

The Final Regulations

We are revising 20 CFR 404.929 and 416.1429 to state that you may appear at your hearing in person or by VTC. We are revising 20 CFR 404.936 and 416.1436 to state that we may schedule your appearance or that of any individual appearing at the hearing to be by VTC and that, if we schedule you to appear by VTC and you tell us that you want to appear in person, we will schedule a hearing at which you may appear in person. We are revising 20 CFR 404.938 and 416.1438 to state that if we schedule you or anyone to appear at your hearing by VTC, the notice of hearing will tell you that and provide information about VTC appearances and about how you can tell us that you do not want to appear by VTC. Finally, we are revising 20 CFR 404.950(a) and (e) and 416.1450(a) and (e) to state that a party or a witness may appear at a hearing in person or by VTC.

Public Comments

We published these regulatory provisions in the **Federal Register** as an NPRM on January 5, 2001 (66 FR 1059). We provided the public with a 60-day comment period. In response to the NPRM, we received seven comment letters from the following sources: the Railroad Retirement Board (RRB), the Disability Law Center, the National Organization of Social Security Claimants Representatives, the Association of Administrative Law Judges, and seven ALJs commenting as individuals.

Because some of the comments were detailed, we have condensed, summarized, or paraphrased them below. However, we have tried to summarize commenters' views accurately and to respond to all of the significant issues raised by the commenters that were within the scope of the proposed rules.

Based on our consideration of the comments received, we have made a number of changes in the rules as proposed in the NPRM. We have also made a number of decisions about administrative practices we will follow in using VTC procedures. We discuss our response to each of the comments below.

In the NPRM we spoke of ''VTC hearings'' and ''in-person hearings'' as a way of distinguishing easily between hearings at which VTC procedures are used and those at which all the participants are at the same location. The public comments received reflected our use of that language (see below) without raising any specific issue about it. However, from our general consideration of the comments and further evaluation of the use of VTC procedures, we have concluded that we should not rely on language that could erroneously suggest that there are two types of hearings and should instead use language that reflects the fact that all claimants are afforded an opportunity for one type of hearing—*i.e.*, a hearing at which the claimant's rights to procedural due process, including the right to appear and present evidence, are fully protected. Speaking of hearings as either ''in-person'' or ''VTC'' hearings would also not accurately reflect the circumstances of hearings in which some of the participants appear before the ALJ in person and some appear by VTC.

The distinctions between hearings at which all of the participants are at the same location and hearings at which some or all of the involved individuals participate by VTC are secondary distinctions. The distinctions involve the manner in which the parties and the witnesses make their appearances before the ALJ (*i.e.*, in person or by VTC), not fundamental differences that cause the hearings to be of different types. We reflect that view in the description of the final rules set forth above, in the discussion of our responses to the comments, and in specific changes we are making in the final rules. However, our comment summaries are couched in the terms we used in the NPRM.

We further discuss these revisions, and other changes in the final rules that are not in direct response to the comments, following the discussion of our responses to the comments. *See* below under the heading, *Additional Changes*.

Comment: The RRB commented that it was very pleased to see SSA's proposal. The RRB also indicated that it would be interested in determining the feasibility of its hearing officers using the VTC facilities of SSA on a fee basis to conduct some of its hearings—to reduce the significant travel in which the RRB is required to engage to conduct its hearings.

Response: As we noted above and in the NPRM, we are investigating whether we can share facilities with other federal agencies and states. We will pursue discussions with the RRB in that regard.

Comment: One organization commented that when claimants who need hearings at a remote site want to exercise their right to an in-person hearing, they will probably face even longer waits for their hearings, and that SSA must take steps to minimize the delays these claimants will face.

Response: In considering this comment, we have concluded that frequent use of VTC procedures in a remote area could delay the hearings of individuals in that area who do not want to appear by VTC. That is the case because the participation of other individuals in VTC procedures will

eliminate some or most of the pending hearings that could go to make up a complete docket for an ALJ trip to the affected remote site.

To ensure claimants in areas of high VTC usage a meaningful option to appear in person, we will make it our practice in those areas to afford claimants who do not want to appear by VTC the opportunity to appear in person either at the hearing office (where hearings are held without need to accumulate ALJ travel dockets), or at any remote site in the hearing office's service area (including, but not limited to, the designated remote site for the claimant's place of residence). We will schedule a hearing where the claimant may appear in person at the earliest possible time based on the filing date of the claimant's request for hearing; election of the option to appear in person will not cause the claimant to lose his or her place in the queue of individuals awaiting entry into the process for scheduling hearings.

In following these practices, we will apply our normal rules for reimbursing the travel expenses that claimants, their representatives, and any unsubpoenaed witnesses incur in traveling to the hearing office or to any remote site in the service area for hearings (*see* §§ 404.999a–404.999d and 416.1495–416.1499). A claimant's decision not to accept a scheduled appearance by VTC will not prevent reimbursement of travel expenses under §§ 404.999c(d)(4) and 416.1498(d)(4).

Comment: An organization commented that choice of hearing sites should be explained at an early, informal conference, and that the choice should be deferred where a claimant wants to appoint a representative. The commenter noted that ensuring that claimants make an informed choice of hearing site would further SSA's goal of reducing the rescheduling of hearings.

Response: In areas in which the Associate Commissioner for Hearings and Appeals has determined that hearings can be conducted more efficiently using VTC than by having appearances made in person, it will be our practice in our pre-hearing activities to provide claimants with information about VTC procedures and an opportunity to ask questions about and to state a preference for or against use of those procedures.

When the ALJ determines that a case is ready to be scheduled for hearing and sets the time and place of the hearing, the ALJ will also decide whether the claimant's appearance should be scheduled to occur by VTC or in person. In doing that, the ALJ will consider any stated preference of the claimant or the representative for or against appearing by VTC, as well as the availability of VTC technology and any other factors, such as a claimant's loss of visual and auditory capacities, that may affect how the appearance should be conducted.

When we issue a notice of hearing advising a claimant that his or her appearance has been scheduled to be by VTC, the claimant will then have an absolute right to decline to appear by VTC, irrespective of any preference he or she may have previously stated in this regard, and to choose to appear in person, under the practices on rescheduling and use of in-person appearance sites that we have described above. A timely statement by the claimant of any objection to appearing by VTC or of a desire to appear in person will constitute good cause for rescheduling the claimant's appearance to be in person (*see* §§ 404.936(e) and 416.1436(e) as revised in these final rules).

Our policy of giving claimants their option to decline to appear by VTC after issuance of the notice of hearing is designed to promote the effective use of VTC procedures while also maintaining a meaningful option for claimants who want to appear in person. We believe that claimants will carefully consider whether they should exercise this option since doing so could delay the occurrence of their hearings, even under the rescheduling and site-usage practices we have described above for expediting the rescheduling of hearings to allow in-person appearances. We believe this policy will help to ensure that VTC procedures will be frequently used where available and, thus, that these procedures will be effective in improving the overall efficiency of the hearings process, even though some hearings will have to be rescheduled because claimants decide against appearing by VTC. We believe the policy is warranted with respect to the individuals affected because the option of appearing by VTC will allow them to have their hearings before an ALJ in the shortest possible time.

Comment: An ALJ commented that claimants should not be given the option of demanding an in-person hearing instead of a VTC hearing. The commenter's reasoning was that VTC either is or is not in accord with due process and, if it is (as this commenter believes), the claimant has no legal basis for insisting on in-person proceedings. The commenter further contended that giving this option would be based, not on a legal right, but on an attempt to accommodate the claimant's preferences, and that mere preferences should be outweighed by the costs to the Agency and the public of accommodating those preferences for a hearing in a more costly forum. The commenter reported that it was his impression—based on pre-ALJ experience with use of VTC in criminal proceedings—that the participants in proceedings conducted by VTC paid little attention to the medium once the proceedings began. In this commenter's view, there is no legitimate reason to object to VTC procedures and many less than legitimate reasons for preferences against those procedures, including judge shopping and claimant discomfort at being ''on TV.''

Response: We believe that the hearing proceedings we conduct by VTC will be fundamentally fair and that they will fully protect the claimant's right to procedural due process. However, as explained below, there are sound reasons for assuring that all claimants retain an opportunity to appear in person at their hearings. Preserving that opportunity for claimants is also consistent with our general policy, as explained in SSR 96–10p, of using technology to provide claimants an optional way of communicating with us.

That certain procedures will provide due process does not mean that there are no legal issues to consider regarding those procedures. Use of VTC technology in administrative hearings is relatively new. In these final rules, we are interpreting the word ''hearing'' as used in sections 205(b)(1) and 1631(c)(1)(A) of the Social Security Act (the Act) to include hearings at which the claimant will appear by VTC, a technology that was not available when these statutes were created, as well as hearings at which the claimant appears in person before the ALJ. Our earliest regulations interpreting the hearing provisions of the Act specified that the claimant had a right to request a hearing ''before'' the decisionmaker (20 CFR 403.707, 1940), and our current regulations specify that claimants may appear ''in person'' at the hearing (20 CFR 404.929 and 416.1429), and that they have a ''right to appear before the administrative law judge, either personally or by means of a designated representative * * *'' (20 CFR 404.950(a) and 416.1450(a)). Therefore, we believe it is legally prudent to ensure that all claimants retain the opportunity to appear in person.

Claimant credibility is an important issue in many of our hearings, and some claimants may have strong opinions about whether they can best project their own credibility by appearing in person as opposed to appearing by VTC. Preserving an option for claimants to appear in person should increase their

comfort level in appearing by VTC and help to ensure that they perceive the hearing process as fair. The satisfaction of claimants with their hearing experiences is, of course, an important consideration in the administration of the Social Security hearings process.

It is also important that we try to ensure that preferences against appearing by VTC do not undermine the effectiveness with which we are able to use VTC, as could happen if such preferences frequently caused claimants to decline to appear by VTC. However, we believe we should pursue that end by promoting and continually improving the claimant-service advantages of VTC while also preserving the opportunity of claimants to appear in person.

Comment: An organization stated that we should guarantee the right of claimants to an in-person hearing to the extent of allowing the claimant to withdraw consent to participate in VTC proceedings even up to the point of arriving at the VTC site (because they may not realize that they do not want to proceed with a VTC appearance until they arrive at the site), and by ensuring that claimants do not lose their place in queue if they decline (or withdraw consent for) a VTC hearing.

Response: Under the provisions of §§ 404.936 and 416.1436, as they currently exist and as revised when these final rules become effective, claimants who object to the time or place of the hearing are required to ''notify the [ALJ] at the earliest possible opportunity before the time set for the hearing.'' Under our existing provisions on dismissing requests for hearing based on failure to appear at a scheduled hearing, a request for hearing may be dismissed if a claimant does not appear at the scheduled hearing and has not given the ALJ, before the time set for the hearing, a good reason why he or she cannot appear at the scheduled hearing. (*See* §§ 404.957(b) and 416.1457(b), which we are not revising.) Under the above provisions, a claimant who has been scheduled to appear by VTC may establish good cause for changing the time or place of the hearing by notifying the ALJ at the earliest possible opportunity before the time set for the hearing that he or she has an objection to appearing by VTC. The notice of hearing will advise the claimant of that requirement. A timely statement by the claimant of any objection to appearing by VTC will cause the ALJ to find that there is good cause to change the time and place of the scheduled hearing and to reschedule the hearing for a time and place at which the claimant may appear in person (*see* §§ 404.936(e) and 416.1436(e)). No hard and fast rule for the latest time for a claimant to object to appearing by VTC may be set because many different factors (including the delayed appointment of a representative who opposes participation in VTC) could affect whether the claimant has notified the ALJ of his or her objection at the earliest possible time. In addition, as we discussed above, claimants who decide to decline to appear by VTC will not lose their place in the queue of individuals awaiting hearings.

Comment: An organization commented that while VTC hearings have the potential to be an improvement over some in-person hearings (such as those conducted in hotel rooms), there are concerns and we should not schedule a VTC hearing and require the claimant to respond affirmatively to choose an in-person hearing. This commenter noted that many claimants with mental impairments, cognitive limits, low education, and communication limitations will have difficulty understanding and responding to the notice.

Response: As discussed above, we believe that the policy of generally requiring claimants to take action to opt out of a scheduled appearance by VTC will be administratively beneficial and otherwise warranted. For the reasons set forth below, we also believe that the policy of generally requiring claimants affirmatively to decline to appear by VTC will not involve any significant risks for claimants, including those individuals who do not have an appointed representative and who may have mental, educational, and linguistic limitations—

- Hearing office staff will have provided claimants with information concerning their options for how they may appear at the hearing during the pre-hearing case preparation that occurs before the notice of hearing is issued;
- The ALJ will have discretion to prevent issuance of a notice scheduling a claimant to appear by VTC in instances in which the ALJ concludes that there are circumstances that make it necessary not to have the claimant appear by VTC;
- The notices of hearing used to schedule claimants to appear by VTC will explain VTC procedures and the option to appear in person in clear, easily understood language; and
- The claimant will be able to opt out of appearing by VTC merely by stating a desire not to appear in that way or a desire to appear in person.

Comment: An organization of individuals who represent claimants in proceedings before us reported that it generally supported the proposed rules and the use of VTC hearings, so long as the right to a full and fair hearing is adequately protected and the quality of VTC hearings is ensured. This organization reported that its members had had mixed experiences with the VTC tests and noted that while a member who had experience with one VTC hearing was dissatisfied with the quality of the VTC transmission (which was not sufficient to allow the ALJ to perceive shortness of breath and sweating experienced by the claimant), another member who had represented several hundred claimants in the Iowa test now preferred VTC to in-person hearings because of the calming effect that VTC procedures had on his clients, the reduction in claimant travel, and the quality of VTC facilities. This organization offered the general comment that its members could be expected not to encourage their clients to participate in VTC hearings if there is no travel advantage and the quality of the hearing experience is inadequate.

Response: We believe that providing high quality VTC facilities and travel advantages for claimants who use VTC services will be of critical importance in ensuring the active cooperation of claimant representatives in encouraging their clients to use those services. We will not achieve our goals in implementing VTC procedures unless claimant representatives support their use. For that reason, and because providing claimants high quality hearing experiences with as little inconvenience to them as reasonably possible is inherently part of our overall mission, we intend to ensure that our VTC facilities are of high quality and that the travel claimants are required to undertake to attend their hearings is reduced by participation in our VTC services. The Associate Commissioner for Hearings and Appeals will consider those factors in determining whether a service area should be designated as ready for VTC use.

Comment: An organization commented that we should establish procedures to ensure that files can be reviewed and that additional evidence is associated with the file. The organization noted that problems have occurred in these respects at in-person, remote-site hearings, especially where the hearing is conducted by a visiting ALJ, and these problems would also exist in VTC hearings.

Response: As we stated in the NPRM, we will make certain that claimants participating in VTC procedures will have the ''same access'' to the hearing record as individuals not participating in those procedures. It is our intent in this regard to ensure that claimants who

make in-person appearances and those who participate in VTC procedures will have equal and sufficient access to the record. The sufficiency of record access in an area will be one of the factors the Associate Commissioner for Hearings and Appeals considers in deciding whether to declare an area ready for use of VTC procedures.

Comment: While only one of the ALJs who commented on the NPRM opposed the proposal to give claimants the right to choose not to have their hearings conducted by VTC, all but one of the commenting ALJs strongly opposed the proposal to allow claimants to veto the use of VTC to conduct the appearances of vocational experts (VEs) and medical experts (MEs). (The comments of the remaining ALJ dealt with matters that were not within the scope of the NPRM.) The ALJs who opposed this provision included five ALJs who conducted hearings in the Iowa test and the Association of Administrative Law Judges.

The reasons offered for opposing this proposal included that it would defeat the purpose of using VTC as a way to obtain expert testimony when it is impractical for the expert to appear in person, and that it could force ALJs to forgo needed testimony or to take testimony through the time consuming and unwieldy method of written interrogatories. Concern was expressed that the right to veto the appearance of an expert by VTC could be used to prevent the taking of expert testimony that might be adverse to the claimant and to facilitate ''expert shopping.'' It was pointed out that claimants can already object to witnesses based on bias or qualifications. The view was also expressed that due process is fully accorded to the claimant if the claimant can see and cross-examine the expert and confront the expert with documentary evidence.

The ALJs who commented based on their experience in the Iowa test strongly emphasized the practical problems that allowing claimants to veto having an expert testify by VTC would cause. These ALJs stated that using VTC to take the testimony of VEs is necessary to utilize these experts effectively because the cost of a VE's appearance can be reduced if, as is possible using VTC procedures, a docket of multiple appearances can be arranged for the expert. They also emphasized the value of VTC in reducing the problems involved in scheduling hearings, citing the example of how much easier it is to make arrangements for one VE to appear by VTC in four hearings occurring on a given day at four different sites than it is to arrange for four VEs to make in-person appearances, at odd times in their workdays, at four sites.

The ALJs involved in the Iowa test further emphasized that the practical problems in not using VTC to take VE testimony are greatly compounded when it comes to securing the testimony of MEs. They reported that it is only through VTC that they are able to provide ME testimony for hearings being held in remote sites, and that MEs will not travel to remote sites when it is technically possible to testify in hearings being held at such sites via VTC. These ALJs also reported that it was their experience that it is almost impossible to get MEs to testify in the larger urban areas where the hearing offices are located, and that it is sometimes necessary to rely on MEs testifying from the medical centers in Ames and Iowa City even in cases being heard in the West Des Moines area.

Response: In considering this comment, we have concluded that claimants should not be empowered to veto use of VTC to take the testimony of expert witnesses. Therefore, we have deleted from §§ 404.938 and 416.1438 the proposed provisions that would have given claimants that power. Because this represents a significant change from the proposed rule, we have decided to offer an additional opportunity for public comment on this provision.

Under these final rules, decisions as to whether hearings will be conducted with a witness or witnesses appearing by VTC will be made by the ALJ. The claimant may state objections to a witness appearing by VTC, just as they may state objections to any aspect of the hearing, and they may object to a witness on the basis of perceived bias or lack of expertise. However, a claimant's objection to a witness appearing by VTC will not prevent use of VTC for the appearance, unless the ALJ determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person.

The analysis of the commenting ALJs concerning the impracticalities of giving claimants veto power over the medium whereby expert witnesses make their appearance has caused us to reevaluate our proposal in that regard. We believe these commenters are correct in indicating that giving claimants that power would undermine one of the primary practical benefits of using VTC procedures and adversely impact our ability to use those procedures effectively to improve the hearings process. The commenters also effectively emphasize the significance of the positive practical benefits that can flow from relying on VTC procedures in scheduling and conducting the appearances of expert witnesses.

An important point made in this comment is that implementation of VTC procedures reduces the readiness of experts to travel to remote sites. This is a result that might be expected logically, we believe, and the experience of the ALJs in the Iowa test bears out its occurrence.

Unless we ensure ALJ authority to use VTC to take expert testimony by not empowering claimants to veto its use for that purpose, the reduced readiness of expert witnesses to travel when VTC appearances are technologically possible will adversely affect our ability to preserve a reasonable opportunity for claimants to appear in person if they choose to opt out of scheduled appearances by VTC. If the authority of ALJs to secure expert testimony by VTC is not ensured, the reduced willingness of experts to travel when VTC technology is available could also reduce the efficiency with which we are able to schedule the appearances of experts at the hearings of individuals who live near hearing offices in urban areas and appear in person in those offices for their hearings.

MEs and VEs testify as impartial witnesses. They testify based on the evidence entered into the record and not based on any examination or personal evaluation of the claimant. Where they testify by VTC and their testimony is adverse to a party's claim, the party and his or her representative, if any, will have a complete opportunity to confront and examine the witness regarding the matters that are important with respect to expert testimony—*i.e.*, the expertise of the witness and the accuracy of his or her testimony.

Affording claimants the power to veto the appearance of expert witnesses by VTC would be inconsistent with our existing practices and instructions regarding use of interrogatories to secure the testimony of expert witnesses. While emphasizing the preferability of securing live testimony where feasible, and requiring the ALJ to consider and rule on any claimant objection to the use of interrogatories, our instructions do not mandate non-use of interrogatories merely because a claimant objects to their use. *See* Hearings, Appeals and Litigation Law Manual (HALLEX), sections I–2–530, I–2–542, and I–2–557. Thus, allowing claimants to veto the live testimony that experts can give by VTC would invest claimants with an authority that they do not currently have with respect to interrogatories.

Under these final rules, ALJs will have discretion to determine that the

appearance of any individual must be conducted in person. Thus, to the extent that circumstances could arise in which it would be advisable to schedule an in-person appearance by an expert witness even though a VTC appearance would be possible technologically, the ALJ may schedule such an appearance. That action could be appropriate, for example, where the claimant alleges personal bias or dishonesty on the part of the expert and the ALJ determines that the claimant should have the opportunity to cross-examine the witness in person because of the greater immediacy of an in-person confrontation.

Comment: An organization commented that the ALJ has exclusive control over the way hearings are conducted, so long as they are fundamentally fair and comport with requirements of due process, and such authority necessarily implies authority to settle disputes concerning the appropriate form of a hearing in a particular case. This commenter was concerned that the proposed rules did not expressly reflect the authority of ALJs to determine if a hearing will be conducted wholly or in part by VTC, and that the lack of clarity of these rules in this regard could lead to confusion and litigation.

Response: We agree that the proposed rules were unclear in this respect. In §§ 404.936 and 416.1436, the final rules clearly reflect the authority of the ALJ to determine how hearings are conducted with respect to the use of VTC to conduct appearances, while also setting forth specific policies that direct how that authority is to be exercised.

In paragraph (c) of §§ 404.936 and 416.1436, the final rules provide that in setting the time and place of the hearing, the ALJ will determine if the appearance of the claimant or that of any other individual who is to appear at the hearing will be made in person or by VTC. Determining the medium by which appearances will be made is part of the ALJ's function of setting the time and place of the hearing because determining the hearing's ''place'' requires consideration of whether VTC technology will be used to conduct an appearance or appearances. See below under *Additional Changes* regarding the definition of ''place'' included in the final rules.

The final rules include provisions in paragraph (c) of §§ 404.936 and 416.1436 that require the ALJ to direct that the appearance of an individual be conducted by VTC if VTC technology is available to conduct the appearance, use of VTC to conduct the appearance would be more efficient than conducting the appearance in person, and the ALJ does not determine that there is a circumstance preventing use of VTC to conduct the appearance. In setting these guidelines, it is our intent that ALJs routinely schedule appearances by VTC in areas that we have designated as ready for VTC use. An appearance in person should be scheduled in these areas only if the ALJ determines that there is a circumstance in the particular case that would make it inappropriate to use VTC in that case.

The final rules also include provisions requiring the ALJ to find good cause to change a scheduled VTC appearance of a party to an in-person appearance if the party objects to appearing by VTC. These provisions are located in paragraph (e) of §§ 404.936 and 416.1436.

Comment: An organization commented that VTC hearings have not been shown to equal the quality and accuracy of in-person hearings and that national rollout should await the study referenced in the NPRM to ensure that claimants have access to full and fair hearings.

Response: We anticipate that we will gradually rollout use of VTC procedures nationally as we are able to make high-quality VTC technology available in different areas. Under that approach, claimants and the hearing process will be able to benefit from VTC technology as soon as it is available, and we will be able to improve our VTC procedures as we move toward full national implementation.

Based on our experience in using VTC, we believe that VTC does not change adjudicative quality or change decisional outcomes. We will continue to assess the results of VTC procedures as we go forward. We will consider the accuracy and efficiency of VTC procedures and the reactions of claimants and their representatives to those procedures.

Additional Changes

Our decision not to use terminology referring to a hearing as a ''video teleconference hearing'' or an ''in-person hearing,'' and to use instead language that distinguishes between appearances made in-person and by VTC, has resulted in editorial changes throughout the rules as proposed in the NPRM. These changes include eliminating the phrase ''and type of hearing'' from the proposed heading for §§ 404.936 and 416.1436. In the final rules, that heading reads, as it does in the current rules: ''Time and place for a hearing before an administrative law judge.''

To facilitate this change in terminology, and to address a question that the proposed rules did not address, we have included in §§ 404.936 and 416.1436 language defining the term ''place.'' Under these final rules, generally, the ''place'' of the hearing is the hearing office or other site at which claimant is located when he or she makes his or her appearance before the administrative law judge, whether in person or by video teleconferencing. If there are multiple parties, the ''place'' of the hearing is the site or sites at which the parties are located when they make their appearances, whether in person or by VTC. That will be the ''place'' of the hearing even though the ALJ and a witness or witnesses may be located at one or more other sites. Thus, in notifying claimants of the ''place'' of their hearings, we will notify them, under these final rules as under our current rules, of the places at which they should arrive in order to make their appearances.

The rules as proposed were unclear regarding the function of the ALJ in setting the time and place of the hearing. We have clarified the rules in this regard by changing the final rules to use the language of the current regulations, which specifies that the ''[ALJ] sets the time and place for the hearing.'' Use of the existing language is possible based on the definition of ''place'' noted above.

These final rules provide needed headings for the multiple paragraphs of §§ 404.936 and 416.1436. In doing that, the final rules distinguish the ''General'' material in current paragraph (a) from the matter included therein on where we hold hearings, and move the matter dealing with location into a separate, new paragraph (b) that has the heading, ''Where we hold hearings.'' The rules include the definition of ''place'' in that paragraph.

The final rules also create a new paragraph (c) under the heading, ''Determining how appearance will be made.'' This paragraph sets forth the rules, as discussed above, under which, in setting the time and place for the hearing, the ALJ determines if an appearance or appearances are to be made by VTC or in person. We have also included in this paragraph a reference to §§ 404.950 and 416.1450, which describe procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

Paragraph (b) of the current regulations is redesignated paragraph (d) and given the heading, ''Objecting to the time or place of the hearing.'' The language of this paragraph follows the

language of current paragraph (b). For reasons previously discussed, paragraph (d) of the final rules does not include, as the comparable language of the proposed rules did, language distinguishing between the ''site and/or time'' of a ''video teleconference hearing'' and the ''time and/or place'' of an ''in person hearing.''

The claimant's right to veto his or her appearance by VTC by objecting to it is established in paragraph (e) of §§ 404.936 and 416.1436 of the final rules. The heading for this paragraph is, ''Good Cause for changing the time or place.'' Paragraph (e) of the final rules follows the language of paragraph (c) of the current rules except for the additions at the beginning of the paragraph that describe both the right of a claimant to object if he or she is scheduled to appear by VTC at the place of the hearing, and the required reaction of the ALJ to such an objection. Those additions make it clear that there is no evidentiary requirement that the claimant must satisfy in establishing this ''good cause'' condition (such as exists regarding the other ''good cause'' conditions described in the paragraph). Nor is there any requirement that the claimant state a reason for objecting to appearing by VTC beyond his or her wish not to do so.

The power of the claimant to veto a VTC appearance pertains in these final rules (with request for comment) only to his or her own appearance, not to the appearances of any other party or witness. The decision made in these final rules not to distinguish between hearings as ''in-person hearings'' or ''VTC hearings'' makes it possible to preserve the right of claimants to control the manner of their own appearances without expanding that right to include control over the manner in which other individuals make their appearances at the hearing.

The heading assigned to the last paragraph of §§ 404.936 and 416.1436 in the final rules, paragraph (f), is, ''Good cause in other circumstances.'' The language of this paragraph follows the language of paragraph (d) of the current §§ 404.936 and 416.1436.

The final rules make a number of changes in the sections of the regulations that deal with the notice of hearing before an administrative law judge, §§ 404.938 and 416.1438. In the current regulations, these sections consist of a single paragraph that includes material that deals with the issuance of notices, information included in notices, and acknowledgment of the notice of hearing. In the proposed rules, this material was placed in a paragraph (a) with the heading, ''General notice information.'' The proposed rules also added a new paragraph (b) with the heading, ''Hearing via video teleconferencing [,]'' which included material about the scheduling of a ''[VTC] hearing'' and information included in notices of such hearings. The proposed rules also added a new paragraph (c) with the heading, ''For a hearing before an [ALJ,]'' which discussed the scheduling of an ''in-person hearing.'' In these final rules, paragraph (a) deals with the issuance of notices and has the heading, ''Issuing the notice.'' Paragraph (b) deals with information contained in notices, including notices that schedule an appearance or appearances by VTC, and has the heading, ''Notice information.'' Paragraph (c) deals with acknowledgment of the notice of hearing and has the heading, ''Acknowledging the notice of hearing.''

The language of the final rules follows the language of the current rules, except as regards the notice information pertaining to use of VTC procedures and acknowledgment of receipt of the notice of hearing. Paragraph (b) states that the claimant will be told if his or her appearance or that of any other party or witness is scheduled to be made by VTC rather than in person. If we have scheduled the claimant to appear at the hearing by VTC, the notice of hearing will also tell the claimant that the scheduled place for the hearing is a teleconferencing site and explain what it means to appear at the hearing by VTC. The notice will also tell the claimant how to object to appearing by VTC and how to request a hearing at a place for appearing in person. In paragraph (c), the information provided by the current rules regarding acknowledgement of receipt of the notice of hearing is expanded to include a statement explaining that the notice will ask the claimant to return a form acknowledging receipt of the notice. It has long been our practice to include an acknowledgement form with the notice of hearing. We plan to modify the current form to include a check block that claimants may use to object to appearing by VTC.

The final rules also make conforming changes in §§ 404.950 and 416.1450. In paragraph (a) of these sections, we specify that claimants may appear before the ALJ either in person or by VTC, and that if the claimant's appearance is made by a designated representative, the representative may appear in person or by VTC. In paragraph (e) of these sections, we specify that witnesses may appear at a hearing in person or by VTC.

Additional Comments

We invite your comments on the issue of whether claimants should or should not be empowered to veto use of VTC to take the testimony of expert witnesses. Comments may be submitted by the date and to the addresses shown above.

Electronic Version

The electronic file of this document is available on the Internet at *http://www.access.gpo.gov/su docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, SSA Online) at *http://www.ssa.gov/regulations*.

Regulatory Procedures

Executive Order 12866, As Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these 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 as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of the burdens referenced in these rules because the rules were not considered during the clearance of the forms.

Section	Annual number of resonses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.929	1	1	1	1
404.936(d), (e) & (f)	92,000	Once	10	15,333
404.938(c)	300,000	Once	1	5,000
404.950(a)	210,000	Once	30	105,000
416.1429	1	1	1	1
416.1436(d), (e) & (f)	75,000	Once	10	12,500
416.1438(c)	250,000	Once	1	4,166
416.1450(a)	172,000	Once	30	86,000
Total	1,099,002			228,001

An Information Collection Request has been submitted to OMB for clearance. While these rules will be effective 30 days from publication, these burdens will not be effective until cleared by OMB. 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. We will publish a notice in the **Federal Register** upon OMB's approval of the information collection requirement(s). Comments should be submitted to the OMB desk officer for SSA within 30 days of publication of this final rule at the following address: Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.003, Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR 416

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

Dated: October 25, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below:

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

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, 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, 425, and 902(a)(5)); 31 U.S.C. 3720A; 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).

2. Section 404.929 is revised to read as follows:

§ 404.929 Hearing before an administrative law judge—general.

If you are dissatisfied with one of the determinations or decisions listed in § 404.930 you may request a hearing. The Associate Commissioner for Hearings and Appeals, or his or her delegate, shall appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Associate Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing you may appear in person or by video teleconferencing, submit new evidence, examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she shall issue a decision based on the hearing record. If you waive your right to appear at the hearing, either in person or by video teleconferencing, the administrative law judge will make a decision based on the evidence that is in the file and any new evidence that may have been submitted for consideration.

3. Section 404.936 is revised to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. He or she may change the time and place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico and the Virgin Islands. The ''place'' of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge, whether in person or by video teleconferencing.

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, the administrative law judge determines whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will direct that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge does not determine that there is a circumstance in the particular case preventing use of video teleconferencing to conduct the appearance. Section 404.950 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time or place of the hearing.* If you object to the time or place of your hearing, you must notify the administrative law judge at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraph (e) and (f) of this section. Section 404.938 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear by video teleconferencing at the place of your hearing and you notify the ALJ as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(f) *Good cause in other circumstances.* In determining whether good cause exists in circumstances other than those set out in paragraph (e) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(4) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(5) Transportation is not readily available for you to travel to the hearing;

(6) You live closer to another hearing site; or

(7) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

4. Section 404.938 is revised to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing.

(b) *Notice information.* The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or witness is scheduled to be made by video teleconferencing rather than in person. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a teleconferencing site and explain what it means to appear at your hearing by video teleconferencing. The notice will also tell you how you may let us know if you do not want to appear in this way and want, instead, to have your hearing at a time and place where you may appear in person before the ALJ.

(c) *Acknowledging the notice of hearing.* The notice of hearing will ask you to return a form to let us know that you received the notice. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail. *See* § 404.936 for the procedures we will follow in deciding whether the time or place of your scheduled hearing will be changed if you do not respond to the notice of hearing.

5. In § 404.950, paragraphs (a) and (e) are revised to read as follows:

§ 404.950 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, either in person or, when the conditions in § 404.936(c) exist, by video teleconferencing, to present evidence and to state his or her position. A party may also make his or her appearance by means of a designated representative, who may make the appearance in person or by video teleconferencing.

* * * * *

(e) *Witnesses at a hearing.* Witnesses may appear at a hearing in person or, when the conditions in § 404.936(c) exist, by video teleconferencing. They shall testify under oath or affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witnesses any questions material to the issues and shall allow the parties or their designated representatives to do so.

* * * * *

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

6. The authority citation for subpart N of part 416 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); 31 U.S.C. 3720A.

7. Section 416.1429 is revised to read as follows:

§ 416.1429 Hearing before an administrative law judge—general.

If you are dissatisfied with one of the determinations or decisions listed in § 416.1430 you may request a hearing. The Associate Commissioner for Hearings and Appeals, or his or her delegate, shall appoint an

administrative law judge to conduct the hearing. If circumstances warrant, the Associate Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing you may appear in person or by video teleconferencing, submit new evidence, examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she shall issue a decision based on the hearing record. If you waive your right to appear at the hearing, either in person or by video teleconferencing, the administrative law judge will make a decision based on the evidence that is in the file and any new evidence that may have been submitted for consideration.

8. Section 416.1436 is revised to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. He or she may change the time and place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, and the Northern Mariana Islands. The ''place'' of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge, whether in person or by video teleconferencing.

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, the administrative law judge determines whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will direct that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge does not determine that there is a circumstance in the particular case preventing use of video teleconferencing to conduct the appearance. Section 416.1450 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time or place of the hearing.* If you object to the time or place of your hearing, you must notify the administrative law judge at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. The administrative law judge will change the time or place of the hearing if you have good cause, as determined under paragraph (e) and (f) of this section. Section 416.1438 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear by video teleconferencing at the place of your hearing and you notify the ALJ as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(1) You or your representative are unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(f) *Good cause in other circumstances.* In determining whether good cause exists in circumstances other than those set out in paragraph (e) of this section, the administrative law judge will consider your reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(4) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(5) Transportation is not readily available for you to travel to the hearing;

(6) You live closer to another hearing site; or

(7) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

9. Section 416.1438 is revised to read:

§ 416.1438 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing.

(b) *Notice information.* The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the ALJ may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or witness is scheduled to be made by video teleconferencing rather than in person. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a teleconferencing site and explain what it means to appear at your hearing by video teleconferencing. The notice will also tell you how you may let us know if you do not want to appear in this way and want, instead, to have your hearing at a time and place where you may appear in person before the ALJ.

(c) *Acknowledging the notice of hearing.* The notice of hearing will ask you to return a form to let us know that you received the notice. If you or your representative do not acknowledge receipt of the notice of hearing, we will attempt to contact you for an explanation. If you tell us that you did not receive the notice of hearing, an amended notice will be sent to you by certified mail. *See* § 416.1436 for the procedures we will follow in deciding whether the time or place of your scheduled hearing will be changed if you do not respond to the notice of hearing.

10. In § 416.1450, paragraphs (a) and (e) are revised to read as follows:

§ 416.1450 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, either in person or, when the conditions in § 416.1436(c) exist, by video teleconferencing, to present evidence and to state his or her position. A party may also make his or her appearance by means of a designated representative, who may make the appearance in person or by video teleconferencing.

* * * * *

(e) *Witnesses at a hearing.* Witnesses may appear at a hearing in person or, when the conditions in § 416.1436(c) exist, video teleconferencing. They shall testify under oath or affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witnesses any questions material to the issues and shall allow the parties or their designated representatives to do so.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–200311; FRL–7444–7]

Approval and Promulgation of Air Quality Implementation Plans; Alabama Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Alabama that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective February 3, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Lakeman at the above Region 4 address or at (404) 562–9043.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On December 22, 1998, EPA published a document in the **Federal Register** (63 FR 70669) beginning the new IBR procedure for Alabama. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety