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Social Security Administration

20 CFR Parts 404, 405, and 416

Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels; Proposed Rule

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007–0044]

20 CFR Parts 404, 405, and 416

RIN 0960–AG52

Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to include in parts 404 and 416 of our rules many of the hearing level procedures now in place for disability cases in the Boston region. This change will expand those rules nationwide and apply them to hearings on both disability and non-disability matters. We expect these rules will make the hearings process more efficient and help us reduce the hearings backlog, which has reached historic proportions, thereby benefiting all individuals requesting a hearing. We also propose to amend our rules governing the final level of the administrative review process to make proceedings at that level more like those used by a Federal appellate court when it reviews the decision of a district court, to establish procedures for appeals to that level, and to change the name of the body that will hear such appeals from the ''Appeals Council,'' or the ''Decision Review Board'' in the Boston region, to the ''Review Board.'' Consistent with the change to a more truly appellate process, we suggest limiting the circumstances in which new evidence may be added to the record during the appeals process. We also propose circumscribing the time period covered in any subsequent administrative hearing on remand from the Review Board or a Federal court to the time period covered by the first administrative law judge's (ALJ) hearing decision in the case.

DATES: To be sure that we consider your comments, we must receive them no later than December 28, 2007.

ADDRESSES: You may submit comments by any of the following methods. Regardless of which method you choose, to ensure that we can associate your comments with the correct regulation for consideration, you must state that your comments refer to Docket No. SSA–2007–0044:

- Federal eRulemaking Portal at *http://www.regulations.gov.* (This is the preferred method for submitting your comments.) In the Search Documents section, select ''Social Security Administration'' from the agency drop-down menu, then click ''submit''. In the Docket ID Column, locate SSA–2007–0044 and then click ''Add Comments'' in the ''Comments Add/Due By'' column.
- Telefax to (410) 966–2830.
- Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.
- Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer 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 the Federal eRulemaking portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Brent Hillman, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, (703) 605–8280 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.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

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

Introduction

As part of our ongoing commitment to improve the way we process claims for benefits under the old age, survivors, and disability insurance programs under title II of the Social Security Act (Act) and the supplemental security income (SSI) program under title XVI of the Act, we propose to revise the procedures at the ALJ hearing level to improve the decision-making process and change the final step in our four-tiered administrative structure for adjudicating claims for benefits. Our workloads at the ALJ hearing level have continued to grow, as have requests for review of those hearing decisions. We expect even further increases in those workloads as the baby boom generation advances through their disability-prone years. Along with our electronic disability (eDib) process, we anticipate that these changes will help us conduct hearings and issue decisions more effectively. We are continually reviewing our processes to find ways to handle these workloads more effectively, and this proposal is another step toward better service.

Our administrative procedures in parts 404 and 416 generally provide three levels of administrative review for individuals dissatisfied with the initial determination on their claims for Social Security benefits or SSI payments. First, the individual may request reconsideration, in which the State agency takes a fresh look at the initial determination. Second, the individual may request a hearing before an ALJ. Third, if the individual remains dissatisfied after the ALJ's hearing decision, our longstanding rules give the individual the right to request review of that decision by the Appeals Council. If the individual requests such a review, the Appeals Council may grant the request and issue the Agency's final decision in the case, grant the request and remand the case to an ALJ for further proceedings, or deny the request for review. If the Appeals Council denies the individual's request that it review the decision of the ALJ, the decision of the ALJ becomes our final decision.

In March 2006, we issued final rules that implemented a new administrative structure for adjudicating claims for disability benefits in the Boston region. Under those final rules in part 405 of our regulations, we provide two levels of administrative review of State agency initial determinations for individuals in the Boston region who are dissatisfied with the initial determination on their claims for Social Security benefits or SSI payments. First, the individual may request review by a Federal reviewing official. Second, if dissatisfied with the decision of the Federal reviewing official, the individual may request a hearing before an ALJ. Unless the ALJ's decision is selected for review by the Decision Review Board, as discussed below, the decision of the ALJ is our final decision in these cases.

The March 2006 final rules also implemented new ALJ hearing level procedures in the Boston region and included a new approach, the Decision Review Board, for the final level of our adjudicative structure. 70 FR 16424 (March 31, 2006). We received numerous public comments on our proposal for these new procedures, and we made various changes based on the public comments. For a discussion of the comments and our changes, see 71 FR 16424, 16428 and 16434–16437.

Our experience has been that some aspects of the new procedures have been beneficial, while others have not worked as well as we had anticipated. Having thoroughly reviewed our entire administrative adjudicative procedure, we believe that we need to modify some aspects of those procedures, extend what is working well to the rest of the country, and make changes where we

can make our processes better. In this proposed rule, we propose to retain many of the March 2006 changes we made to the hearing level because we still believe they will make the hearings more efficient and allow us to provide better service to the increasing number of individuals who have requested ALJ hearings.

On the other hand, we propose to transform the Decision Review Board and the Appeals Council into the Review Board. Although we have limited experience with the Decision Review Board at this time because it has been in operation only in the Boston region and only for the past year, we are concerned that we will have to test it for many years before we are able to determine whether to roll it out nationwide. This concern arises primarily because of the difficulties in designing a predictive model that will identify the most problematic cases. In the Boston region, we committed to 100% review of all ALJ decisions by the Decision Review Board, which we obviously would not be able to sustain in a nationwide rollout, especially at a time when the number of cases pending at the hearing level exceeds 700,000, which is higher than it has ever been in our history. Consequently, we propose to end the Decision Review Board experiment in favor of allowing traditional appeals.

In this document, we address the ALJ hearing level and the final level of our administrative adjudicative process. If we finalize these rules, we plan to use these procedures nationwide and remove the corresponding provisions in part 405 of our regulations. (Part 405 describes the disability service improvement initiative that was implemented in our March 31, 2006 final rules.)

We propose to apply to all disability and non-disability cases nationwide many of the hearing level procedures we adopted for disability claims received after July 31, 2006 in the Boston region. We also propose to replace both the Appeals Council and the Decision Review Board with a new adjudicative body to be named the ''Review Board.'' In this notice of proposed rulemaking, we have included proposed regulation language that would accomplish the substantive changes we propose. We also have included the conforming changes we believe are needed in subpart J of part 404 and subpart N of part 416 of our regulations. We recognize that additional changes of a technical or ''housekeeping'' nature will be required throughout our regulations such as replacing references to the ''Appeals Council'' with references to the ''Review Board,'' and if we adopt these proposed changes as final rules, we will make those additional changes at that time.

Submitting Evidence to the ALJ

One of the major changes that we are proposing addresses the time frames for submitting evidence to the ALJ. Our current rule states that, if possible, an individual should submit the evidence, or a summary of the evidence, within 10 days after filing the request for a hearing. In many cases, however, individuals submit evidence to us well after that time frame.

Our program experience has convinced us that the late submission of evidence to the ALJ significantly impedes our ability to issue hearing decisions in a timely manner. When new and voluminous medical evidence is presented at the hearing or shortly before the hearing, the ALJ and any other person who will be participating in the hearing, such as a medical or vocational expert, do not have the time needed to review the record and adequately prepare for the hearing. We often must reschedule the hearing, which not only delays the decision on that case, but also delays the hearings of other individuals.

To ensure individuals have adequate time in which to prepare for the hearing and meet the deadlines for submitting evidence, we propose requiring ALJs to notify an individual of the time and place of the hearing at least 75 days before the date of the hearing, unless the individual agrees to a shorter notice period. The notice of hearing also will specify the issues to be decided at the hearing. This proposed rule provides that if an individual objects to the time or place of the hearing, the individual should notify the ALJ in writing as soon as possible after receiving the notice of hearing, but no later than 30 days after receiving that notice. If the individual objects to the issues to be decided at the hearing, the individual would be required to notify the ALJ in writing at least 5 business days prior to the hearing date.

Individuals would be encouraged to submit evidence as soon as possible after they file their request for a hearing. Nevertheless, no later than 5 business days before the hearing, they must submit all of the evidence to be relied upon in a case. We believe this deadline is reasonable because we also propose to require the ALJ to notify the individual of the hearing date at least 75 days before the hearing.

The 5-day time limit for submitting evidence would be subject to exceptions, depending on when the individual attempts to present the additional evidence. If the individual requests to submit evidence within the 5 business days immediately preceding the hearing, the ALJ would accept and consider the evidence if:

1. Our action misled the individual (for example, if the wrong notice was accidentally sent to you, or you were provided misinformation over the phone);

2. The individual had a physical, mental, educational, or linguistic limitation(s) that prevented him or her from submitting the evidence earlier; or

3. Some other unusual, unexpected, or unavoidable circumstance beyond the individual's control prevented the individual from submitting the evidence earlier.

If the individual requests to submit evidence after the hearing but before the hearing decision is issued, the ALJ would accept and consider the evidence if the individual makes one of the three showings above and there is a reasonable possibility that the evidence would affect the outcome of the case.

Requesting an ALJ Hearing

Our proposed rule slightly amends the list of things we request when an individual files a written request for a hearing. Our proposed rule provides that, if disability is an issue in the case, the individual should include a statement of the medically determinable impairment(s) that he or she believes prevents him or her from working. The proposed rule also specifies that the individual should include his or her name and social security number. Like the current rule, the proposed rule provides that the individual should include the name and social security number of the wage earner under whose account the claim is filed, any evidence that is available to the individual; and the name and address of the individual's representative, if any.

Prehearing Statements and Conferences

Our proposed rule adds a provision for prehearing statements. At any time before the hearing begins, an individual could submit, or the ALJ could request the individual to submit, a prehearing statement on the issues arising in the case. In this statement, the individual should briefly discuss the issues; describe the supporting facts; identify witnesses; explain the evidentiary and legal basis upon which he or she believes the ALJ should find in his or her favor; and provide any other comments, suggestions, or information that might assist in preparing for the hearing.

Our proposed rule continues to provide for prehearing conferences. As under the current rule, the ALJ could decide on his or her own initiative or at an individual's request to conduct a prehearing conference if the ALJ believes that such a conference would facilitate the hearing or the decision in a case.

During these conferences, the ALJ would consider matters that may expedite the hearing, such as simplifying or amending issues or obtaining and submitting evidence. The ALJ would summarize in writing, or on the record at the hearing, the actions taken or to be taken as a result of the conference. The proposed rule also states that if neither the individual nor the representative appears for the prehearing conference and there is not a good reason for the failure to appear, such as a death or serious illness in your immediate family or the destruction of important records by fire or other accidental cause, the individual's hearing request might be dismissed.

The purpose of these provisions would be to ensure that each individual's hearing is as fair, timely, and comprehensive as possible. Both individuals and the Agency would have the responsibility to work toward this objective.

The main differences between our current rule on prehearing conferences and the proposed rule are the provisions for conference by telephone and the notice requirement. The proposed rule provides that prehearing conferences normally would be held by telephone, unless the ALJ were to decide that it would be more efficient and effective to conduct the prehearing conference in a different manner. Additionally, we propose to change the notice requirement to ''reasonable notice.'' It has been our experience that the current requirement (7 days notice unless the parties indicate in writing that they do not wish to receive written notice of the conference) is too rigid to accommodate many situations where a conference would be beneficial and the parties agree to the time and place of the conference.

Appearing at the ALJ Hearing

Like the current rule, this proposed rule provides that, when setting the time and place of the hearing, the ALJ would determine whether an individual would appear at the hearing in person or by video teleconference. Also like the current rule, this proposed rule provides that, if the individual who requested the hearing objects to appearing by video teleconference, the ALJ would reschedule the hearing to allow that individual to appear in person. The proposed rule differs from the current rule in that it specifies that the ALJ may direct a witness, other than the individual who requested the hearing, to appear by video teleconference if: (1) Video teleconference is available, (2) use of the technology would be more efficient than conducting an examination of a witness in person, and (3) the ALJ determines that there is no other reason why a video hearing should not be conducted. We believe that the ability to conduct hearings via video teleconference would 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. Greater efficiency would be achieved through savings in ALJ travel time, faster case processing, and higher ratios of hearings held to hearings scheduled.

Our proposed rule also differs from the current rule by providing that the ALJ may direct the individual who requested the hearing to appear at the hearing by telephone under extraordinary circumstances where appearing in person is not possible and video teleconference is not available. For example, an ALJ may direct an individual who is incarcerated to appear at the hearing by telephone if the facility in which the individual is incarcerated will not allow a hearing to be held at the facility and the facility does not have video teleconference technology. The proposed rule also provides that, if the individual who requested the hearing objects to any other person appearing by telephone, the ALJ could overrule the objection.

Posthearing Conferences

Our proposed rule continues to provide for posthearing conferences. The individual could request, or the ALJ could decide, to hold a posthearing conference to facilitate the hearing decision. Like the prehearing conference proceedings, if neither the individual nor the representative were to appear at the posthearing conference and there was no good reason for failing to appear, the ALJ would make a decision based on the hearing record.

As in the prehearing conference provisions discussed above, the main differences between our current rule and the proposed rule are the provisions for conference by telephone and the notice requirement. The proposed rule provides that posthearing conferences normally would be held by telephone, unless the ALJ were to decide that it would be more efficient and effective to conduct the posthearing conference in a different manner. Additionally, we propose to change the notice requirement to ''reasonable notice,'' for the reasons discussed earlier in the section on prehearing statements and conferences.

Holding the Record Open

In addition, this proposed rule specifies that the ALJ would retain discretion at the time of the hearing to hold the record open for the submission of additional evidence. If an individual were aware of any additional evidence that the individual was unable to obtain and submit before or at the hearing or if the individual were scheduled to undergo additional medical evaluation after the hearing for any impairment that forms the basis of the case, the individual should inform the ALJ of the circumstances during the hearing. If the individual were to request additional time to submit the evidence, the ALJ could exercise discretion and choose to keep the record open for a defined period of time to give the individual the opportunity to obtain and submit the additional evidence. Once the additional evidence was received, or if no evidence was received during the defined period, the ALJ would close the record and issue a decision. The ALJ may also take other necessary action, such as holding a supplemental hearing to receive further testimony. These procedures are not new. The proposed rule merely formalizes them in our rules.

The ALJ Decision

Under our current rule, the ALJ must issue a written decision that gives the findings of fact and the reasons for the decision, may enter a wholly favorable oral decision into the record under certain circumstances, and may send a recommended decision to the Appeals Council. Our proposed rule would specify that the ALJ must explain, in clear and understandable language, the reasons for his or her decision. It would continue to allow the ALJ to enter a wholly favorable oral decision into the record under certain circumstances. It would remove the provision for recommended decisions, except on remand by direction of the Review Board. In our experience, issuance of a recommended decision is only rarely appropriate, and therefore its use should be permitted only where the Review Board directs.

The Review Board's Role

Our current regulations in parts 404 and 416 provide that an individual who is dissatisfied with the decision of the ALJ on the claim can file a request

asking the Appeals Council to review the ALJ's decision. Those regulations further provide that the Appeals Council will grant the claimant's request and review the case if there appears to be an abuse of discretion by the ALJ, if there is an error of law, if the actions, findings, or conclusions of the ALJ are not supported by substantial evidence, or if there is a broad policy or procedural issue that may affect the general public. If the Appeals Council does review the case, it may issue a decision affirming, modifying, or reversing the ALJ's decision, or it may vacate the ALJ's decision and remand the case for further proceedings. If the Appeals Council determines that the criteria for granting review are not met, however, the Appeals Council may simply deny the claimant's request for review and allow the ALJ's decision to become the final decision of the Commissioner. The Appeals Council is composed of administrative appeals judges.

Our regulations in part 405 (governing the new process applicable to certain claims in the Boston region) replaced that Appeals Council step with a new body called the Decision Review Board. A claimant has no right to ask the Decision Review Board to review the ALJ decision in his or her case. Rather, the Decision Review Board selects the decisions it will review, with an emphasis on claims where there is an increased likelihood of error or that involve the application of new policies, rules, or procedures. (Because the procedures in part 405 are so new, however, the Decision Review Board initially has been selecting all ALJ hearing decisions for review.) If the Decision Review Board selects a case for review, it may either affirm the ALJ's decision, issue a new decision that affirms, reverses, or modifies the decision of the ALJ, or remand the case to an ALJ for further proceedings. Additionally, if the Decision Review Board does not complete its action on a case within 90 days of the date the claimant received notice that the ALJ's decision would be reviewed, the decision of the ALJ becomes the final decision of the Commissioner. The Decision Review Board is composed of both administrative appeals judges and ALJs.

We propose to replace both the Appeals Council and the Decision Review Board with a new body, the Review Board. Like the Appeals Council, the Review Board members will be administrative appeals judges (as defined in 20 CFR 405.5). In contrast to our current rules for the Appeals Council and the Decision Review Board, we propose to give any party who receives a hearing decision that is unfavorable, in whole or in part, or whose request for hearing was dismissed, the right to appeal that decision or dismissal to the Review Board and have the Review Board review their case. However, we are proposing changes to make the nature of the review at that level more like the review an appellate court would give to a district court decision that has been appealed to it. These changes would focus Agency resources on correcting significant errors that change the outcome of a case and avoid further administrative proceedings that serve only to correct harmless errors in an otherwise appropriate denial of benefits.

Specifically, we propose to extend the additional evidence requirements we are proposing for the hearing level to the Review Board level, with a further restriction that additional evidence offered by the individual may be accepted by the Review Board only if there is a reasonable probability that it, alone or when considered with the other evidence of record, would change the outcome of the decision.

We also propose that the Review Board will review the factual findings of the ALJ using the substantial evidence test. Under that test, the Review Board will accept a finding of fact made by the ALJ if a reasonable mind might accept that finding as adequately supported by the evidence in the case, even if a different conclusion of fact might also be supported by the evidence. We propose that the Review Board will review any purely legal questions, such as the proper interpretation of Agency regulations or policy, as if it were considering the question for the first time, without any deference to the ALJ's conclusion on the issue. We also propose a harmless error rule the Review Board would apply when considering error either in the admission or exclusion of evidence, or error, defect, or omission in any ruling or decision of the ALJ. Under this rule, no such error would be grounds for vacating, modifying, or reversing an otherwise appropriate ruling or decision of the ALJ unless, in the opinion of the Review Board, there is a reasonable probability that the error, alone or when considered with other aspects of the case, changed the outcome of the decision. The Review Board would notify the parties in writing of its action on the appeal and would explain the basis for its action in that notice.

In any case appealed to the Review Board, we propose that the Review Board will consider that appeal and either (1) issue a new decision affirming, modifying, or reversing the decision of the ALJ, (2) remand the matter to an ALJ for further proceedings, or (3) where the Review Board has concluded that there is no significant error in the ALJ's decision and no significant legal or factual issues that warrant additional discussion, summarily affirm the decision and analysis of the ALJ without issuing a separate opinion of its own. This differs from our current rules for the Appeals Council in that, unlike the Appeals Council, the Review Board may not simply decline the individual's request that it review the ALJ's decision. In these proposed rules, we describe the procedures for appealing an ALJ's hearing decision or dismissal to the Review Board, the procedures the Review Board will follow during the appeal, the possible actions the Review Board may take, and the effect of those actions.

Our intent with these changes is to make the Review Board's role more analogous to that of an appellate court reviewing the decision of the trial court. We believe that this approach will provide individuals a full opportunity to have the Review Board address any significant error by the ALJ that the individual believes led to a wrong decision in the case, while still giving appropriate deference to the ALJ's factual findings. Because this approach would allow the Review Board to focus its efforts on significant errors that may have affected the outcome of the case, we believe this approach represents the best use of the Review Board's limited resources. Toward that end, our proposed rules encourage, but do not require, parties to include with their appeal a written statement that identifies the errors the party believes were made by the ALJ, explains why the alleged errors warrant action by the Review Board under the standards of review described above, and cites applicable law or facts to support the party's position.

Closing the Evidentiary Record at the Time of the ALJ Decision

We propose to limit a party's ability to submit new evidence to the Review Board to the same extent the final rules published March 31, 2006 limited submission of new evidence following the first ALJ decision. Specifically, we propose that following the first ALJ decision in a case (whether that decision is subsequently overturned or not), we will accept additional evidence from a party only if:

- The evidence relates to the period on or before the date of that first decision by an ALJ;

• The party shows that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision; and

• Either our action misled the party, the party had a physical, mental, educational, or linguistic limitation that prevented the party from submitting the evidence earlier, or some other unusual, unexpected, or unavoidable circumstance beyond the party's control prevented the earlier submission of the evidence.

The proposed rules differ somewhat from our current rules for submitting evidence to the Appeals Council. Under our current rules, the Appeals Council will accept new evidence only if it relates to the period on or before the date of the ALJ decision. The proposed rules contain the same restriction that the evidence must relate to the period on or before the date of the ALJ decision, but they also require the individual to show that there is a reasonable probability that the evidence would change the outcome of the decision and that there was some good reason, as described above, that the individual could not have submitted the evidence earlier.

This limitation would apply only to evidence offered by a party. Should the Review Board believe additional evidence is needed to decide the issues in the case, it will be able to obtain that evidence itself or remand the case to an ALJ to obtain the evidence, and any evidence so obtained would be made part of the evidentiary record.

Also, we propose to revise our rules on reopening to make them consistent with these proposed limits on an individual's ability to submit new evidence after a hearing decision or dismissal. Specifically, we propose to remove ''new and material evidence'' as a basis for reopening any decision made at the hearing or Review Board levels on a claim for benefits based on disability. We believe this change is necessary because without it, a claimant who submits additional evidence to the Review Board that does not meet the standard described above for admitting the evidence would be able to circumvent our limits simply by asking to have our final decision reopened based on the additional evidence we declined to admit.

Limiting the Period of Time Covered by the Review Board's Adjudication and Adjudication Following Administrative or Court Remands

When cases are remanded for further proceedings, either from a Federal court or the Appeals Council, our current rules allow ALJs and the Appeals Council to consider changes in the individual's condition after the date of the first ALJ decision on the claim, such as an increase in severity of the claimant's original impairment(s) or the development of a new impairment. Under our current rules, for example, when the Appeals Council grants an individual's request that it review the decision made by an ALJ and finds reasons to reverse that decision and remand the case for further proceedings, it has typically ''vacated'' the decision of the ALJ. As a result, we consider the case during the subsequent proceedings on remand as if the earlier ALJ's decision had not been issued. This same situation may arise where a Federal court remands a case for further proceedings. In practical terms, this approach allowed individuals to continue to submit evidence freely throughout the subsequent proceedings or to attempt to establish an onset of disability even after the date of the first hearing decision.

It became possible, therefore, for the final decision on remand to be based on evidence submitted well after the evidentiary record should have closed, on evidence that related to a period of time after the date of the hearing decision that was reviewed, or even on evidence of a physical or mental impairment that did not begin until after the date of the hearing decision that was reviewed. This open-ended approach is administratively very inefficient, as we often are reviewing ALJ decisions based on evidence not presented to the ALJ.

The approach we are proposing in this rule would modify that process. We believe that the first ALJ hearing decision on a claim for benefits, regardless of whether that decision becomes our final decision, generally must close both the evidentiary record (as discussed above) and the period of time within which the claimant must establish entitlement to the benefits sought. Therefore, we propose in these rules that throughout any appeal to the Review Board, and during any subsequent administrative proceedings on remand from the Review Board or a Federal court, the proceedings will consider only the claimant's eligibility for benefits on or before the date of that first ALJ hearing decision on the claim for benefits.

We believe this proposed closing of the record will not unduly disadvantage claimants. Consistent with existing policy, claimants applying for disability benefits who experience a worsening of condition or new impairments during the intervening time between the ALJ decision and the Review Board's decision—or while the case is pending on remand—may file a new claim for benefits. The average processing time for initial determinations by State agencies is currently faster than the average processing time for Appeals Council review, particularly when cases are remanded. If these proposed rules become final, we plan to modify the notices we send to claimants when their cases are denied or remanded to ensure that claimants are aware that they can file new applications. We welcome comments from the public about how we can best ensure that claimants understand their right to file new applications while prior applications are pending review.

The changes we are proposing are consistent with the governing statute. Specifically, sections 202(j) and 223(b) of the Act provide that an individual's claim for benefits may be allowed only if the claimant satisfies the requirements for ''before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).'' This proposed approach would be consistent with the role we envision for the Review Board, which would be to review a decision that has already been made, based on a record that has already been developed, for the precise period of time considered by the ALJ who made the decision that is being reviewed.

Removal of Special Provision for Cases Remanded by a Court

Our current rules (§§ 404.984 and 416.1484) contain a separate process for further administrative review of hearing decisions made after a remand by a Federal court. Under those rules, when a Federal court has remanded a case to the Commissioner for further proceedings, and the Appeals Council in turn has remanded the case to an ALJ, the ALJ's decision on remand becomes the final decision of the Commissioner unless, within 30 days of the date the claimant receives notice of the decision, the claimant files written exceptions asking the Appeals Council to review the ALJ's decision or, within 60 days of the date of the ALJ's decision, the Appeals Council notifies the claimant that it has taken jurisdiction of the case. That procedure replaced earlier procedures which generally required ALJs to issue recommended decisions in all court remands, even when the ALJ's decision on remand was favorable to the claimant. Our intent when we adopted the current process in 1989 was primarily to eliminate the requirement that ALJs issue recommended decisions

and thus permit favorable ALJ decisions on remand to be effectuated more quickly.

In the interests of administrative efficiency, we believe it is better to have one uniform appeal process for all of our cases. As discussed earlier, we are proposing to eliminate the option for ALJs to issue recommended decisions, except on remand by direction of the Review Board. Therefore, the rationale for our current special procedure for cases remanded by a Federal court no longer applies in cases where the ALJ's decision is favorable to the claimant. Those favorable decisions would be effectuated promptly under our proposed procedures, without the need for action by the Review Board. However, cases where the ALJ's decision on remand is unfavorable and the claimant continues to disagree are ones we believe the Review Board should see before the case goes back to court. We believe it is important to ensure that our policies have been applied consistently and that the problems identified by the court have been addressed before the case returns to Federal court. Therefore, we propose to remove §§ 404.984 and 416.1484, and instead channel any further review of these hearing decisions through the Review Board appeal process described above.

Advisory Function for Review Board

The Review Board's primary function will be to adjudicate the cases that come before it pursuant to an appeal by the claimant or when the Review Board selects the case for review on its own initiative under the procedure described in proposed §§ 404.970 and 416.1470. We anticipate that the Review Board's work also will provide its members with a unique and valuable perspective on the issues, policies, or procedures that may tend to impede the efficient and consistent adjudication of cases at all levels of our administrative adjudicative process. Therefore, we propose as an additional function of the Review Board that it may from time to time make recommendations for changes in policy or procedure that it believes may improve the efficiency and consistency of our adjudicative process. We do not intend to establish a specific process for this advisory function in the regulations themselves, as we believe the structure for such internal deliberations must be kept as flexible as possible. We currently anticipate that the Review Board would make such recommendations through the Deputy Commissioner for Disability Adjudication and Review or her designee, and would consider in its recommendations any anecdotal case experiences and any relevant statistical information that is available to the Review Board. However, we would welcome any suggestions as to how this advisory function might best be implemented.

Comparison of Current and Proposed Policy

The table below summarizes the changes we are proposing to make to the hearings and appeals provisions discussed above. In the table, we first summarize the current process and then describe the proposed process.

Topic	Current policy (outside the Boston region)	Proposed policy
Three Levels of Disability Appeals.	1. Reconsideration (except in prototype states where no reconsideration). 2. ALJ Hearing—Notify claimant at least 20 days prior to hearing. Claimant makes any ''time, place or issue'' objections ''at the earliest possible opportunity''. 3. Appeals Council.	1. Reconsideration (unchanged). 2. ALJ hearing—Notify claimant at least 75 days prior to hearing. ''Time and place'' objections no later than 30 days after receipt of notice. ''Issues'' objections at least 5 days before hearing. 3. Review Board.
Requesting an ALJ Hearing	Request must be in writing and should include the name, SSN of the wage earner; the reasons you disagree with the previous determination or decision; a statement of additional evidence to be submitted and the date it will be submitted; and the name and address of any designated representative. The request must be filed within 60 days after the date claimant receives notice of the previous determination or decision. The time can be extended. Good cause applies. The ALJ may decide case without an oral hearing if claimant waives right to appear.	Request must be in writing and should include claimant's name and SSN, the name and SSN of the wage earner if the case concerns benefits under another person's account, the specific reasons you disagree with the reconsidered determination, description of impairment (if disability), any available evidence, name and address of representative, if any. The request must be filed within 60 days after the date claimant receives notice of the reconsidered determination. The time can be extended. Good cause applies. The ALJ may decide case without an oral hearing if claimant waives right to appear.
Submitting Evidence	ALJ accepts evidence up to and including day of hearing. ALJ may choose at hearing to hold record open for a defined time period if claimant advises additional material evidence forthcoming. ALJ may hold supplemental hearing or take other action. In proceedings on remand from the Appeals Council or a Federal court, ALJ accepts evidence relating to period following first ALJ decision. Appeals Council accepts new and material evidence relating to the period on or before the date of the ALJ hearing decision.	ALJ will accept evidence submitted at least 5 business days before the hearing. ALJ will accept evidence submitted within the 5 business days before the hearing if there is good cause for late submission. ALJ will accept evidence submitted after the hearing but before the hearing decision is issued if there is good cause for late submission and there is a reasonable possibility that the evidence would affect the outcome of the case. ALJ may choose at hearing to hold record open for a defined time period if claimant advises additional material evidence forthcoming. ALJ may hold supplemental hearing or take other action. In proceedings on remand from the Review Board or a Federal court, ALJ will not accept evidence relating to period following first ALJ decision. Review Board will accept evidence only if it relates to the period on or before the date of the first ALJ decision, there is a reasonable probability that the evidence would change the outcome of the case, and there is good cause for late submission.

Topic	Current policy (outside the Boston region)	Proposed policy
Prehearing Statements and Conferences.	Claimant can submit a written summary of the case or written statements about the facts and law material to the case. ALJ can decide on his or her own, or at the request of any party, to hold a prehearing conference. The ALJ generally must tell the parties of the time, place, and purpose of the conference at least 7 days in advance. There is no sanction if the claimant/representative does not appear. Current regulation is silent as to whether the conference is held in person or by telephone. A record of the conference is made.	Claimant can submit, or ALJ can request that claimant submit, a prehearing statement describing why the claimant disagrees with the reconsidered determination. Statement should discuss briefly issues involved in the proceeding, facts, witnesses, the evidentiary and legal basis upon which claimant believes the ALJ should decide the case in claimant's favor, and any other comments, suggestions, or information that might assist the ALJ in preparing for the hearing. ALJ can decide on his or her own, or at the claimant's request, to conduct a prehearing conference if the ALJ finds that a conference would facilitate the hearing or the decision. The ALJ will give claimant reasonable notice of the time, place, and manner of the conference. If neither claimant nor representative appears, hearing might be dismissed. Good cause applies. The conference will normally be held by telephone. The ALJ will summarize in writing, or on the record at the hearing, the actions taken or to be taken as a result of the conference.
Appearance at Hearing	ALJ determines whether claimant and any other witness will appear in person or by video teleconference (VCT). Claimant can object to time or place of the hearing. Objection must be made at the earliest possible opportunity before the hearing. ALJ will change time or place of hearing if there is good cause to do so. If claimant objects to appearing by VCT, ALJ will reschedule hearing for in-person appearance.	ALJ determines whether claimant or any other witness will appear in person, by VCT, or by telephone. ALJ will only direct claimant to appear by telephone if claimant's appearance in person is not possible (e.g., claimant is incarcerated and facility will not allow a hearing at the facility) and VCT is not available. Claimant can object to time or place of the hearing. Objection must be in writing and made no later than 30 days after receipt of notice of hearing. ALJ will consider claimant's reasons for requesting change and the impact of the proposed change on the efficient administration of the hearing process. If claimant objects to appearing by VCT, ALJ will reschedule hearing for in-person appearance. If claimant objects to another witness appearing by VCT or telephone, ALJ will decide whether to have that person appear in person, by VCT, or by telephone.
Posthearing Conferences	ALJ can decide on his or her own, or at the request of any party, to hold a posthearing conference. The ALJ generally must tell the parties of the time, place, and purpose of the conference at least 7 days in advance. Current regulation is silent as to whether the conference is held in person or by telephone. A record of the conference is made.	ALJ can decide on his or her own, or at the claimant's request, to hold a posthearing conference to facilitate the hearing decision. The ALJ will give claimant reasonable notice of the time, place, and manner of the conference. If neither claimant nor representative appears and there is no good cause for failure to appear, ALJ will decide on record.
The ALJ Decision	The ALJ must issue a written decision which gives the findings of fact and the reason for the decision; made part of the record. Exception is oral (bench) fully favorable decision issued at the hearing; claimant receives a notice incorporating the oral decision. Notice advises claimant can appeal to Appeals Council.	ALJ must issue a written decision that explains in clear and understandable language the reason for decision; made part of record. Exception is oral (bench) fully favorable decision issued at hearing; claimant receives a notice incorporating the oral decision. Notice advises claimant can appeal to Review Board.
Appeal to Review Board	Appeals Council can deny claimant's request that it review the ALJ's decision. Appeals Council applies ''substantial evidence'' test to ALJ fact finding; considers any question of law as if it were considering it for the first time; applies ''abuse of discretion'' test to ALJ exercise of discretion. Claimant may submit ''new and material evidence'' which relates to the period on or before the date of ALJ decision. The AC will consider the entire record including any new and material evidence related to the period on or before the date of ALJ decision and will review the case if ALJ's action, findings, or conclusion is contrary to the ''weight of the evidence.''	Review Board must consider and issue a decision in any case that is appealed to it timely. Review Board will use ''substantial evidence'' test, consider any question of law as if it were considering it for the first time, apply ''harmless error'' test; applies ''abuse of discretion'' test to ALJ exercise of discretion. Additional evidence requirements similar to those at hearing level, with the added requirement that evidence will be accepted only if the Review Board determines that there is a reasonable probability that the new evidence, alone or in consideration with other evidence of record, would change the outcome of the decision. Review Board can: • Issue new decision • Remand to ALJ • Summarily affirm ALJ decision.

Topic	Current policy (outside the Boston region)	Proposed policy
Removal of Special Provision in Court Remands.	When a case is remanded by a court, the ALJ decision becomes the final decision after remand unless the Appeals Council assumes jurisdiction. The Appeals Council may assume jurisdiction based on a claimant's written exceptions or on its own motion. If no exceptions are filed, or the Appeals Council does not assume jurisdiction based on exceptions or on its own motion, a claimant may seek court review of the final decision after remand.	Remove current process. Claimant who is dissatisfied with the hearing decision would have to appeal to the Review Board.

Transitional Rules

Our goal is to move as many cases to these new procedures as quickly as possible. Therefore, if we adopt these proposed rules, we plan to follow them with regard to any (1) cases for which a request for an ALJ hearing is made on or after the effective date of the final rules and (2) further review of ALJ hearing decisions or dismissals on or after the effective date of the final rules. On the effective date of the final rules, we also plan to transfer to the Review Board any cases then pending before the Decision Review Board or the Appeals Council, and to treat any pending request for review by the Appeals Council as a notice of appeal to the Review Board.

We recognize, however, that on the date the final rules become effective there will be pending cases in which the first ALJ decision on the claim had been issued prior to the effective date of these rules, perhaps even several years prior to the date the new rules take effect. We believe it would be unfair to those claimants if we were to apply strictly the new provision in these proposed rules that limits the period of time covered by the claim to the date of the first ALJ decision.

Therefore, for cases pending on the effective date of the final rules in which the first decision by an ALJ on the claim was issued prior to the effective date of the final rules, we propose to apply the new provision on limiting the period of time covered by the application for benefits in a different manner. For such cases, we will use the date of the first hearing or Review Board decision on the claim that is issued on or after the effective date of the final rules as the date by which entitlement must be established. For those cases, during the period between the effective date of the final rules and the date of the first hearing decision or dismissal or Review Board decision issued thereafter, we propose to apply the rest of these proposed rules to the extent practicable, but will accord the claimant the benefit of the prior procedures where necessary to avoid disadvantaging the claimant or any other party. For example, if the claimant has new evidence to submit that would not be admitted under the new rules we are proposing here, but would have been admissible under the rules previously in effect, we will accord the claimant the benefit of those earlier rules and accept the evidence.

Clarity of These Proposed Rules

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

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

Regulatory Procedures

Executive Order 12866, as Amended

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule is subject to OMB review because it meets the criteria for an economically significant regulatory action under Executive Order 12866, as amended. The Office of the Chief Actuary estimates that this proposed rule, if finalized, would reduce the program costs of the Old Age, Survivors, and Disability Insurance (OASDI) and the SSI programs by $1.5 billion. That Office estimates that there would be a small increase in program costs in the first year, followed by savings that increase at first but then begin to decrease in 2013. Specifically, that Office estimates that program costs would be reduced by the following amounts ($ in millions) if this proposed rule were adopted in a final rule.

TABLE 1.—ESTIMATED EFFECT ON OASDI AND FEDERAL SSI BENEFIT PAYMENTS OF A PROPOSED REGULATION MAKING AMENDMENTS TO THE ADMINISTRATIVE LAW JUDGE, APPEALS COUNCIL, AND DECISION REVIEW BOARD APPEALS LEVELS, FISCAL YEARS 2008–17

[In millions]

Fiscal year	OASDI	SSI	Total
2008	$15	$6	$21
2009	−32	−14	−46
2010	−117	−48	−166
2011	−138	−63	−201
2012	−154	−60	−215

TABLE 1.—ESTIMATED EFFECT ON OASDI AND FEDERAL SSI BENEFIT PAYMENTS OF A PROPOSED REGULATION MAKING AMENDMENTS TO THE ADMINISTRATIVE LAW JUDGE, APPEALS COUNCIL, AND DECISION REVIEW BOARD APPEALS LEVELS, FISCAL YEARS 2008–17—Continued

[In millions]

Fiscal year	OASDI	SSI	Total
2013	−171	−70	−241
2014	−159	−69	−228
2015	−142	−65	−206
2016	−101	−59	−160
2017	−48	−42	−90
Totals:			
2008–2012	−427	−180	−607
2008–2017	−1,047	−484	−1,531

(Totals may not equal the sum of components due to rounding.)

Regarding the estimates in the above table, we note that this NPRM would have two principal effects relative to the baseline under current rules. First, the closing of the record after the initial decision by an ALJ would be accelerated relative to the baseline. Under the baseline in the FY 2008 Budget and the Mid-Session Review, we assumed that DSI would be phased in one region per year over a 10-year period. Included in that implementation is a closing of the record that is very similar to that in the NPRM. The difference is that the NPRM would implement this change for all regions immediately. This acceleration of the closure of the record is estimated to provide significant reductions in cost through reduced allowances over the next 10 years or so.

The second principal effect would be from establishing immediately the Review Board (RB) for all regions. Under current rules, the Appeals Council (AC) is assumed to be replaced one region at a time by the Decision Review Board (DRB) over the 10-year period. Thus, implementing the RB essentially immediately would at first largely replace the AC with RB, but over the next 10 years, it would be the DRB that would be effectively replaced by the RB. We estimate that the RB would not function much differently from the AC. But because we have assumed the DRB would be more restrictive than the current AC in the future, replacing the DRB with the RB would be less restrictive and would thus result in more allowances and cost. But this cost would only gradually grow through the next 10 years.

The combination of these two principal effects would initially reduce allowances (via immediate closure of the record). But this initial effect would gradually diminish because the current rule would also affect closure of the record, but more gradually. However, just as the reduction in allowances from the first effect is diminishing, the increase in allowances from having the RB instead of the DRB would be gradually rising. By the end of 10 years, the net annual reductions in costs would have diminished substantially.

There is substantial uncertainty associated with estimated effects of the provisions in this NPRM. We have attempted to develop estimates reflecting the most likely outcome. We believe we are very likely to have properly assessed the direction of change from each of the principal changes. But the magnitude of the effect could be different. It may be useful to think in terms of a plausible range where the impact of all provisions were either 50 percent higher or 50 percent lower than assumed for our estimate. In this case, the overall annual costs estimated would be 50 percent higher or 50 percent lower, respectively. While it is not possible to assign a specific probability that actual program cost effects will fall in this range, we believe the probability is high.

As indicated above, the two principal effects of this NPRM would tend to have opposite impacts on program cost. The effect of lowering program cost by accelerating the implementation of closure of the record would be temporary, lasting for only a short time after the end of the 10-year budget period. However, the effect of changing ultimately from the Decision Review Board in current rules to the Review Board in this NPRM would have persistent effects beyond 10 years, resulting in sustained small increases in allowances and thus in program cost. The magnitude of this persistent effect on long-range program cost is expected to be negligible (i.e., less than 0.005 percent of taxable payroll).

TABLE 2.—ACCOUNTING STATEMENT: ESTIMATED ECONOMIC IMPACT OF AMENDING THE ADMINISTRATIVE LAW JUDGE, APPEALS COUNCIL AND DECISION REVIEW BOARD APPEALS LEVEL FROM 2008–2017 IN 2007 DOLLARS

Category	Transfers
Annualized Monetized Transfers	$127.3 million (7% discount rate). $131.1 million (3% discount rate).
From Whom To Whom?	From SSA beneficiaries to the Social Security trust fund and the general fund.

Regulatory Flexibility Act

We certify that this proposed rule, if published in final, will not have a significant economic impact on a substantial number of small entities as it affects only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

We propose to include in parts 404 and 416 of our rules many of the hearing level procedures now in place for disability cases in the Boston region.

This change will expand those rules nationwide and apply them to hearings on both disability and non-disability matters. We also propose to amend our rules governing the final level of the administrative review process to make proceedings at that level more like those used by a Federal appeals court when it reviews the decision of a lower court that has been appealed to it, to establish procedures for appeals to that level, and to change the name of the body that will hear such appeals from the ''Appeals Council,'' or the ''Decision Review Board'' in the Boston region, to the ''Review Board.''

Requests for information from the public for the hearings process and the associated collection of evidence/documents are paperwork burdens that require clearance under the Paperwork Reduction Act of 1995. The chart below outlines those sections in this proposed rule that contain the paperwork burdens. The changes to the majority of the sections are minor. Also, most of the paperwork burdens for these rules have already been cleared by OMB and are accounted for under separate OMB numbers. Consequently, we show a 1-hour placeholder for these burdens. Respondents to these collections are individuals who request an appeal of a hearing decision or an unfavorable decision on their claims.

Part 404—Federal Old-Age, Survivors and Disability Insurance

Part 416—Supplemental Security Income for the Aged, Blind, and Disabled

Title/section & collection description	Annual number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.933(a)–(d), 416.1433(a)–(d). How to request a hearing—you must request a hearing by filing a written request.	.....	.....	.....	1 hour place holder burden (covered by OMB No. 0960–0269, Request for Hearing by Administrative Law Judge, 20 CFR 404.967–.981, 416.1467–.1481).
404.933(a)(4), 416.1433(a)(4). If disability is an issue, a statement of the medically determinable impairment should be included in the written request for a hearing.	493,155	1	5	41,096.
404.933(d), 416.1433(d). Extension of time to request a hearing—you may ask us for more time to request a hearing.	10,959	1	10	1,827.
404.933(e), 416.1433(e). Waiver of right to appear—you may ask the administrative law judge to decide your case without a hearing.	.....	.....	.....	1 hour place holder burden (covered by OMB No. 0960.0284, Waiver of your right to a personal appearance before an administrative law judge).
404.935(a)–(c), 416.1435(a)–(c). Submitting evidence to an administrative law judge.	547,950	1	60	547,950.
404.935(d)(1) & (2), 416.1435(d)(1) & (2). Subpoena—you must file a written request for a subpoena.	3,750	1	30	1,875.
404.935(d)(4), 416.1435(d)(4). Subpoena—you may ask the administrative law judge to withdraw or limit the scope of the subpoena.	10	1	30	5.
404.938(c), 416.1438(c). Acknowledging the notice of hearing—we will ask you to return a form to let us know that you received the notice.	.....	.....	.....	1 hour placeholder burden (covered by OMB No. 0960–0671, Acknowledgement of Receipt (Notice of Hearing), Part 404, Subpart J, 404.936, .938, .950, Part 416, Subpart N.
404.939(a), 416.1439(a). Objections—you should notify the administrative law judge in writing if you object to the time and place of your hearing.	18,265	1	30	9,132.
404.939(b), 416.1439(b). Objections—you should notify the administrative law judge in writing if you believe that issues in the hearing notice are incorrect.	10	1	30	5.
404.948(b), 416.1448(b). Deciding a case without a hearing before and administrative law judge—You state in writing that you do not wish to appear at a hearing.	.....	.....	.....	1 hour place holder burden (covered by OMB No. 0960.0284, Waiver of your right to a personal appearance before an administrative law judge).
404.950(a), 416.1450(a). Presenting evidence at a hearing before an administrative law judge.				1 hour placeholder burden (covered by OMB No. 0960–0671, Acknowledgement of Receipt (Notice of Hearing), Part 404, Subpart J, 404.936, .938, .950, Part 416, Subpart N.
404.961(b), 416.1461(b). Prehearing and posthearing proceedings—you may submit a prehearing statement describing why you disagree with the reconsidered determination.	36,500	1	30	18,250.

Title/section & collection description	Annual number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.969(a)–(b), 416.1469(a)–(b). How to appeal to the Review Board—to begin your appeal you must file a notice of appeal.				1 hour placeholder burden (covered by OMB NO. 0960–0277, Request for Review of Hearing Decision/Order, 20 CFR 404.967–.981, 416.1467–.1481).
404.969(b)(2), 416.1469(b)(2). How to appeal to the Review Board—you may ask that the time for filing a notice of appeal be extended.	2,000	1	10	334.
404.969(c), 416.1469(c). Contents of the Appeal—you should include with your notice of appeal a written statement.	93,461	1	60	93,461.
404.974(a), 416.1474(a). Procedures before the board, obtaining copies of evidence—you may request and receive copies or a statement of documents and other written evidence.	45,000	1	10	7,500.
404.974(b), 416.1474(b). Filing briefs with the Review Board—you may file a brief or other written statement.	45,000	1	60	45,000.
404.974(e), 416.1474(e). Oral arguments—you may ask to appear before the review board to present an oral argument.	300	1	10	50.
404.976(a)(4), 416.1476(a)(4). Dismissal by Review Board—you may file a written request for dismissal.	600	1	10	100.
404.976(a)(5), 416.1476(a)(5). Dismissal by Review Board—a person other than the claimant may file a written appeal.	20	1	20	7.
404.977(d)(1), 416.1477(d)(1). Filing briefs with the Review Board—you may file briefs or other written statements with the Review Board.	20	1	60	20.
404.982(b), 416.1482(b). Review of final decisions in Federal District Court—you may request an extension in time for filing an action in Federal District Court.	1,475	1	10	245.
Total	805,320			725,761.

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be sent to OMB by fax or by e-mail to:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

Comments on the paperwork burdens associated with this rule can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. This does not affect the deadline for the public to comment to SSA on the proposed regulations. These information collection requirements will not become effective until approved by OMB. When OMB has approved these information collection requirements, SSA will publish a notice in the **Federal Register**. To receive a copy of the OMB clearance package, please contact the Reports Clearance Officer at *OPLM.RCO@ssa.gov.*

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

List of Subjects

20 CFR Part 404

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

20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

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

Dated: October 15, 2007.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart J of part 404, part 405, and subpart N of part 416 as set forth below:

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

Subpart J—[Amended]

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

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

2. Amend § 404.900 by revising paragraphs (a)(4) and (b) to read as follows:

§ 404.900 Introduction.

(a) * * *

(4) *Appeal to the Review Board.* If you are dissatisfied with the decision of the administrative law judge, you may appeal that decision to the Review Board.

* * * * *

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, nonadversarial manner. Subject to the limitations in §§ 404.935 and 404.973 on submitting evidence at the administrative law judge and Review Board levels, you may present any information you feel may be helpful to your case. You may present the information yourself or have someone represent you, including an attorney. At each step of the review process, we will consider all relevant evidence that has been made part of the record. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review unless you can show us that there was good cause for your failure to pursue the next step of our review process in a timely manner.

§ 404.901 [Amended]

3. Amend § 404.901 by removing the words ''Appeals Council'' and adding, in their place, the words ''Review Board''.

4. Amend § 404.911 by revising paragraph (b)(5) to read as follows:

§ 404.911 Good cause for missing the deadline to request review.

* * * * *

(b) * * *

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested reconsideration or a hearing, or within 30 days of receiving the explanation you filed a notice of appeal to the Review Board or filed a civil suit.

* * * * *

5. Amend § 404.924 by revising paragraph (a) to read as follows:

§ 404.924 When the expedited appeals process may be used.

* * * * *

(a) We have made an initial and a reconsidered determination; an administrative law judge has made a hearing decision; or a decision has been appealed to the Review Board, but a final decision has not been issued.

* * * * *

6. Amend § 404.925 by revising paragraph (a)(4) to read as follows:

§ 404.925 How to request expedited appeals process.

(a) * * *

(4) At any time after you have filed a timely notice of appeal to the Review Board, but before the Review Board has issued a decision.

* * * * *

§ 404.928 [Amended]

7. Amend § 404.928 by removing the words ''Appeals Council review'' and adding, in their place, the words ''a notice of appeal to the Review Board''.

8. Revise § 404.929 to read as follows:

§ 404.929 Hearing before an administrative law judge-general.

(a) If you are dissatisfied with one of the determinations or decisions listed in § 404.930 you may request a hearing. We will appoint an administrative law judge to conduct the hearing proceedings. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), we may assign your case to another administrative law judge.

(b) You may examine the evidence used in making the reconsidered determination, submit evidence, appear at the hearing, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, on any new evidence that is timely submitted, and on any evidence that the administrative law judge obtains.

9. Revise § 404.933 to read as follows:

§ 404.933 How to request a hearing before an administrative law judge.

(a) *Written request.* You must request a hearing by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If your case concerns your benefits under an account other than your own, the name and social security number of the wage earner under whose account you are filing,

(3) The specific reasons you disagree with the reconsidered determination,

(4) If disability is an issue in your case, a statement of the medically determinable impairment(s) that you believe prevents you from working,

(5) Additional evidence that you have available to you, and

(6) The name and address of your representative, if any.

(b) *Time limit for filing request.* An administrative law judge will hear your case if you request a hearing in writing no later than 60 days after the date you receive notice of the reconsidered determination (or within the extended time period if we extend the time as provided in paragraph (d) of this section). The administrative law judge may decide your case without an oral hearing under the circumstances described in § 404.948.

(c) *Place for filing request.* You should submit a written request for a hearing at one of our offices. In addition, if you have a disability claim, you may also file the request at the Veterans Affairs regional office in the Philippines, or if you have 10 or more years of service, or at least 5 years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request a hearing.* You may ask us for more time to request a hearing. Your request for an extension of time must be in writing and must give the reasons the hearing request was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 404.911 of this part.

(e) *Waiver of the right to appear.* After you submit your request for a hearing, you may ask the administrative law judge to decide your case without a hearing, as described in § 404.948(b). The administrative law judge may grant the request unless he or she believes that a hearing is necessary. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

10. Revise § 404.935 to read as follows:

§ 404.935 Submitting evidence to an administrative law judge.

(a) *General.* You should submit with your request for hearing any evidence that you have available to you. All documents prepared and submitted by

you (i.e., not including medical or other evidence that is prepared by someone other than you or your representative) should clearly designate your name and the last four digits of your social security number. All such documents must be clear and legible to the fullest extent practicable and delivered or mailed to the administrative law judge within the time frames in paragraph (b) of this section, unless the administrative law judge allows additional time for submitting evidence.

(b) *Time for submitting evidence.* Any documents that you wish to have considered at the hearing must be submitted no later than 5 business days before the date of the scheduled hearing. If you do not comply with this requirement, the administrative law judge may decline to consider the evidence unless the circumstances described in paragraph (c) of this section apply.

(c) *Late submission of evidence.* (1) If you miss the deadline described in paragraph (b) of this section and you wish to submit evidence during the 5 business days before the hearing or at the hearing, the administrative law judge will accept the evidence if you show that:

(i) Our action misled you;

(ii) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(iii) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(2) If you miss the deadline described in paragraph (b) of this section and you wish to submit evidence after the hearing and before the hearing decision is issued, the administrative law judge will accept the evidence if you show that there is a reasonable possibility that the evidence, alone or when considered with the other evidence of record, would affect the outcome of your case, and:

(i) Our action misled you;

(ii) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(iii) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(d) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, an administrative law judge may, on his or her own initiative or at your request, issue subpoenas for the appearance and testimony of witnesses and for the production of any documents that are relevant to an issue at the hearing.

(2) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 20 days before the hearing date. The written request must:

(i) Give the names of the witnesses or describe the documents to be produced;

(ii) Describe the address or location of the witnesses or documents with sufficient detail to find them;

(iii) State the important facts that the witness or document is expected to show; and

(iv) Indicate why these facts could not be shown without that witness or document.

(3) We will pay the cost of issuing the subpoena and pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(4) Within 5 days of receipt of a subpoena, but no later than the date of the hearing, the person against whom the subpoena is directed may ask the administrative law judge to withdraw or limit the scope of the subpoena and must set forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(5) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

11. Revise § 404.936 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. The administrative law judge will notify you of the time and place of the hearing at least 75 days before the date of the hearing, unless you agree to a shorter notice period. If it is necessary, the administrative law judge may change the time and place of the hearing. If the administrative law judge changes the time and place of the hearing, he or she will send you reasonable notice of the change.

(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 United States Virgin Islands.

(c) *Determination regarding in-person, telephonic, or video teleconference appearance of witnesses at the hearing.* (1) In setting the time and place of the hearing, the administrative law judge will determine whether you will appear at the hearing in person or by video teleconference or, under certain extraordinary circumstances, by telephone. If you object to appearing personally by video teleconference, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge. The administrative law judge may direct you to appear by telephone when:

(i) Your appearance in person is not possible, such as if you are incarcerated and the facility will not allow a hearing to be held at the facility, and

(ii) Video teleconference is not available.

(2) In setting the time and place of the hearing, the administrative law judge will determine whether any other person will appear at the hearing in person, by telephone, or by video teleconference. If you object to any other person appearing by telephone or video teleconference, the administrative law judge will decide whether to have that person appear in person, by telephone, or by video teleconference. The administrative law judge will direct a person, other than you if you object to your appearing by video teleconference, to appear by video teleconference when:

(i) Video teleconference technology is available,

(ii) Use of video teleconference technology would be more efficient than conducting an examination of a witness in person, and

(iii) The administrative law judge determines that there is no other reason why video teleconference should not be used.

12. Revise § 404.938 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. We will mail or serve the notice at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

(b) *Notice information.* The notice of hearing will tell you:

(1) The specific issues to be decided,

(2) That you may designate a person to represent you during the proceedings,

(3) How to request that we change the time or place of your hearing,

(4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under § 404.911,

(5) Whether your appearance will be in person or by video teleconference (or, in exceptional circumstances, by

telephone) and whether any witness's appearance will be in person, by telephone, or by video teleconference, and

(6) That you must submit all evidence that you wish to have considered at the hearing no later than 5 business days before the date of the scheduled hearing, unless you show that your circumstances meet the conditions described in § 404.935(c) for missing the deadline.

(c) *Acknowledging the notice of hearing.* In the notice of hearing, we will ask you to return a form, within 5 days of the date you receive the notice, to let us know that you received the notice. If you or your representative does not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you let us know that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

13. Revise § 404.939 to read as follows:

§ 404.939 Objections.

(a) *Time and Place.* (1) If you object to the time or place of your hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the date set for the hearing, but no later than 30 days after receiving notice of the hearing. You must state the reason(s) for your objection and propose a time and place you want the hearing to be held.

(2) The administrative law judge will consider your reason(s) for requesting the change 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 we previously granted to you any changes in the time or place of your hearing.

(b) *Issues.* If you believe that the issues contained in the hearing notice are incorrect, you should notify the administrative law judge in writing at the earliest possible opportunity, but must notify him or her no later than 5 business days before the date set for the hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the hearing or in writing before the hearing.

§ 404.940 [Amended]

14. Amend § 404.940 by removing the words ''Associate Commissioner for Hearings and Appeals'' and adding, in their place, the word ''we'', and by removing the words ''Appeals Council'' and, in their place, adding the words ''Review Board''.

§ 404.943 [Removed and Reserved]

15. Remove and reserve § 404.943.

16. Revise § 404.944 to read as follows:

§ 404.944 Administrative law judge hearing procedures—general.

(a) *General.* A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. The administrative law judge will conduct the proceedings in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into all of the issues raised in your case, will question you and the other witnesses, and will accept any evidence relating to your case that you submit in accordance with § 404.935.

(b) *Conducting the hearing.* The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the notice of the decision is sent to you, the administrative law judge may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described in §§ 404.946 through 404.961.

17. Revise § 404.946 to read as follows:

§ 404.946 Issues before an administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues raised in your case, regardless of whether or not the issues may have already been decided in your favor.

(b) *New issues.* Any time after receiving the hearing request and before mailing notice of the hearing decision, the administrative law judge may consider a new issue if he or she, before deciding the issue, provides you an opportunity to address it. The administrative law judge or any party may raise a new issue. An issue may be raised even though it arose after the request for a hearing and even though it has not been considered in an initial or reconsidered determination.

(c) *Collateral estoppel—issues previously decided.* We already may have decided a fact that is an issue before the administrative law judge in one of our previous and final determinations or decisions involving you, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in the previous determination or decision, unless he or she has reason to believe that it was wrong, or reopens the previous determination or decision under § 404.987.

18. Revise § 404.948 to read as follows:

§ 404.948 Deciding a case without a hearing before an administrative law judge.

(a) *Decision wholly favorable.* If the evidence in the record supports a decision wholly in your favor, the administrative law judge may issue a decision without holding a hearing. However, the notice of the decision will inform you that you have the right to a hearing and that you have a right to examine the evidence on which the decision is based.

(b) *You do not wish to appear.* The administrative law judge may decide a case on the record and not conduct a hearing if—

(1) You state in writing that you do not wish to appear at a hearing, or

(2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the evidence, which, except for the transcript of the hearing, will contain the material described in § 404.951. The decision of the administrative law judge must be based on this record.

§ 404.949 [Removed and Reserved]

19. Remove and reserve § 404.949.

20. Revise § 404.950 to read as follows:

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

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the administrative law judge determines that the conditions in § 404.936(c) exist, by telephone or video teleconference, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* Subject to § 404.935, the administrative law judge may receive any evidence at the hearing that he or she believes relates to your case.

(c) *Witnesses at a hearing.* Witnesses may appear at a hearing in person, by telephone, or by video teleconference.

Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask the witnesses any questions relating to your case.

(d) *Closing statements.* You or your representative may present a closing statement to the administrative law judge—

(1) Orally at the end of the hearing,

(2) In writing after the hearing and within a reasonable time period set by the administrative law judge, or

(3) By using both methods under paragraphs (d)(1) and (2).

21. Revise § 404.951 to read as follows:

§ 404.951 Official record.

(a) All hearings will be recorded. All evidence upon which the administrative law judge relies for the decision must be contained in the record, either directly or through administrative notice, if appropriate. The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were used in making the determination under review and any additional evidence or written statements that the administrative law judge admits into the record under §§ 404.935 and 404.944. All admitted evidence must be incorporated into the record. The official record of your case will contain all of the admitted evidence and a verbatim recording of all testimony offered at the hearing. It also will include any prior initial determinations or decisions relevant to your case. Subject to § 404.973, the official record closes once the administrative law judge issues his or her decision, regardless of whether it becomes our final decision.

(b) The recording of the hearing will be prepared as a typed copy of the proceedings if—

(1) The case is sent to the Review Board without a decision, or with a recommended decision as ordered by the Review Board, by the administrative law judge;

(2) You seek judicial review of your case by filing an action in a Federal district court within the stated time period, unless we request the court to remand the case; or

(3) An administrative law judge or the Review Board asks for a written record of the proceedings in cases remanded by a Federal district court.

22. Revise § 404.952 to read as follows:

§ 404.952 Consolidated hearing before an administrative law judge.

(a) *General.* (1) We may hold a consolidated hearing if—

(i) You have requested a hearing to decide your case, and

(ii) One or more of the issues to be considered at your hearing is the same as an issue involved in another case you have pending before us.

(2) If the administrative law judge consolidates the cases, he or she will decide both cases, even if we have not yet made an initial determination or a reconsidered determination in the other case.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced at the hearing becomes the evidence of record in each case adjudicated. The administrative law judge may issue either a consolidated decision or separate decisions for each case.

23. Revise § 404.953 to read as follows:

§ 404.953 Decision by the administrative law judge.

(a) The administrative law judge will make a decision based on all of the evidence, including the testimony at the hearing. The administrative law judge will prepare a written decision that explains in clear and understandable language the reasons for the decision.

(b) During the hearing, in certain categories of cases that we identify in advance, the administrative law judge may orally explain in clear and understandable language the reasons for, and enter into the record, a wholly favorable decision. The administrative law judge will include in the record a document that sets forth the key data, findings of fact, and narrative rationale for the decision. Within 5 days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference and that explains why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the reconsidered determination. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a record of the oral decision.

24. Revise § 404.955 to read as follows:

§ 404.955 The effect of the administrative law judge's decision.

The decision of the administrative law judge is binding on all parties to the hearing unless—

(a) You or another party to the hearing appeals the decision to the Review Board;

(b) The Review Board decides to review the decision on its own motion, as provided in § 404.970; or

(c) The decision is a recommended decision to the Review Board as ordered by the Review Board; or

(d) The decision is revised by an administrative law judge or the Review Board under the procedures explained in § 404.987.

§ 404.956 [Amended]

25. Amend § 404.956 by removing the words ''Appeals Council'' and, in their place, adding the words ''Review Board''.

26. Revise § 404.957 to read as follows:

§ 404.957 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing;

(b)(1) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we notified you previously that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear; or

(2) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we had not notified you previously that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in § 404.911 of this part.

(4) If neither you nor the person you designate to act as your representative appears at the prehearing conference but the provisions of § 404.948(b) apply, the administrative law judge will issue a decision without holding a hearing.

(c) If the doctrine of res judicata applies because we have made a previous determination or decision in your case on the same facts and on the same issue or issues, and this previous determination or decision has become final;

(d) If you have no right to a hearing under § 404.930;

(e) If you did not request a hearing in time and we have not extended the time for requesting a hearing; or

(f) If you die and your estate or any person to whom an underpayment may be distributed under § 404.503 or § 416.542 of this chapter has not pursued your case.

27. Revise the second sentence of § 404.958 to read as follows:

§ 404.958 Notice of dismissal of a request for hearing before an administrative law judge.

* * * The notice will state that you have the right to appeal the dismissal to the Review Board.

§ 404.959 [Amended]

28. Amend § 404.959 by removing the words ''Appeals Council'' and, in their place, adding the words ''Review Board''.

§ 404.960 [Amended]

29. Amend § 404.960 by removing the words ''Appeals Council'' and, in their place, adding the words ''Review Board''.

30. Revise § 404.961 to read as follows:

§ 404.961 Prehearing and posthearing proceedings.

(a) *Prehearing conferences.* (1) The administrative law judge, on his or her own initiative or at your request, may decide to conduct a prehearing conference if he or she finds that such a conference would facilitate the hearing or the decision in your case. A prehearing conference normally will be held by telephone, unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised at the conference. We will give you reasonable notice of the time, place, and manner of the conference.

(2) At the conference, the administrative law judge may consider matters such as simplifying or amending the issues, obtaining and submitting evidence, and any other matters that may expedite the hearing.

(3) The administrative law judge will summarize in writing, or on the record at the hearing, the actions taken or to be taken as a result of the conference.

(4) Subject to § 404.957(b)(4), if neither you nor the person you designate to act as your representative appears at the prehearing conference, and under § 404.957(b) you do not have a good reason for failing to appear, we may dismiss the hearing request.

(b) *Prehearing statements.* (1) At any time before the hearing begins, you may submit, or the administrative law judge may request that you submit, a prehearing statement describing why you disagree with the reconsidered determination.

(2) Unless otherwise requested by the administrative law judge, a prehearing statement should discuss briefly the following matters:

(i) Issues involved in the proceeding,

(ii) Facts,

(iii) Witnesses,

(iv) The evidentiary and legal basis upon which you believe the administrative law judge should decide the case in your favor, and

(v) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

(c) *Posthearing conferences.* (1) The administrative law judge may decide, on his or her own initiative or at your request, to hold a posthearing conference to facilitate the hearing decision. A posthearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised. We will give you reasonable notice of the time, place, and manner of the conference. The administrative law judge will place in the record a written summary describing the actions taken or to be taken as a result of the conference.

(2) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under § 404.957(b) you do not have a good reason for failing to appear, we will issue a decision based on the information available in your case.

31. Remove the undesignated center heading ''APPEALS COUNCIL REVIEW'' preceding § 404.966.

§§ 404.966 through 404.984 [Removed]

32. Remove existing §§ 404.966 through 404.984 and the undesignated center heading preceding § 404.983.

33. Add a new undesignated center heading and §§ 404.967 through 404.977 and §§ 404.982 and 404.983 to read as follows:

Appeals to the Review Board

§ 404.967 The Review Board.

(a) The Review Board is composed of administrative appeals judges whom we appoint. It is responsible for reviewing decisions made by administrative law judges in cases where you or another party to the proceedings has filed a notice of appeal of the administrative law judge's decision. A party also may appeal an administrative law judge's dismissal of a request for hearing to the Review Board.

(b) The Review Board may choose to review a decision by an administrative law judge even if no party has filed an appeal of that decision. The circumstances in which the Review Board may initiate such a review, and the procedures it will follow, are described in § 404.970.

(c) The Review Board also may identify issues that impede consistent adjudication at any or all levels of the administrative review process and may recommend appropriate changes in policies and procedures to address those impediments. This advisory function will be performed separately from the Review Board's adjudicative function.

§ 404.968 Appeal to the Review Board—general.

(a) If you or any other party is dissatisfied with a hearing decision that is unfavorable, in whole or in part, or with the dismissal of a hearing request, you may appeal that action to the Review Board. The Review Board will consider your appeal and either:

(1) Affirm, reverse, or modify the decision of the administrative law judge;

(2) Remand the case to an administrative law judge for further proceedings; or

(3) Dismiss your appeal pursuant to § 404.976.

(b) The Review Board will notify the parties at their last known addresses of the action it has taken.

§ 404.969 How to appeal to the Review Board.

(a) *Right to appeal to the Review Board.* If you are a party to the administrative proceedings in a case and an administrative law judge has issued a hearing decision or dismissal that is unfavorable to you, in whole or in part, you have the right to appeal that action by the administrative law judge to the Review Board.

(b) *Time limit on appeals to the Review Board.* (1) To begin your appeal, you must file a notice of appeal within 60 days after the date you receive notice of the administrative law judge hearing decision or dismissal, unless we have extended the time period as provided in paragraph (b)(2) of this section.

(2) You or any party to a hearing decision may ask that the time for filing a notice of appeal to the Review Board be extended. The request for additional time must be in writing, must be filed with the Review Board, and must give the reasons why the notice of appeal was not filed, or cannot be filed, within

the 60-day period provided by paragraph (b)(1). If you show that you have good cause for missing the 60-day deadline, we will grant you additional time to file the notice of appeal. We use the standards in § 404.911 to determine whether you had good cause.

(c) *Contents of the appeal.* Your notice of appeal must be in writing and must clearly indicate that you are appealing a specific unfavorable administrative law judge hearing decision or dismissal. Any documents or other evidence you wish to have considered by the Review Board should be submitted with your notice of appeal. You also should include with your notice of appeal a written statement that identifies any errors you believe the administrative law judge made, explains why those alleged errors require reversal or modification of the administrative law judge's hearing decision or dismissal under the standards of review described in § 404.971, and cites applicable law and specific facts in the administrative record to support your contentions.

(d) *Where to file your notice of appeal.* You may file your notice of appeal at one of our offices. If you have a disability claim, you may also file your notice of appeal at the Veterans Affairs regional office in the Philippines or, if you have 10 or more years of service, or at least 5 years of service accruing after December 31, 1995, in the railroad industry, at an office of the Railroad Retirement Board.

§ 404.970 Review Board initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Review Board may decide on its own motion to review the action that was taken in your case. We may refer your case to the Review Board and ask that it review your case under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Review Board for possible review under this section before we effectuate the decision in the case. We will identify cases for referral to the Review Board through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We also will identify cases for referral to the Review Board through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (e.g., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (e.g., benefits based on disability, retirement, etc.). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Neither our random sampling procedures nor our selective sampling procedures will identify cases based on the identity of the decisionmaker. We may examine cases that have been identified through random or selective sampling to refine the identification of cases that may meet the criteria for review by the Review Board.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Review Board if, in the view of the effectuating component, the decision should not be effectuated because it contains an error that affects the outcome of the case, because the decision is clearly inconsistent with the Social Security Act, the regulations, a published Social Security Ruling, or other statement of policy, or because the decision is unclear regarding a matter that affects the outcome of the case.

(c) *Referral of cases.* Any referral we make as a result of a case examination or the effectuation process will be in writing. This written referral will state the referring component's reasons for believing that the Review Board should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Review Board's action.* If the Review Board decides to review a decision or dismissal on its own motion, it will mail a notice to all parties at their last known addresses stating that it has decided to review the case and stating the reasons for the review and the issues to be considered. The Review Board will include with that notice a copy of any written referral it received under paragraph (c) of this section. If the 60-day period within which the Review Board may initiate review on its own motion (see paragraph (a) of this section) ends before the Review Board is able to decide whether to review the decision or dismissal, the Review Board still may consider whether the decision or dismissal should be reopened pursuant to §§ 404.987 and 404.988.

(e) *Interim benefits.* If the Review Board decides to review a decision on its own motion, or to reopen a decision as provided in §§ 404.987 and 404.988, the notice of review or the notice of reopening issued by the Review Board will advise, where appropriate, that interim benefits will be payable if a final decision has not been issued within 110 days after the date of the decision that is reviewed or reopened, and that any interim benefits paid will not be considered overpayments unless the benefits are fraudulently obtained.

§ 404.971 Standard of review.

(a) *Review of hearing decisions.* If you appeal a decision of an administrative law judge to the Review Board, or if the Review Board initiates a review under § 404.970, the Review Board will review the factual findings of the administrative law judge using the substantial evidence test. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The Review Board will consider any questions of law on their merits, without deference to the legal conclusions reached by the administrative law judge.

(b) *Review of dismissals.* If you appeal an administrative law judge's dismissal of your request for a hearing, the Review Board will review the action of the administrative law judge for any abuse of discretion.

(c) *Harmless error.* No error in either the admission or exclusion of evidence, and no error, defect, or omission in any ruling or decision of the administrative law judge, shall require the Review Board to vacate, modify, or reverse an otherwise appropriate ruling or decision of the administrative law judge unless, in the opinion of the Review Board, there is a reasonable probability that the error, alone or when considered with other aspects of the case, changed the outcome of the decision.

§ 404.972 Scope of review—period of time adjudicated.

The administrative law judge's hearing decision in your case adjudicated the issues relevant to your case for the period of time up to and including the date the hearing decision was issued. If you or another party files an appeal of that hearing decision, or if the Review Board decides to review the decision on its own motion, the appeal and any subsequent proceedings will consider only that period of time ending with the date of the first hearing decision in your case. If the original hearing decision in your case is set aside, in whole or in part, by the Review Board or a Federal court and remanded to an administrative law judge for a new hearing or decision, the proceedings on

remand will consider your case only with regard to the period ending on the date of the original administrative law judge decision in your case.

§ 404.973 Scope of review—evidentiary record before the Review Board.

(a) Subject to paragraphs (b) and (d) of this section, the evidentiary record for your case is closed as of the date of the first administrative law judge's decision in your case. The Review Board will base its action on the same evidence that was before the administrative law judge and will consider only that evidence that was in the record before the administrative law judge.

(b) If you have submitted additional evidence with your appeal, and that additional evidence relates to the period on or before the date of the first administrative law judge hearing decision in your case, the Review Board will accept that evidence if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(4) You must submit with your additional evidence a written statement that explains why you believe you meet one or more of the criteria in paragraphs (b)(1), (2), and (3) of this section.

(c) If you have submitted additional evidence with your appeal and the Review Board determines that the evidence does not relate to the period on or before the date of the administrative law judge's hearing decision, or otherwise does not satisfy the criteria in paragraph (b) of this section, the Review Board will return the additional evidence to you with an explanation as to why it did not accept the additional evidence. The notice returning the evidence to you will advise you that you have a right to file a new application and that, if you file a new application within 6 months after the date of the notice, we will consider your appeal as a written statement indicating an intent to claim benefits in accordance with § 404.630 and use the date of your appeal as the filing date for your new application.

(d) If the Review Board obtains additional evidence pursuant to § 404.974(d) of this part, or remands your case to an administrative law judge with instructions to obtain additional evidence on one or more issues, any evidence so obtained will become part of the evidentiary record in your case.

§ 404.974 Procedures before Review Board.

(a) *Obtaining copies of evidence.* You may request and receive copies or a statement of the documents or other written evidence upon which the hearing decision or dismissal was based and, if a hearing was held before an administrative law judge, a copy of the recording of that hearing. However, you will be asked to pay the costs of providing these copies unless there is a good reason why you should not pay.

(b) *Filing briefs or written statements with the Review Board.* You may file a brief or other written statement about the facts and law relevant to the case. Any such brief or written statement should be filed with your notice of appeal, as provided in § 404.969(c), or within 10 days thereafter. If there are other parties in your case and you choose to file a brief or written statement, you should send a copy to each party.

(c) *Limitation of issues.* The Review Board may limit the issues it considers in your appeal. If the Review Board chooses to limit the issues it will consider, it will notify you and any other party of the specific issues it will consider.

(d) *Additional evidence.* If the Review Board believes additional evidence is needed, it may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Review Board decides it can obtain the evidence itself more quickly, it may do so, unless to do so would adversely affect your rights.

(e) *Oral argument.* You may ask to appear before the Review Board to present oral argument. The Review Board may grant your request if it decides that your case raises an important question of law or policy or that oral argument would help the Review Board reach a proper decision. If your request for oral argument is granted, the Review Board will notify you of the time and place for the oral argument at least 10 days before the scheduled date.

§ 404.975 Actions that the Review Board may take.

(a) If you appeal your case to the Review Board, or if the Review Board has decided to review your case on its own motion pursuant to § 404.970, the Review Board may take one of the following actions:

(1) The Review Board may dismiss the appeal pursuant to § 404.976;

(2) If the Review Board decides that the administrative law judge's decision is supported by substantial evidence and contains no significant error of law, it may summarily affirm the decision of the administrative law judge;

(3) If the Review Board determines that there were significant errors of law or fact in the decision of the administrative law judge, or if the Review Board believes there are aspects of the case that warrant further clarification, it may issue its own decision which affirms, reverses, or modifies the decision of the administrative law judge;

(4) If the Review Board determines that there were significant errors of law or fact in the decision of the administrative law judge, or if the Review Board believes there are aspects of the case that warrant further clarification, it may remand the case to an administrative law judge for further proceedings and a new decision, or recommended decision, that is consistent with the instructions and limitations set forth by the Review Board in its order of remand; or

(5) If the Review Board concludes that further development of the evidence is necessary before a decision can be reached, it may issue an order remanding your case to an administrative law judge for further proceedings consistent with the Review Board's order.

(b) We will send notice of the Review Board's action to you at your last known address. The notice will explain in clear and simple language what action the Review Board has taken and the reasons for that action. If the Review Board issues a new decision pursuant to paragraph (a)(3) of this section, that decision will accompany the notice and will contain in understandable language a statement of the case setting forth the evidence on which the decision was based, the Review Board's analysis of the evidence and the issues, and the reasons for the Review Board's conclusions. If the Review Board summarily affirms the decision of the administrative law judge, or issues a new decision that decides your case, the notice also will advise you that the Review Board's action is our final decision and will explain how to seek judicial review of our decision. If the Review Board dismisses your appeal, the notice will advise you that the dismissal is our final decision and is not subject to further review. If the Review Board issues an order remanding your case for further proceedings, the notice

will explain that the remand order is not our final decision.

§ 404.976 Dismissal by Review Board.

(a) The Review Board may dismiss any proceedings pending before it if—

(1) You did not file your appeal within the prescribed period of time and the time for filing has not been extended;

(2) The party who filed the appeal had no right to do so under § 404.968;

(3) The record shows that the administrative law judge who issued the hearing decision should have dismissed your request for hearing under § 404.957;

(4) You and all other parties to the proceedings file a written request for dismissal; or

(5) You die, your estate or any other person to whom an underpayment may be distributed under § 404.503 of this part has not pursued your appeal, and the record clearly shows that dismissal will not adversely affect any other person who wishes to continue the action. However, dismissal of the appeal for this reason will be vacated if, within 60 days after the date of the dismissal, another person submits a written appeal and shows that he or she may be adversely affected by the determination that was under appeal.

(b) Except as provided in paragraph (a)(5) of this section, the Review Board's dismissal of an appeal pursuant to this section is binding and is not subject to further review.

§ 404.977 Case remanded by the Review Board.

(a) *When the Review Board may remand a case.* The Review Board may remand a case to an administrative law judge to issue a new decision or recommended decision, and may instruct the administrative law judge to hold another hearing. The Review Board may also remand a case to have the administrative law judge obtain additional evidence or for other action.

(b) *Action by administrative law judge on remand.* The administrative law judge shall take any action that is ordered by the Review Board and may take any additional action that is not inconsistent with the Review Board's order of remand. However, the administrative law judge may consider your case only with regard to the period of time on or before the date of the first administrative law judge decision in your case.

(c) *Notice when case is returned with a recommended decision.* When the administrative law judge sends a case to the Review Board with a recommended decision, as ordered by the Review Board, a notice is mailed to the parties at their last known addresses. The notice tells them that the case has been sent to the Review Board with a recommended decision, includes a copy of the recommended decision, and explains the rules for filing briefs or other written statements with the Review Board.

(d) *Filing briefs or written statements with the Review Board.* When the administrative law judge sends a case to the Review Board with a recommended decision, as ordered by the Review Board, you will be given 20 days from the date that the recommended decision is mailed to you in which to file with the Review Board any briefs or other written statements about the facts and law relevant to your case. Any party may ask the Review Board for additional time to file briefs or other written statements. The Review Board will extend this period, as appropriate, if you show you had good cause for missing the deadline.

(e) *Action by Review Board on recommended decision.* After receiving a recommended decision from the administrative law judge, as ordered by the Review Board, the Review Board will conduct its proceedings and take action according to the procedures explained in this subpart.

§ 404.982 Review of final decisions in Federal district court.

(a) If the Review Board issues a final decision in your case pursuant to § 404.975(a)(2) or § 404.975(a)(3) of this part, that decision will be binding unless you or another party files a civil action in Federal district court seeking a review of that final decision. You have until 60 days after the date you receive the notice of the Review Board's decision to file your civil action with the court. We will presume you received the notice within 5 days of the date shown on the notice, unless you show us that you did not receive it within that 5-day period.

(b) Any party to the Review Board's final decision, or to an expedited appeals process agreement, may request that the time for filing an action in a Federal district court be extended. The request must be in writing and must include the reasons why the action was not filed, or cannot be filed, within the stated time period. The request must be filed with the Review Board, or if it concerns an expedited appeals process agreement, with one of our offices. If you show that you had good cause for missing the deadline, the time period will be extended. We use the standards in § 404.911 to determine whether good cause exists.

§ 404.983 Case remanded by a Federal court.

When a Federal court remands a case to us for further consideration, the Review Board may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Review Board with a recommended decision. If the case is remanded by the Review Board, the procedures explained in § 404.977 will be followed.

34. Amend § 404.989 by revising paragraph (a)(1) to read as follows:

§ 404.989 Good cause for reopening.

(a) * * *

(1) New and material evidence is furnished, except that, if the decision was made by an administrative law judge or the Review Board and involved a claim that you were disabled, we will not consider any new evidence;

* * * * *

35. Amend § 404.992 by revising paragraphs (c) and (d) to read as follows:

§ 404.992 Notice of revised determination or decision.

* * * * *

(c) If an administrative law judge or the Review Board proposes to revise a decision, and the revision would be based on evidence not included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action and of your right to request that a hearing be held before any further action is taken. If a revised decision is issued by an administrative law judge, you and any other party may appeal the revised decision to the Review Board or the Review Board may review the decision on its own initiative.

(d) If an administrative law judge or the Review Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action. If a revised decision is issued by an administrative law judge, you and any other party may appeal the revised decision to the Review Board or the Review Board may review the decision on its own initiative.

36. Revise § 404.993 to read as follows:

§ 404.993 Effect of revised determination or decision.

A revised determination or decision is binding unless—

(a) You or another party to the revised determination files a written request for

reconsideration or a hearing before an administrative law judge, as appropriate;

(b) You or another party to the revised decision files, as appropriate, a request for a hearing before an administrative law judge or a notice of appeal to the Review Board;

(c) The Review Board reviews the revised decision on its own motion; or

(d) The revised determination or decision is further revised.

§ 404.999c [Amended]

37. Amend § 404.999c(d)(3)(i)(C) by removing the words ''Office of Hearings and Appeals'' and adding, in their place, the words ''Office of Disability Adjudication and Review''.

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

38. The authority citation for part 405 continues to read as follows:

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

Subpart A—[Removed and Reserved]

Subparts D through H—[Removed and Reserved]

39. Amend part 405 by removing and reserving subparts A, D, E, F, G, and H.

39a. Section 405.230 is revised to read as follows:

§ 405.230 Effect of the Federal reviewing official's decision.

The Federal reviewing official's decision is binding unless—

(a) You request a hearing before an administrative law judge under § 404.933 or § 416.1433 of this chapter within 60 days of the date you receive notice of the Federal reviewing official's decision and a decision is made by the administrative law judge,

(b) The expedited appeals process is used, or

(c) We revise the Federal reviewing official's decision under §§ 404.987 through 404.996 or §§ 416.1487 through 416.1494 of this chapter.

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

Subpart N—[Amended]

40. 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); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

41. Amend § 416.1400 by revising paragraphs (a)(4) and (b) to read as follows:

§ 416.1400 Introduction.

(a) * * *

(4) *Appeal to the Review Board.* If you are dissatisfied with the decision of the administrative law judge, you may appeal that decision to the Review Board.

* * * * *

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, nonadversarial manner. Subject to the limitations in §§ 416.1435 and 416.1473 on submitting evidence at the administrative law judge and Review Board levels, you may present any information you feel may be helpful to your case. You may present the information yourself or have someone represent you, including an attorney. At each step of the review process, we will consider all relevant evidence that has been made part of the record. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review unless you can show us that there was good cause for your failure to pursue the next step of our review process in a timely manner.

§ 416.1401 [Amended]

42. Amend § 416.1401 by removing the words ''Appeals Council'' and adding, in their place, the words ''Review Board''.

43. Amend § 416.1411 by revising paragraph (b)(5) to read as follows:

§ 416.1411 Good cause for missing the deadline to request review.

* * * * *

(b) * * *

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested reconsideration or a hearing, or within 30 days of receiving the explanation you filed a notice of appeal to the Review Board or filed a civil suit.

* * * * *

44. Amend § 416.1424 by revising paragraph (a) to read as follows:

§ 416.1424 When the expedited appeals process may be used.

* * * * *

(a) We have made an initial and a reconsidered determination; an administrative law judge has made a hearing decision; or a decision has been appealed to the Review Board, but a final decision has not been issued.

* * * * *

45. Amend § 416.1425 by revising paragraph (a)(4) to read as follows:

§ 416.1425 How to request expedited appeals process.

(a) * * *

(4) At any time after you have filed a timely notice of appeal to the Review Board, but before the Review Board has issued a decision.

* * * * *

§ 416.1428 [Amended]

46. Amend § 416.1428 by removing the words ''Appeals Council review'' and adding, in their place, the words ''a notice of appeal to the Review Board''.

47. Revise § 416.1429 to read as follows:

§ 416.1429 Hearing before an administrative law judge—general.

(a) If you are dissatisfied with one of the determinations or decisions listed in § 416.1430 you may request a hearing. We will appoint an administrative law judge to conduct the hearing proceedings. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), we may assign your case to another administrative law judge.

(b) You may examine the evidence used in making the reconsidered determination, submit evidence, appear at the hearing, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, on any new evidence that is timely submitted, and on any evidence that the administrative law judge obtains.

48. Revise § 416.1433 to read as follows:

§ 416.1433 How to request a hearing before an administrative law judge.

(a) *Written request.* You must request a hearing by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) The specific reasons you disagree with the reconsidered determination,

(3) If disability is an issue in your case, a statement of the medically determinable impairment(s) that you believe prevents you from working,

(4) Additional evidence that you have available to you, and

(5) The name and address of your representative, if any.

(b) *Time limit for filing request.* An administrative law judge will hear your case if you request a hearing in writing no later than 60 days after the date you receive notice of the reconsidered determination (or within the extended time period if we extend the time as provided in paragraph (d) of this section). The administrative law judge may decide your case without an oral hearing under the circumstances described in § 416.1448.

(c) *Place for filing request.* You should submit a written request for a hearing at one of our offices.

(d) *Extension of time to request a hearing.* You may ask us for more time to request a hearing. Your request for an extension of time must be in writing and must give the reasons the hearing request was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 416.1411 of this part.

(e) *Waiver of the right to appear.* After you submit your request for a hearing, you may ask the administrative law judge to decide your case without a hearing, as described in § 416.1448(b). The administrative law judge may grant the request unless he or she believes that a hearing is necessary. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

49. Revise § 416.1435 to read as follows:

§ 416.1435 Submitting evidence to an administrative law judge.

(a) *General.* You should submit with your request for hearing any evidence that you have available to you. All documents prepared and submitted by you (i.e., not including medical or other evidence that is prepared by someone other than you or your representative) should clearly designate your name and the last four digits of your social security number. All such documents must be clear and legible to the fullest extent practicable and delivered or mailed to the administrative law judge within the time frames in paragraph (b) of this section, unless the administrative law judge allows additional time for submitting evidence.

(b) *Time for submitting evidence.* Any documents that you wish to have considered at the hearing must be submitted no later than 5 business days before the date of the scheduled hearing. If you do not comply with this requirement, the administrative law judge may decline to consider the evidence unless the circumstances described in paragraph (c) of this section apply.

(c) *Late submission of evidence.* (1) If you miss the deadline described in paragraph (b) of this section and you wish to submit evidence during the 5 business days before the hearing or at the hearing, the administrative law judge will accept the evidence if you show that:

(i) Our action misled you;

(ii) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(iii) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(2) If you miss the deadline described in paragraph (b) of this section and you wish to submit evidence after the hearing and before the hearing decision is issued, the administrative law judge will accept the evidence if you show that there is a reasonable possibility that the evidence, alone or when considered with the other evidence of record, would affect the outcome of your case, and:

(i) Our action misled you;

(ii) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(iii) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(d) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, an administrative law judge may, on his or her own initiative or at your request, issue subpoenas for the appearance and testimony of witnesses and for the production of any documents that are relevant to an issue at the hearing.

(2) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 20 days before the hearing date. The written request must:

(i) Give the names of the witnesses or describe the documents to be produced;

(ii) Describe the address or location of the witnesses or documents with sufficient detail to find them;

(iii) State the important facts that the witness or document is expected to show; and

(iv) Indicate why these facts could not be shown without that witness or document.

(3) We will pay the cost of issuing the subpoena and pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(4) Within 5 days of receipt of a subpoena, but no later than the date of the hearing, the person against whom the subpoena is directed may ask the administrative law judge to withdraw or limit the scope of the subpoena and must set forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(5) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

50. Revise § 416.1436 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. The administrative law judge will notify you of the time and place of the hearing at least 75 days before the date of the hearing, unless you agree to a shorter notice period. If it is necessary, the administrative law judge may change the time and place of the hearing. If the administrative law judge changes the time and place of the hearing, he or she will send you reasonable notice of the change.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, and the Northern Mariana Islands.

(c) *Determination regarding in-person, telephonic, or video teleconference appearance of witnesses at the hearing.* (1) In setting the time and place of the hearing, the administrative law judge will determine whether you will appear at the hearing in person or by video teleconference or, under certain extraordinary circumstances, by telephone. If you object to appearing personally by video teleconference, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge. The administrative law judge may direct you to appear by telephone when:

(i) Your appearance in person is not possible, such as if you are incarcerated and the facility will not allow a hearing to be held at the facility, and

(ii) Video teleconference is not available.

(2) In setting the time and place of the hearing, the administrative law judge

will determine whether any other person will appear at the hearing in person, by telephone, or by video teleconference. If you object to any other person appearing by telephone or video teleconference, the administrative law judge will decide whether to have that person appear in person, by telephone, or by video teleconference. The administrative law judge will direct a person, other than you if you object to your appearing by video teleconference, to appear by video teleconference when:

(i) Video teleconference technology is available,

(ii) Use of video teleconference technology would be more efficient than conducting an examination of a witness in person, and

(iii) The administrative law judge determines that there is no other reason why video teleconference should not be used.

51. Revise § 416.1438 to read as follows:

§ 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. We will mail or serve the notice at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

(b) *Notice information.* The notice of hearing will tell you:

(1) The specific issues to be decided,

(2) That you may designate a person to represent you during the proceedings,

(3) How to request that we change the time or place of your hearing,

(4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under § 416.1411,

(5) Whether your appearance will be in person or by video teleconference (or, in exceptional circumstances, by telephone) and whether any witness's appearance will be in person, by telephone, or by video teleconference, and

(6) That you must submit all evidence that you wish to have considered at the hearing no later than 5 business days before the date of the scheduled hearing, unless you show that your circumstances meet the conditions described in § 416.1435(c) for missing the deadline.

(c) *Acknowledging the notice of hearing.* In the notice of hearing, we will ask you to return a form, within 5 days of the date you receive the notice, to let us know that you received the notice. If you or your representative does not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you let us know that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

52. Revise § 416.1439 to read as follows:

§ 416.1439 Objections.

(a) *Time and Place.* (1) If you object to the time or place of your hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the date set for the hearing, but no later than 30 days after receiving notice of the hearing. You must state the reason(s) for your objection and propose a time and place you want the hearing to be held.

(2) The administrative law judge will consider your reason(s) for requesting the change 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 we previously granted to you any changes in the time or place of your hearing.

(b) *Issues.* If you believe that the issues contained in the hearing notice are incorrect, you should notify the administrative law judge in writing at the earliest possible opportunity, but must notify him or her no later than 5 business days before the date set for the hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the hearing or in writing before the hearing.

§ 416.1440 [Amended]

53. Amend § 416.1440 by removing the words ''Associate Commissioner for Hearings and Appeals'' and adding, in their place, the word ''we'', and by removing the words ''Appeals Council'' and, in their place, adding the words ''Review Board''.

§ 416.1443 [Removed and Reserved]

54. Remove and reserve § 416.1443.

55. Revise § 416.1444 to read as follows:

§ 416.1444 Administrative law judge hearing procedures—general.

(a) *General.* A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. The administrative law judge will conduct the proceedings in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into all of the issues raised in your case, will question you and the other witnesses, and will accept any evidence relating to your case that you submit in accordance with § 416.1435.

(b) *Conducting the hearing.* The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the notice of the decision is sent to you, the administrative law judge may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described in §§ 416.1446 through 416.1461.

56. Revise § 416.1446 to read as follows:

§ 416.1446 Issues before an administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues raised in your case, regardless of whether or not the issues may have already been decided in your favor.

(b) *New issues.* Any time after receiving the hearing request and before mailing notice of the hearing decision, the administrative law judge may consider a new issue if he or she, before deciding the issue, provides you an opportunity to address it. The administrative law judge or any party may raise a new issue. An issue may be raised even though it arose after the request for a hearing and even though it has not been considered in an initial or reconsidered determination.

(c) *Collateral estoppel—issues previously decided.* We already may have decided a fact that is an issue before the administrative law judge in one of our previous and final determinations or decisions involving you, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in the previous determination or decision, unless he or she has reason to believe that it was wrong, or reopens the previous determination or decision under § 416.1487.

57. Revise § 416.1448 to read as follows:

§ 416.1448 Deciding a case without a hearing before an administrative law judge.

(a) *Decision wholly favorable.* If the evidence in the record supports a decision wholly in your favor, the

administrative law judge may issue a decision without holding a hearing. However, the notice of the decision will inform you that you have the right to a hearing and that you have a right to examine the evidence on which the decision is based.

(b) *You do not wish to appear.* The administrative law judge may decide a case on the record and not conduct a hearing if—

(1) You state in writing that you do not wish to appear at a hearing, or

(2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the evidence, which, except for the transcript of the hearing, will contain the material described in § 416.1451. The decision of the administrative law judge must be based on this record.

§ 416.1449 [Removed and Reserved]

58. Remove and reserve § 416.1449.

59. Revise § 416.1450 to read as follows:

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

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the administrative law judge determines that the conditions in § 416.1436(c) exist, by telephone or video teleconference, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* Subject to § 416.1435, the administrative law judge may receive any evidence at the hearing that he or she believes relates to your case.

(c) *Witnesses at a hearing.* Witnesses may appear at a hearing in person, by telephone, or by video teleconference. Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask the witnesses any questions relating to your case.

(d) *Closing statements.* You or your representative may present a closing statement to the administrative law judge—

(1) Orally at the end of the hearing,

(2) In writing after the hearing and within a reasonable time period set by the administrative law judge, or

(3) By using both methods under paragraphs (d)(1) and (2).

60. Revise § 416.1451 to read as follows:

§ 416.1451 Official record.

(a) All hearings will be recorded. All evidence upon which the administrative law judge relies for the decision must be contained in the record, either directly or through administrative notice, if appropriate. The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were used in making the determination under review and any additional evidence or written statements that the administrative law judge admits into the record under §§ 416.1435 and 416.1444. All admitted evidence must be incorporated into the record. The official record of your case will contain all of the admitted evidence and a verbatim recording of all testimony offered at the hearing. It also will include any prior initial determinations or decisions relevant to your case. Subject to § 416.1473, the official record closes once the administrative law judge issues his or her decision, regardless of whether it becomes our final decision.

(b) The recording of the hearing will be prepared as a typed copy of the proceedings if—

(1) The case is sent to the Review Board without a decision, or with a recommended decision as ordered by the Review Board, by the administrative law judge;

(2) You seek judicial review of your case by filing an action in a Federal district court within the stated time period, unless we request the court to remand the case; or

(3) An administrative law judge or the Review Board asks for a written record of the proceedings in cases remanded by a Federal district court.

61. Revise § 416.1452 to read as follows:

§ 416.1452 Consolidated hearing before an administrative law judge.

(a) *General.* (1) We may hold a consolidated hearing if—

(i) You have requested a hearing to decide your case, and

(ii) One or more of the issues to be considered at your hearing is the same as an issue involved in another case you have pending before us.

(2) If the administrative law judge consolidates the cases, he or she will decide both cases, even if we have not yet made an initial determination or a reconsidered determination in the other case.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced at the hearing becomes the evidence of record in each case adjudicated. The administrative law judge may issue either a consolidated decision or separate decisions for each case.

62. Revise § 416.1453 to read as follows:

§ 416.1453 Decision by the administrative law judge.

(a) The administrative law judge will make a decision based on all of the evidence, including the testimony at the hearing. The administrative law judge will prepare a written decision that explains in clear and understandable language the reasons for the decision.

(b) During the hearing, in certain categories of cases that we identify in advance, the administrative law judge may orally explain in clear and understandable language the reasons for, and enter into the record, a wholly favorable decision. The administrative law judge will include in the record a document that sets forth the key data, findings of fact, and narrative rationale for the decision. Within 5 days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference and that explains why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the reconsidered determination. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a record of the oral decision.

63. Revise § 416.1455 to read as follows:

§ 416.1455 The effect of the administrative law judge's decision.

The decision of the administrative law judge is binding on all parties to the hearing unless—

(a) You or another party to the hearing appeals the decision to the Review Board;

(b) The Review Board decides to review the decision on its own motion, as provided in § 416.1470; or

(c) The decision is a recommended decision to the Review Board as ordered by the Review Board; or

(d) The decision is revised by an administrative law judge or the Review Board under the procedures explained in § 416.1487.

§ 416.1456 [Amended]

64. Amend § 416.1456 by removing the words ''Appeals Council'' and, in

their place, adding the words ''Review Board''.

65. Revise § 416.1457 to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing;

(b)(1) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we notified you previously that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear; or

(2) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we had not notified you previously that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in § 416.1411 of this part.

(4) If neither you nor the person you designate to act as your representative appears at the prehearing conference but the provisions of § 416.1448(b) apply, the administrative law judge will issue a decision without holding a hearing.

(c) If the doctrine of res judicata applies because we have made a previous determination or decision in your case on the same facts and on the same issue or issues, and this previous determination or decision has become final;

(d) If you have no right to a hearing under § 416.1430;

(e) If you did not request a hearing in time and we have not extended the time for requesting a hearing; or

(f) If you die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for hearing, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The administrative law judge, however, will vacate a dismissal of the hearing request if, within 60 days after the date of the dismissal:

(1) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for a hearing, and shows that a decision on the issues that were to be considered at the hearing may adversely affect him or her; or

(2) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

66. Revise the second sentence of § 416.1458 to read as follows:

§ 416.1458 Notice of dismissal of a request for hearing before an administrative law judge.

* * * The notice will state that you have the right to appeal the dismissal to the Review Board.

§ 416.1459 [Amended]

67. Amend § 416.1459 by removing the words ''Appeals Council'' and, in their place, adding the words ''Review Board''.

§ 416.1460 [Amended]

68. Amend § 416.1460 by removing the words ''Appeals Council'' and, in their place, adding the words ''Review Board''.

69. Revise § 416.1461 to read as follows:

§ 416.1461 Prehearing and posthearing proceedings.

(a) *Prehearing conferences.* (1) The administrative law judge, on his or her own initiative or at your request, may decide to conduct a prehearing conference if he or she finds that such a conference would facilitate the hearing or the decision in your case. A prehearing conference normally will be held by telephone, unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised at the conference. We will give you reasonable notice of the time, place, and manner of the conference.

(2) At the conference, the administrative law judge may consider matters such as simplifying or amending the issues, obtaining and submitting evidence, and any other matters that may expedite the hearing.

(3) The administrative law judge will summarize in writing, or on the record at the hearing, the actions taken or to be taken as a result of the conference.

(4) Subject to § 416.1457(b)(4), if neither you nor the person you designate to act as your representative appears at the prehearing conference, and under § 416.1457(b) you do not have a good reason for failing to appear, we may dismiss the hearing request.

(b) *Prehearing statements.* (1) At any time before the hearing begins, you may submit, or the administrative law judge may request that you submit, a prehearing statement describing why you disagree with the reconsidered determination.

(2) Unless otherwise requested by the administrative law judge, a prehearing statement should discuss briefly the following matters:

(i) Issues involved in the proceeding,

(ii) Facts,

(iii) Witnesses,

(iv) The evidentiary and legal basis upon which you believe the administrative law judge should decide the case in your favor, and

(v) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

(c) *Posthearing conferences.* (1) The administrative law judge may decide, on his or her own initiative or at your request, to hold a posthearing conference to facilitate the hearing decision. A posthearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised. We will give you reasonable notice of the time, place, and manner of the conference. The administrative law judge will place in the record a written summary describing the actions taken or to be taken as a result of the conference.

(2) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under § 416.1457(b) you do not have a good reason for failing to appear, we will issue a decision based on the information available in your case.

70. Remove the undesignated center heading ''APPEALS COUNCIL REVIEW'' preceding § 416.1466.

§§ 416.1466 through 416.1484 [Removed]

71. Remove existing §§ 416.1466 through 416.1484 and the undesignated center heading preceding § 416.1483.

72. Add a new undesignated center heading and §§ 416.1467 through 416.1477 and §§ 416.1482 through 416.1483 to read as follows:

Appeals to the Review Board

§ 416.1467 The Review Board.

(a) The Review Board is composed of administrative appeals judges whom we appoint. It is responsible for reviewing decisions made by administrative law judges in cases where you or another party to the proceedings has filed a notice of appeal of the administrative law judge's decision. A party also may appeal an administrative law judge's dismissal of a request for hearing to the Review Board.

(b) The Review Board may choose to review a decision by an administrative law judge even if no party has filed an appeal of that decision. The circumstances in which the Review Board may initiate such a review, and the procedures it will follow, are described in § 416.1470.

(c) The Review Board also may identify issues that impede consistent adjudication at any or all levels of the administrative review process and may recommend appropriate changes in policies and procedures to address those impediments. This advisory function will be performed separately from the Review Board's adjudicative function.

§ 416.1468 Appeal to the Review Board—general.

(a) If you or any other party is dissatisfied with a hearing decision that is unfavorable, in whole or in part, or with the dismissal of a hearing request, you may appeal that action to the Review Board. The Review Board will consider your appeal and either:

(1) Affirm, reverse, or modify the decision of the administrative law judge;

(2) Remand the case to an administrative law judge for further proceedings; or

(3) Dismiss your appeal pursuant to § 416.1476.

(b) The Review Board will notify the parties at their last known addresses of the action it has taken.

§ 416.1469 How to appeal to the Review Board.

(a) *Right to appeal to the Review Board.* If you are a party to the administrative proceedings in a case and an administrative law judge has issued a hearing decision or dismissal that is unfavorable to you, in whole or in part, you have the right to appeal that action by the administrative law judge to the Review Board.

(b) *Time limit on appeals to the Review Board.* (1) To begin your appeal, you must file a notice of appeal within 60 days after the date you receive notice of the administrative law judge hearing decision or dismissal, unless we have extended the time period as provided in paragraph (b)(2) of this section.

(2) You or any party to a hearing decision may ask that the time for filing a notice of appeal to the Review Board be extended. The request for additional time must be in writing, must be filed with the Review Board, and must give the reasons why the notice of appeal was not filed, or cannot be filed, within the 60-day period provided by paragraph (b)(1). If you show that you have good cause for missing the 60-day deadline, we will grant you additional time to file the notice of appeal. We use the standards in § 416.1411 to determine whether you had good cause.

(c) *Contents of the appeal.* Your notice of appeal must be in writing and must clearly indicate that you are appealing a specific unfavorable administrative law judge hearing decision or dismissal. Any documents or other evidence you wish to have considered by the Review Board should be submitted with your notice of appeal. You also should include with your notice of appeal a written statement that identifies any errors you believe the administrative law judge made, explains why those alleged errors require reversal or modification of the administrative law judge's hearing decision or dismissal under the standards of review described in § 416.1471, and cites applicable law and specific facts in the administrative record to support your contentions.

(d) *Where to file your notice of appeal.* You may file your notice of appeal at one of our offices.

§ 416.1470 Review Board initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Review Board may decide on its own motion to review the action that was taken in your case. We may refer your case to the Review Board and ask that it review your case under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Review Board for possible review under this section before we effectuate the decision in the case. We will identify cases for referral to the Review Board through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We also will identify cases for referral to the Review Board through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (e.g., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (e.g., benefits based on disability, retirement, etc.). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Neither our random sampling procedures nor our selective sampling procedures will identify cases based on the identity of the decisionmaker. We may examine cases that have been identified through random or selective sampling to refine the identification of cases that may meet the criteria for review by the Review Board.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Review Board if, in the view of the effectuating component, the decision should not be effectuated because it contains an error that affects the outcome of the case, because the decision is clearly inconsistent with the Social Security Act, the regulations, a published Social Security Ruling, or other statement of policy, or because the decision is unclear regarding a matter that affects the outcome of the case.

(c) *Referral of cases.* Any referral we make as a result of a case examination or the effectuation process will be in writing. This written referral will state the referring component's reasons for believing that the Review Board should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Review Board's action.* If the Review Board decides to review a decision or dismissal on its own motion, it will mail a notice to all parties at their last known addresses stating that it has decided to review the case and stating the reasons for the review and the issues to be considered. The Review Board will include with that notice a copy of any written referral it received under paragraph (c) of this section. If the 60-day period within which the Review Board may initiate review on its own motion (see paragraph (a) of this section) ends before the Review Board is able to decide whether to review the decision or dismissal, the Review Board still may consider whether the decision or dismissal should be reopened pursuant to §§ 416.1487 and 416.1488.

(e) *Interim benefits.* If the Review Board decides to review a decision on its own motion, or to reopen a decision as provided in §§ 416.1487 and 416.1488, the notice of review or the notice of reopening issued by the Review Board will advise, where appropriate, that interim benefits will be payable if a final decision has not been issued within 110 days after the date of the decision that is reviewed or reopened, and that any interim benefits paid will not be considered

overpayments unless the benefits are fraudulently obtained.

§ 416.1471 Standard of review.

(a) *Review of hearing decisions.* If you appeal a decision of an administrative law judge to the Review Board, or if the Review Board initiates a review under § 416.1470, the Review Board will review the factual findings of the administrative law judge using the substantial evidence test. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The Review Board will consider any questions of law on their merits, without deference to the legal conclusions reached by the administrative law judge.

(b) *Review of dismissals.* If you appeal an administrative law judge's dismissal of your request for a hearing, the Review Board will review the action of the administrative law judge for any abuse of discretion.

(c) *Harmless error.* No error in either the admission or exclusion of evidence, and no error, defect, or omission in any ruling or decision of the administrative law judge, shall require the Review Board to vacate, modify, or reverse an otherwise appropriate ruling or decision of the administrative law judge unless, in the opinion of the Review Board, there is a reasonable probability that the error, alone or when considered with other aspects of the case, changed the outcome of the decision.

§ 416.1472 Scope of review—period of time adjudicated.

The administrative law judge's hearing decision in your case adjudicated the issues relevant to your case for the period of time up to and including the date the hearing decision was issued. If you or another party files an appeal of that hearing decision, or if the Review Board decides to review the decision on its own motion, the appeal and any subsequent proceedings will consider only that period of time ending with the date of the first hearing decision in your case. If the original hearing decision in your case is set aside, in whole or in part, by the Review Board or a Federal court and remanded to an administrative law judge for a new hearing or decision, the proceedings on remand will consider your case only with regard to the period ending on the date of the original administrative law judge decision in your case.

§ 416.1473 Scope of review—evidentiary record before the Review Board.

(a) Subject to paragraphs (b) and (d) of this section, the evidentiary record for your case is closed as of the date of the first administrative law judge's decision in your case. The Review Board will base its action on the same evidence that was before the administrative law judge and will consider only that evidence that was in the record before the administrative law judge.

(b) If you have submitted additional evidence with your appeal, and that additional evidence relates to the period on or before the date of the first administrative law judge hearing decision in your case, the Review Board will accept that evidence if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(4) You must submit with your additional evidence a written statement that explains why you believe you meet one or more of the criteria in paragraphs (b)(1), (2), and (3) of this section.

(c) If you have submitted additional evidence with your appeal and the Review Board determines that the evidence does not relate to the period on or before the date of the administrative law judge's hearing decision, or otherwise does not satisfy the criteria in paragraph (b) of this section, the Review Board will return the additional evidence to you with an explanation as to why it did not accept the additional evidence. The notice returning the evidence to you will advise you that you have a right to file a new application and that, if you file a new application within 60 days after the date of the notice, we will consider your appeal as a written statement indicating an intent to claim benefits in accordance with § 416.340 and use the date of your appeal as the filing date for your new application.

(d) If the Review Board obtains additional evidence pursuant to § 416.1474(d) of this part, or remands your case to an administrative law judge with instructions to obtain additional evidence on one or more issues, any evidence so obtained will become part of the evidentiary record in your case.

§ 416.1474 Procedures before Review Board.

(a) *Obtaining copies of evidence.* You may request and receive copies or a statement of the documents or other written evidence upon which the hearing decision or dismissal was based and, if a hearing was held before an administrative law judge, a copy of the recording of that hearing. However, you will be asked to pay the costs of providing these copies unless there is a good reason why you should not pay.

(b) *Filing briefs or written statements with the Review Board.* You may file a brief or other written statement about the facts and law relevant to the case. Any such brief or written statement should be filed with your notice of appeal, as provided in § 404.969(c), or within 10 days thereafter. If there are other parties in your case and you choose to file a brief or written statement, you should send a copy to each party.

(c) *Limitation of issues.* The Review Board may limit the issues it considers in your appeal. If the Review Board chooses to limit the issues it will consider, it will notify you and any other party of the specific issues it will consider.

(d) *Additional evidence.* If the Review Board believes additional evidence is needed, it may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Review Board decides it can obtain the evidence itself more quickly, it may do so, unless to do so would adversely affect your rights.

(e) *Oral argument.* You may ask to appear before the Review Board to present oral argument. The Review Board may grant your request if it decides that your case raises an important question of law or policy or that oral argument would help the Review Board reach a proper decision. If your request for oral argument is granted, the Review Board will notify you of the time and place for the oral argument at least 10 days before the scheduled date.

§ 416.1475 Actions that the Review Board may take.

(a) If you appeal your case to the Review Board, or if the Review Board has decided to review your case on its own motion pursuant to § 416.1470, the Review Board may take one of the following actions:

(1) The Review Board may dismiss the appeal pursuant to § 416.1476;

(2) If the Review Board decides that the administrative law judge's decision is supported by substantial evidence and contains no significant error of law,

it may summarily affirm the decision of the administrative law judge;

(3) If the Review Board determines that there were significant errors of law or fact in the decision of the administrative law judge, or if the Review Board believes there are aspects of the case that warrant further clarification, it may issue its own decision which affirms, reverses, or modifies the decision of the administrative law judge;

(4) If the Review Board determines that there were significant errors of law or fact in the decision of the administrative law judge, or if the Review Board believes there are aspects of the case that warrant further clarification, it may remand the case to an administrative law judge for further proceedings and a new decision, or recommended decision, that is consistent with the instructions and limitations set forth by the Review Board in its order of remand; or

(5) If the Review Board concludes that further development of the evidence is necessary before a decision can be reached, it may issue an order remanding your case to an administrative law judge for further proceedings consistent with the Review Board's order.

(b) We will send notice of the Review Board's action to you at your last known address. The notice will explain in clear and simple language what action the Review Board has taken and the reasons for that action. If the Review Board issues a new decision pursuant to paragraph (a)(3) of this section, that decision will accompany the notice and will contain in understandable language a statement of the case setting forth the evidence on which the decision was based, the Review Board's analysis of the evidence and the issues, and the reasons for the Review Board's conclusions. If the Review Board summarily affirms the decision of the administrative law judge, or issues a new decision that decides your case, the notice also will advise you that the Review Board's action is our final decision and will explain how to seek judicial review of our decision. If the Review Board dismisses your appeal, the notice will advise you that the dismissal is our final decision and is not subject to further review. If the Review Board issues an order remanding your case for further proceedings, the notice will explain that the remand order is not our final decision.

§ 416.1476 Dismissal by Review Board.

(a) The Review Board may dismiss any proceedings pending before it if—

(1) You did not file your appeal within the prescribed period of time and the time for filing has not been extended;

(2) The party who filed the appeal had no right to do so under § 416.1468;

(3) The record shows that the administrative law judge who issued the hearing decision should have dismissed your request for hearing under § 416.1457;

(4) You and all other parties to the proceedings file a written request for dismissal; or

(5) You die, there are no other parties who would be adversely affected by the dismissal, and we have no information to show that you may have a survivor who may be paid benefits due you under § 416.542(b) of this part and who wishes to pursue the appeal, or that you authorized interim assistance to a State pursuant to section 1631(g) of the Act. However, dismissal of the appeal for this reason will be vacated if, within 60 days after the date of the dismissal, a person claiming to be your survivor who may be paid benefits under § 416.542(b) submits a written appeal and shows that he or she may be adversely affected by the determination that was under appeal. We will also vacate the dismissal if, within 60 days after the date of the dismissal, we receive information that shows you had authorized interim assistance reimbursement to a State.

(b) Except as provided in paragraph (a)(5) of this section, the Review Board's dismissal of an appeal pursuant to this section is binding and is not subject to further review.

§ 416.1477 Case remanded by the Review Board.

(a) *When the Review Board may remand a case.* The Review Board may remand a case to an administrative law judge to issue a new decision or recommended decision, and may instruct the administrative law judge to hold another hearing. The Review Board may also remand a case to have the administrative law judge obtain additional evidence or for other action.

(b) *Action by administrative law judge on remand.* The administrative law judge shall take any action that is ordered by the Review Board and may take any additional action that is not inconsistent with the Review Board's order of remand. However, the administrative law judge may consider your case only with regard to the period of time on or before the date of the first administrative law judge decision in your case.

(c) *Notice when case is returned with a recommended decision.* When the administrative law judge sends a case to the Review Board with a recommended decision, as ordered by the Review Board, a notice is mailed to the parties at their last known addresses. The notice tells them that the case has been sent to the Review Board with a recommended decision, includes a copy of the recommended decision, and explains the rules for filing briefs or other written statements with the Review Board.

(d) *Filing briefs or written statements with the Review Board.* When the administrative law judge sends a case to the Review Board with a recommended decision, as ordered by the Review Board, you will be given 20 days from the date that the recommended decision is mailed to you in which to file with the Review Board any briefs or other written statements about the facts and law relevant to your case. Any party may ask the Review Board for additional time to file briefs or other written statements. The Review Board will extend this period, as appropriate, if you show you had good cause for missing the deadline.

(e) *Action by Review Board on recommended decision.* After receiving a recommended decision from the administrative law judge, as ordered by the Review Board, the Review Board will conduct its proceedings and take action according to the procedures explained in this subpart.

§ 416.1482 Review of final decisions in Federal district court.

(a) If the Review Board issues a final decision in your case pursuant to § 416.1475(a)(2) or § 416.1475(a)(3) of this part, that decision will be binding unless you or another party files a civil action in Federal district court seeking a review of that final decision. You have until 60 days after the date you receive the notice of the Review Board's decision to file your civil action with the court. We will presume you received the notice within 5 days of the date shown on the notice, unless you show us that you did not receive it within that 5-day period.

(b) Any party to the Review Board's final decision, or to an expedited appeals process agreement, may request that the time for filing an action in a Federal district court be extended. The request must be in writing and must include the reasons why the action was not filed, or cannot be filed, within the stated time period. The request must be filed with the Review Board, or if it concerns an expedited appeals process agreement, with one of our offices. If you show that you had good cause for missing the deadline, the time period

will be extended. We use the standards in § 416.1411 to determine whether good cause exists.

§ 416.1483 Case remanded by a Federal court.

When a Federal court remands a case to us for further consideration, the Review Board may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Review Board with a recommended decision. If the case is remanded by the Review Board, the procedures explained in § 416.1477 will be followed.

73. Amend § 416.1489 by revising paragraph (a)(1) to read as follows:

§ 416.1489 Good cause for reopening.

(a) * * *

(1) New and material evidence is furnished, except that, if the decision was made by an administrative law judge or the Review Board and involved a claim that you were disabled, we will not consider any new evidence;

* * * * *

74. Amend § 416.1492 by revising paragraphs (e) and (f) to read as follows:

§ 416.1492 Notice of revised determination or decision.

* * * * *

(e) If an administrative law judge or the Review Board proposes to revise a decision, and the revision would be based on evidence not included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action and of your right to request that a hearing be held before any further action is taken. If a revised decision is issued by an administrative law judge, you and any other party may appeal the revised decision to the Review Board or the Review Board may review the decision on its own initiative.

(f) If an administrative law judge or the Review Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action. If a revised decision is issued by an administrative law judge, you and any other party may appeal the revised decision to the Review Board or the Review Board may review the decision on its own initiative.

* * * * *

75. Revise § 416.1493 to read as follows:

§ 416.1493 Effect of revised determination or decision.

A revised determination or decision is binding unless—

(a) You or another party to the revised determination files a written request for reconsideration or a hearing before an administrative law judge, as appropriate;

(b) You or another party to the revised decision files, as appropriate, a request for a hearing before an administrative law judge or a notice of appeal to the Review Board;

(c) The Review Board reviews the revised decision on its own motion; or

(d) The revised determination or decision is further revised.

§ 416.1498 [Amended]

76. Amend § 416.1498(d)(3)(i)(C) by removing the words ''Office of Hearings and Appeals'' and adding, in their place, the words ''Office of Disability Adjudication and Review''.

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