Gardner, MA, Gardner Muni, VOR–A, Amdt 6
Pittsfield, MA, Pittsfield Muni, LOC RWY 26, Amdt 8
Biddeford, ME, Biddeford Muni, GPS RWY 6, Orig-A, CANCELLED
Biddeford, ME, Biddeford Muni, RNAV (GPS) RWY 6, Orig
Dowagiac, MI, Dowagiac Muni, RNAV (GPS) RWY 9, Orig
Dowagiac, MI, Dowagiac Muni, RNAV (GPS) RWY 27, Orig
Dowagiac, MI, Dowagiac Muni, VOR–A, Amdt 10
Dowagiac, MI, Dowagiac Muni, VOR/DME RNAV OR GPS RWY 27, Amdt 6, CANCELLED
Drummond Island, MI, Drummond Island, GPS RWY 8, Orig, CANCELLED
Drummond Island, MI, Drummond Island, GPS RWY 26, Orig, CANCELLED
Drummond Island, MI, Drummond Island, RNAV (GPS) RWY 8, Orig
Drummond Island, MI, Drummond Island, RNAV (GPS) RWY 26, Orig
Grayling, MI, Grayling AAF, VOR RWY 14, Amdt 2
Lansing, MI, Capital Region Intl, RNAV (GPS) RWY 6, Orig
Lansing, MI, Capital Region Intl, VOR RWY 6, Amdt 25
Newberry, MI, Luce County, RNAV (GPS) RWY 11, Orig
Newberry, MI, Luce County, RNAV (GPS) RWY 29, Orig
Newberry, MI, Luce County, VOR RWY 11, Amdt 12
Newberry, MI, Luce County, VOR RWY 29, Amdt 12
Valley City, ND, Barnes County Muni, RNAV (GPS) RWY 13, Orig
Valley City, ND, Barnes County Muni, RNAV (GPS) RWY 31, Orig
Las Vegas, NV, McCarran Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Reno, NV, Reno/Stead, RNAV (GPS) RWY 32, Amdt 1
Hamilton, NY, Hamilton Muni, RNAV (GPS) RWY 35, Orig
Ithaca, NY, Ithaca Tompkins Rgnl, ILS OR LOC RWY 32, Amdt 6
Ithaca, NY, Ithaca Tompkins Rgnl, RNAV (GPS) RWY 32, Orig
Shawnee, OK, Shawnee Rgnl, RNAV (GPS) RWY 35, Orig
Barnwell, SC, Barnwell Rgnl, RNAV (GPS) RWY 17, Amdt 2
Austin, TX, Austin Executive, RNAV (GPS) RWY 13, Orig
Austin, TX, Austin Executive, RNAV (GPS) RWY 31, Orig
Austin, TX, Austin Executive, Takeoff Minimums and Obstacle DP, Orig
Henderson, TX, Rusk County, NDB–B, Amdt 1
Odessa, TX, Odessa-Schlemeyer Field, VOR–A, Amdt 7
Louisa, VA, Louisa County/Freeman Field, LOC/DME RWY 27, Amdt 3
Louisa, VA, Louisa County/Freeman Field, RNAV (GPS) RWY 27, Amdt 1
Louisa, VA, Louisa County/Freeman Field, Takeoff Minimums and Obstacle DP, Amdt 1
East Troy, WI, East Troy Muni, Takeoff Minimums and Obstacle DP, Orig

On June 09, 2010 (75 FR 32654) the FAA published an Amendment in Docket No. 30727, Amdt 3376 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entries, effective 29 July 2010, are hereby changed to be effective on *23 September 2010:*

Marshalltown, IA, Marshalltown Muni, GPS RWY 12, Orig-B, CANCELLED
Marshalltown, IA, Marshalltown Muni, RNAV (GPS) RWY 13, Orig
Marshalltown, IA, Marshalltown Muni, RNAV (GPS) RWY 31, Orig
Marshalltown, IA, Marshalltown Muni, Takeoff Minimum and Obstacle DP, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 13, Amdt 2
Marshalltown, IA, Marshalltown Muni, VOR RWY 31, Amdt 2

[FR Doc. 2010–16261 Filed 7–7–10; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2008–0033]

RIN 0960–AG61

Setting the Time and Place for a Hearing Before an Administrative Law Judge

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are amending our rules to state that our agency is responsible for setting the time and place for a hearing before an administrative law judge (ALJ). This change creates a 3-year pilot program that will allow us to test this new authority. Our use of this authority, consistent with due process rights of claimants, may provide us with greater flexibility in scheduling both in-person and video hearings, lead to improved efficiency in our hearing process, and reduce the number of pending hearing requests. This change is a part of our broader commitment to maintaining a hearing process that results in accurate, high-quality decisions for claimants.

DATES: These final rules are effective August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Brent Hillman, Social Security Administration, 5107 Leesburg Pike, Falls Church, Virginia 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

One of our highest priorities is to improve the efficiency of our hearing process for the Old Age, Survivors, and Disability Insurance (OASDI) programs under title II of the Social Security Act (Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. The increasing workloads at the hearing level of our administrative review process have been well-publicized, and we are actively preparing for further increases in the number of hearing requests. Eliminating the hearing backlog is a "moral imperative." [1] We face significant challenges in dealing with the historically large number of pending hearing requests, and we must schedule a greater number of hearings to reduce the hearing backlog. The ALJs who conduct the hearings are dedicated, hard working professionals; they will play a central role in helping us reduce the backlog. However, some ALJs do not schedule or hold a minimally acceptable number of hearings, and our current rules are arguably unclear as to certain scheduling issues.

Therefore, we are revising our rules to state that "we" (the agency) have the authority to set the time and place for a hearing before an ALJ. We are adding this authority as a 3-year pilot program so we may test it and evaluate its effectiveness, as explained below. We will conduct this pilot to test the effect of our use of this authority, consistent with due process rights of claimants, on the timely scheduling of hearings and on reducing the hearing backlog. This change is a part of our broader commitment to maintaining a hearing process that results in accurate, high-quality decisions for claimants. Through the pilot, we hope to determine whether extending the authority to schedule hearings to other agency personnel,

[1] *See, e.g., www.socialsecurity.gov/legislation/testimony_111909.htm* and *www.socialsecurity.gov/legislation/testimony_032409.htm.*

including management officials, allows us to better manage the number of hearings held and to keep our hearing process as efficient as possible.

Under our current rules, ALJs set the time and place for hearings. In practice, each ALJ provides hearing office staff with a schedule of times that he or she is available to hold hearings. The hearing office staff then coordinates scheduling of the hearing with the claimant, the claimant's representative, medical and vocational experts, and hearing recorders. We expect that the rules changes we are making here will help us reduce the number of pending hearing requests by giving us more flexibility to set the time and place for hearings.[2] We anticipate using this pilot authority primarily in a very small number of situations where an ALJ is scheduling so few hearings that he or she is compromising our efforts to make timely and accurate decisions for people applying for benefits. One impetus for proposing these rules was a New England judge who scheduled no hearings for many years. Because we expect that virtually all ALJs will work with us to schedule hearings in a timely manner, administrative action under this regulation should be an exceptionally rare occurrence.

The United States Government Accountability Office (GAO) recognized that achieving productivity goals was critical if we are to reach our goal of eliminating the backlog by the end of fiscal year (FY) 2013.[3] Our Inspector General and the GAO reported that meeting our ALJ hiring and productivity goals will be critical in reducing the pending hearings to fewer than 466,000[4] cases by the end of FY 2013.[5]

We expect the number of hearing requests to continue to grow as the number of new applications for benefits increases. In FY 2009, we saw a 13.8 percent increase in the number of initial disability claims. We also experienced an increase in the number of requests for a hearing before an ALJ—a 5.7 percent increase over the number of requests in FY 2008. We are anticipating an even larger increase in the number of hearing requests in FY 2010, corresponding to the increase in initial claims in FY 2009.

We will consult with the appropriate Hearing Office Chief Administrative Law Judge (HOCALJ) and the ALJ before we exercise the pilot authority provided in these rules to determine if there are any reasons why we should not set the time and place of the ALJ's hearings, such as the ALJ being on leave for an extended period or insufficient staff support to prepare cases for hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by an ALJ, we will then consult with the ALJ before deciding whether to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

Our decision to set the time and place of a hearing in no way interferes with the ALJ's role to develop, hear, and decide cases. The ALJ will be in the best position to help us identify cases that are ready for a hearing, as well as those that need additional development before a hearing is scheduled. In making this change to our rules as a pilot, we intend only to test whether this authority improves the quality of service to claimants awaiting a hearing. We are committed to maintaining a hearing process that results in accurate, high-quality decisions for claimants. We will carefully monitor the application of these rules to ensure that the hearing process remains effective and fair.

In the rare instances where we will need to exercise this authority to schedule hearings for an ALJ, we will determine when and where an ALJ will hold a hearing. As is our practice when we schedule and hold all hearings, before we schedule a hearing, we will first consider those factors that affect scheduling, such as the availability of all parties and the development of the case file. We expect that the clarity provided by these final rules will allow issues that have arisen in the past to be quickly and effectively resolved between an ALJ and the HOCALJ.

We also expect that the changes we are making in these final rules will assist our development of an electronic scheduling initiative, which includes an automated calendaring function. Electronic hearings scheduling will improve our efficiency by integrating the schedules of ALJs, experts, claimants, claimants' representatives, and hearing recorders, and the availability of hearing rooms.

As stated above, to ensure that these rules operate as intended, we are adding a provision to these rules to explain that the authority to allow us to set the time and place of the hearing will be implemented as a temporary 3-year pilot program, so we may test the provisions of these rules and evaluate their effectiveness. By using this authority to schedule hearings, we expect that we will be able to increase productivity and help ALJs manage their caseloads. We expect these final rules will help us reduce the hearing request backlog and ensure that claimants are given timely hearings. As we work to improve the hearing process, we are committed to maintaining a system that results in accurate, high-quality decisions for claimants.

We are conducting this 3-year pilot program to evaluate the capacity of these rules to help us achieve our mission. This change is a part of our broader commitment to maintaining a hearing process that results in accurate, high-quality decisions for claimants. During the course of the pilot program, we will carefully examine ALJ productivity, caseload distribution, staffing requirements, the efficiency of the scheduling process, the efficacy of both inter- and intra-office consultation,

[2] These rule changes are only one part of our Plan to Eliminate the Hearing Backlog and Prevent its Recurrence. *See www.ssa.gov/appeals/Backlog_Reports/Annual_Backlog_Report_FY_2008–Jan.pdf* and *http://www.ssa.gov/asp.* Other initiatives to reduce the hearing backlog include final rules that allows certain attorneys in our Office of Disability Adjudication and Review (ODAR) to make fully favorable decisions, and an initiative for medical experts to screen cases and identify those claimants whose impairments are most likely to meet our disability requirements. We have streamlined folder assembly, which allows us to fill ALJ hearing dockets more efficiently, and offered overtime work to a wide variety of agency employees to assist hearing offices to prepare cases for hearing. To increase our overall adjudicatory capacity, we opened four National Hearing Centers in Falls Church, Virginia, Albuquerque, New Mexico, Chicago, Illinois, and Baltimore, Maryland. We expect to open a fifth National Hearing Center in St. Louis, Missouri, in the near future. We also anticipate opening 25 new hearing offices and 7 new satellite offices in the near future, and continue to modify and expand existing hearing offices. We also continue to increase our use of electronic folders and additional automated processes. We anticipate long-term benefits from use of these electronic applications. In sum, the rule changes we are making here are just one part of our overall plan to provide a more efficient hearings process to Social Security claimants.

[3] *http://www.gao.gov/new.items/d09398.pdf.*

[4] At the end of FY 2009, 722,822 hearings were pending in ODAR. In October 2009, the average processing time was 446 days. As outlined in the FY 2008–2013 Strategic Plan, we plan to reduce the number of pending hearings to a desired level of 466,000 and the average processing time to 270 days by the end of FY 2013. A pending level of 466,000 hearings ensures a sufficient number of cases to maximize the efficiency of the hearing process. *http://www.ssa.gov/oig/ADOBEPDF/audittxt/A–07–09–29162.htm; www.ssa.gov/asp/StrategicGoal1.pdf; https://www.socialsecurity.gov/legislation/testimony_111909.htm.*

[5] *See* Quick Response Evaluation: Office of Disability Adjudication and Review Management Information, A–07–09–29162 at pp. 1–3, Appendix C, *http://www.ssa.gov/oig/ADOBEPDF/A–07–09–29162.pdf* (Aug. 3, 2009); *http://www.gao.gov/new.items/d09398.pdf.*

and the proportional effect on the hearing request backlog.

Public Comments

In the notice of proposed rulemaking (NPRM) published at 73 FR 66564 (November 10, 2008), we provided the public with a 60-day period in which to comment on the proposed changes. That comment period ended on January 9, 2009. We received 141 comments on the proposed rules. We carefully considered all of the comments. As some of the comments were long and quite detailed, we have condensed, summarized, and paraphrased them in the following discussions. However, we have tried to present all views adequately and to carefully address all of the relevant and significant issues raised by the commenters. We generally did not address comments that are outside the scope of this rulemaking proceeding.

ALJs' Qualified Decisional Independence

Comment: The most prevalent comment we received was a concern that allowing us to schedule hearings limited an ALJ's qualified decisional independence. Many commenters believed that deciding when a claim is ready for a hearing, as well as the type and scope of development necessary prior to the hearing, should be solely within the discretion of the ALJ. Some commenters noted that the decision regarding the length of time reserved for each hearing should also be solely within the discretion of the ALJ. A number of commenters also objected to our expectation that each ALJ would process at least 500 cases per year to eliminate the backlog of claims at the hearing level. One commenter feared that we would set so many hearings for an ALJ that he or she would spend all or most of his or her time "on the bench" and would be unable to perform the other required duties.

Response: We agree that ALJs have qualified decisional independence, but we disagree with the commenters' views that these rules changes infringe on that qualified decisional independence. "Qualified decisional independence" means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with agency policy as laid out in regulations, rulings, and other policy statements. Further, because of their qualified decisional independence, ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. The agency may not take actions that abridge the duty of impartiality owed to claimants when ALJs hear and decide claims.

Contrary to what some of the commenters seem to assume, however, qualified decisional independence does not prevent appropriate management oversight of our administrative review process. ALJs' qualified decisional independence does not prevent us from establishing administrative practices and programmatic policies that ALJs must follow, such as the rules that we are adopting here. Our authority to establish such practices and policies means that ALJs are entirely subordinate to the agency on matters of law and policy. That view has been repeatedly endorsed by the Federal courts.

Furthermore, as some of the commenters pointed out, the Federal courts also have recognized that reasonable efforts to increase the production levels of ALJs are not an infringement of qualified decisional independence and that the setting of reasonable production expectations, as opposed to fixed quotas, does not in itself violate the Administrative Procedure Act. As one court observed, "[I]n view of the significant backlog of cases, it was not unreasonable to expect ALJs to perform at minimally acceptable levels of efficiency. Simple fairness to claimants awaiting benefits required no less." [6] We included a rough figure of 500 cases per year to help provide context; to avoid misunderstanding, the figure was removed from these final rules. Contrary to the assumptions of some commenters, these final rules do not establish a "fixed quota" that will require ALJs to schedule and hear a specific number of cases. Nevertheless, we expect all of our ALJs to perform at reasonable levels of efficiency. The changes in these final rules are intended to accomplish that goal in the rare instances where we may find it necessary to exercise the authority under these rules. The changes will help us manage the hearings process more efficiently, consistent with our obligations to the public we serve, and in ways that do not impinge on an ALJ's qualified decisional independence.

We recognize the challenging job facing our ALJs: holding a sufficient number of hearings and rendering accurate, well-reasoned decisions. But the reality of the current hearing backlog and the increasing number of hearing requests require an acceptable level of production from all of our employees, including ALJs. Nothing in these rules exerts pressure on ALJs to decide claims in a particular way, precludes an ALJ from developing the evidence, or interferes with the ALJ's conduct of a hearing. These rules simply change an administrative practice to ensure the best and most prompt service to those who request a hearing.

However, we also want to ensure that these rules do not result in any unintended and unforeseen consequences. Consequently, in order to address the commenters' concerns, we have decided to make four changes to final sections 404.936 and 416.1436.

First, we have revised final sections 404.936(a) and 416.1436(a) to provide that we "may" set the time and place of the hearing. We made this change in order to clarify that we will not set the time and place of every hearing, as some of the commenters seemed to fear.

Second, we have revised final sections 404.936(c) and 416.1436(c) to clarify that we will consult with the ALJ in order to determine the status of case preparation before we set the time and place of the hearing.

Third, we have added new final sections 404.936(g) and 416.936(g) to state that we will consult with the appropriate HOCALJ and ALJ before we exercise this authority to determine if there are any reasons why we should not set the time and place of the ALJ's hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by an ALJ, we will then consult with the ALJ before deciding whether to begin to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

Finally, we have added new final sections 404.936(h) and 416.1436(h) to clarify that we will implement these rules as a pilot program. As a result, the provisions of the rules that authorize us to set, and, if necessary, to change, the time and place of the hearing and that require us to consult with the ALJ to determine the status of case preparation will be effective for a 3-year period from the effective date of these final rules. We may, however, terminate these final rules earlier or extend them beyond that date by notice of a final rule in the **Federal Register**. We expect that these four changes will make it clear that we will implement these final rules in a manner that does not affect the ALJs' qualified decisional independence and

[6] *Nash* v. *Bowen,* 869 F.2d 675, 681 (2d Cir.), *cert. denied,* 493 U.S. 812 (1989).

that results in a hearing process that continues to be effective and fair.

Comment: One commenter asserted that no other agency "interferes" with the authority of an ALJ to set the time and place for hearings, while another commenter sought to distinguish the work of our ALJs from ALJs in other Federal agencies where the agency has authority to schedule hearings. Other commenters suggested that our hearing process should remain different from the hearing processes in other agencies, based on the nature of the work we perform.

Response: Several Federal agencies employ ALJs, and some of those agencies have exercised their authority to schedule hearings for ALJs. There is no uniform practice among the agencies for scheduling hearings. In some agencies, the agency has specifically delegated the authority to set the time and place for a hearing to an ALJ or equivalent adjudicator. In other agencies, the agency has retained its authority to set the time and place of the hearing.[7] Although the subject matter and the format of administrative hearings may vary among agencies, we do not believe that the nature of the duties our ALJs perform requires that we specifically delegate the authority to set the time and place for the hearing to the ALJ.

Comment: Many comments suggested that these rules would result in the unwarranted denial or allowance of claims by ALJs. Several commenters believed that the result of these rules would be an increase in the issuance of favorable decisions by ALJs, based on the commenters' assertions that favorable decisions can be more quickly processed. One commenter believed this would be particularly true in cases involving more difficult factual situations or in cases requiring complicated legal analysis. Two commenters suggested the opposite—that these rules would result in an increase in *un*favorable decisions by ALJs. Several commenters stated that these rules could prevent ALJs from properly developing the administrative record and could either encourage or discourage ALJs from calling necessary medical or vocational experts to testify at the administrative hearing.

Response: Nothing in these rules either explicitly or implicitly pressures an ALJ to decide any claim in a particular manner. In order to make that clear, as noted above, we have included two consultation provisions in the final rules. First, in final sections 404.936(c) and 416.1436(c), we provide that we will consult with the ALJ in setting the time and place for the hearing, in part to determine the status of case preparation. We also have added new final sections 404.936(g) and 416.1436(g), where we explain that before we exercise the authority to set the time and place for an ALJ's hearings, we will consult with the appropriate HOCALJ to determine if there are any reasons why we should not set the time and place of the ALJ's hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will then consult with the ALJ before deciding whether to begin to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

We believe that these consultation provisions will enhance our goal to improve the efficiency of our hearing process. In addition to these specific provisions, we also provide in final sections 404.936(c) and 416.1436(c) that we will consult with the ALJ to determine whether the claimant or any other party will appear in person or by video teleconferencing.[8] We will also ascertain the availability of medical or vocational experts the ALJ determines are required before we schedule a hearing. Nothing in these rules will either encourage or discourage ALJs from calling any necessary experts or witnesses.

As we have stated, we will carefully monitor quality, productivity, and accuracy in those situations in which we exercise the authority in these rules. We also plan to evaluate the effectiveness of our pilot program by the end of 3 years to ensure that we properly implement these rules and that these rules do not result in any unintended and unforeseen consequences. We believe that our ALJs will continue to perform their duties in a professional manner and will decide all claims before them consistent with the applicable law, regulations, and agency policy.

Comment: Several commenters suggested the proposed changes would not help us increase the efficiency of our hearing process or reduce the number of pending hearings. Three commenters suggested these rules will not decrease the hearing backlog because allowing us to schedule hearings will merely result in a greater delay between the hearing date and issuing the ALJ decision. Many commenters suggested that scheduling additional hearings without ALJ input would result in increased rescheduling and an increased need for supplemental hearings. By contrast, another commenter felt that these rules would result in fewer supplemental hearings. Additional commenters believed that these rules will result in increased remands from the Appeals Council and Federal district courts because claims will not be fully developed before a hearing is scheduled.

Response: As previously stated, we have revised these rules to provide that we will consult with the ALJ in setting the time and place for the hearing. Thus, we do not believe that claims will proceed without proper development or need additional rescheduling. We have no interest in using the authority in these rules in a manner that would result in further delay of hearings. For the majority of ALJs, these rules will result in no change to the way their hearings are currently scheduled. We will exercise our authority to schedule hearings only where an ALJ is not scheduling a sufficient number of hearings. Finally, we will monitor the success of this regulation on an agency-wide basis to ensure that it does not produce unintended consequences, such as those suggested by the comments.

Other Options for Increasing Efficiency and Productivity

Comment: As previously stated, numerous commenters offered

[7] The National Labor Relations Board's (NLRB) regulations give authority to the regional director to schedule the hearing. 29 CFR 101.8. The NLRB's Casehandling Manual Part 1 Unfair Labor Practice Proceedings §§ 10256–10256.5 provides certain factors for consideration in the exercise of that authority. (available at *http://www.nlrb.gov/nlrb/legal/manuals/CHM1/CHM1.pdf).* The Federal Communications Commission reserves to "the Commission" the ability to specify the date and place of the hearing. 47 CFR 1.221(a)(3) and 1.253(a). The regulations for the Board of Veterans' Appeals do not expressly state who sets the time and place for hearing, but refers to "officials scheduling hearings" separately from a member of the Board. 38 CFR 20.702(a) and 20.704(a). However, the Department of Labor, the Department of Agriculture, the Department of Homeland Security, the Department of Housing and Urban Development, and the National Transportation Safety Board authorize their ALJs (or the equivalent) to set and change the date, time, and place of a hearing. 6 CFR 13.12, 13.18(b)(1); 7 CFR 1.141(b); 24 CFR 26.32(a); 29 CFR 18.27; and 49 CFR 800.23 and 821.37(a). The regulations for the Department of Health and Human Services, which are modeled on our current rules, provide that the ALJ sets the time and place for the hearing. 42 CFR 405.1016(a) and 405.1020(a).

[8] Final sections 404.936(c) and 416.1436(c).

suggestions for other actions we could take that they felt would be more effective in meeting our goals of efficiency in scheduling hearings and reducing the hearing backlog. Most prevalent among these comments was the suggestion that additional hiring, both of support staff and ALJs, would be the most effective tool in reaching our productivity goals.

Response: We agree that additional hiring will also help us meet our goal of reducing the hearings backlog. We hired a significant number of ALJs in FY 2008 and in FY 2009, and we plan to hire additional ALJs and support staff in FY 2010. However, "merely adding employees, while critical to our success, will not solve all of our problems." [9]

Viability of Centralized Scheduling

Comment: Many commenters expressed concern about our proposal to "institute nationwide centralized scheduling," noting that centralized scheduling would not take into account all variables in scheduling a hearing, including the availability of a claimant, or a claimant's representative, a hearing monitor, security personnel, and any necessary experts, as well as access to a hearing room.

Response: These commenters misinterpreted our proposed rules. We are not instituting nationwide centralized scheduling. We recognize the importance of coordinating the schedules of the hearing participants, including the ALJ. As mentioned above, our electronic scheduling initiative anticipates integrating the schedules of ALJs, experts, claimants, claimants' representatives, and hearing recorders, and the availability of hearing rooms to more efficiently set hearing times and dates.

Comment: Several commenters suggested that any centralized scheduling process, even within a hearing office, would prevent an ALJ from using "creative" measures to schedule hearings when circumstances change unexpectedly or at the last minute.

Response: Nothing in these final rules is meant to curtail efforts by ALJs who currently schedule a sufficient number of hearings from maintaining that high level of production, including the use of measures that will allow the scheduling of additional hearings. We encourage those persons who schedule the hearings, whether the ALJ or another person in the hearing office, to avail themselves of those measures which allow for the most efficient scheduling of hearings.

Comment: Several commenters expressed fear that the agency would not consider an ALJ's personal schedule (vacation time, significant personal events, illness, etc.) when it sets the time and place for the hearing.

Response: We clearly state in the rules that we will consult with the ALJ when we set the time and place for the hearing.[10] It would serve no purpose to schedule a hearing when the required ALJ is unavailable and would certainly not meet our goal of increasing the number of scheduled hearings. These final rules will not impinge on any employees' ability to use properly requested leave. We will continue to comply with all of our obligations regarding the use of leave by ALJs and other employees.

Implementation of These Rules

Comment: Several commenters expressed concern over the practicalities of implementing these rules. Some commenters stated the rules did not indicate which specific persons would exercise the authority to set the time and place for a hearing. Other commenters noted that although the preamble limited application of these rules to ALJs with low production, the rules language itself was not so limited. Additional comments were concerned with the "fairness" of the scheduling of hearings and of choosing certain ALJs for application of these rules.

Response: In many cases, the person who sets the time and place will continue to be the ALJ. In those cases where the agency sets the time and place for a hearing, the employee actually scheduling the hearing will be determined by the make-up of the hearing office, the particular situation leading to the exercise of this authority, and other factors. We anticipate that an agency management official will exercise this authority.

For those ALJs who are already setting a sufficient number of claims for hearing, there is no need for the agency to schedule hearings. Our goal is to increase productivity and ensure that we meet the needs of the public. Productive ALJs will continue to use whatever scheduling method they currently use. As noted above, we will use the authority in this pilot to schedule hearings only for those ALJs who do not schedule a sufficient number of hearings. The decision to have the agency schedule hearings will be based solely on productivity and efficiency.

As explained above, these rules clarify our procedures for exercising our authority to set the time and place of an ALJ's hearing. We will consult with the appropriate HOCALJ and the ALJ to determine if there are any reasons why we should not set the time and place of the ALJ's hearings, such as the ALJ being on leave for an extended period or insufficient staff support to prepare cases for hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will then consult with the ALJ before deciding whether to begin to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

Comment: A few commenters expressed concern regarding an ALJ's ability to reschedule hearings. One commenter suggested that these rules did not allow an ALJ to postpone or reschedule a hearing once it had been set by the agency. Several commenters recognized the ALJ's continued ability to reschedule hearings, but believed that this ability would defeat the purpose of the rules, as an ALJ could merely reschedule the hearing in any claim.

Response: We did not propose to make any changes to those portions of 20 CFR 404.936(a) and 416.1436(a), which address adjourning the hearing or reopening it to receive additional evidence, nor do we make any changes to those clauses in these final rules. Determining the need to postpone or adjourn a hearing remains within the discretion of an ALJ. Further, we did not propose any changes to the rules regarding the ALJ's authority to determine whether a claimant has good cause for objecting to the time or place of the hearing. We expect ALJs to act as ethical and responsible adjudicators. An ALJ who repeatedly and systematically reschedules hearings scheduled for him or her without reasonable cause would not meet that expectation.

Other Comments

Comment: A few commenters suggested that we proposed these rules as a way of demonstrating "discriminatory animus" to force the resignation or retirement of older judges, those with poor health, or "women judges, who, more than men,

[9] *www.socialsecurity.gov/legislation/testimony_111909.htm.*

[10] Final sections 404.936(c) and 416.1436(c).

will have scheduling issues revolving around child care."

Response: We absolutely reject these comments. Nothing in these rules can be reasonably interpreted to demonstrate discriminatory animus. It is our policy to ensure that "every employee enjoys a non-hostile work environment free of discrimination or harassment of any kind" and that "[a]ll employment decisions * * * will be made exclusively on the basis of job-related criteria * * *."[11] Nothing in these rules suggests we are, in any way, altering our commitment to a workplace free of discrimination, and, in fact, our ALJ corps has become significantly more diverse since we were able to hire from candidates certified by the Office of Personnel Management in 2008.

Comment: Numerous commenters suggested that if there are ALJs who are not fully performing their duties, then we already have tools for discipline and reprimand of those ALJs without the need for changing our existing rules. These commenters suggested that dealing with certain ALJs in the broader manner of these rules decreases both morale and productivity.

Response: We agree that we have the administrative authority to discipline ALJs who are not performing their duties, and we will continue to use those tools as necessary. However, our current rules, which state that the ALJ has the sole responsibility for setting the time and place for a hearing, unnecessarily impede our ability to schedule a sufficient number of hearings. We believe that a more uniform distribution of the hearing workload in each hearing office will result in an increase in morale, particularly for those ALJs already conducting a sufficient number of hearings.

Comment: One commenter suggested we delay implementation of these final rules pending a report by the GAO on the number of cases currently awaiting hearing. The commenter stated that we should allow supplemental comments on the proposed rules upon receipt of the GAO report.

Response: The GAO issued its report, "Social Security Disability: Additional Performance Measures and Better Cost Estimates Could Help Improve SSA's Efforts to Eliminate Its Hearings Backlog," in September 2009. We agreed with the GAO's conclusion that ALJ productivity is a critical factor in meeting our goal of eliminating the hearing backlog. We are well aware of the critical nature of the backlog of pending hearings and do not believe that any further delay before implementing these rules is warranted.

How long will these final rules be effective?

These final rules will no longer be effective 3 years after the date on which they become effective, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

The Office of the Chief Actuary estimates that these final rules will increase the program costs of the OASDI and SSI programs by $20 million. This revised estimate is significantly lower than the $1,225 billion estimate in the NPRM. The revised estimate is based on the 3-year pilot program and a new assumption that the scheduling revision would be much more limited and only used in rare circumstances.

We assumed the change would result in scheduling for only one ALJ in FY 2011 plus one additional ALJ each year thereafter. This assumption would result in an annual increase of 50 decisions for each ALJ in that year and subsequent years. Thus, in 2013 there would be 150 extra decisions. We assume that the total number of decisions will continue beyond the expiration of the 3-year pilot program, but that the effects decline gradually over the 2014–20 period. The initial projection assumed about 1,000 additional ALJ dispositions in 2010 rising to about 10,000 additional dispositions in 2015 and later.

The table below presents our estimates of the increases in OASDI benefit payments and Federal SSI payments during the 3-year pilot program over the fiscal year period 2011–20 resulting from the increases in ALJ dispositions assumed to occur as a result of the rules changes. The estimates are consistent with the assumptions underlying the President's FY 2011 Budget, and they assume that the final rules will be effective on October 1, 2010.

TABLE 1—ESTIMATED INCREASES IN OASDI BENEFITS AND FEDERAL SSI PAYMENTS

[In millions]

Fiscal year (FY)	OASDI	SSI	Total
2011	$1	*	$1
2012	1	*	2
2013	2	$1	2
2014	2	1	2
2015	2	*	2
2016	2	*	2
2017	2	*	2
2018	2	*	2
2019	2	*	2
2020	1	*	2
Totals:			
2011–15	8	2	10
2011–20	16	4	20

* Increase of less than $500,000.

Notes: 1. (Totals may not equal the sum of components due to rounding.)

2. SSI payments due on October 1st in FY 2012, 2017 and 2018 are included in payments for the prior FY.

Regulatory Flexibility Act

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

Paperwork Reduction Act

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

(Catalog of Federal Domestic Assistance Program No 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart J of

[11] *The Social Security Administration's Policy Prohibiting Discrimination Against Employees and Applicants for Employment.*

part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

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

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 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. In § 404.932, revise the second sentence of paragraph (b) to read as follows:

§ 404.932 Parties to a hearing before an administrative law judge.

* * * * *

(b) * * * In addition, any other person may be made a party to the hearing if his or her rights may be adversely affected by the decision, and we notify the person to appear at the hearing or to present evidence supporting his or her interest.

■ 3. In § 404.936, revise the first and second sentences of paragraph (a), paragraphs (c) and (d), and the introductory text of paragraph (e), and add paragraphs (g) and (h), to read as follows:

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

(a) *General.* We may set the time and place for any hearing. We may change the time and place, if it is necessary. * * *

* * * * *

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, we will consult with the administrative law judge in order to determine the status of case preparation and to determine whether your appearance or that of any other party who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will determine that the appearance of a person be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. Section 404.950 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

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

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

* * * * *

(g) *Consultation procedures.* Before we exercise the authority to set the time and place for an administrative law judge's hearings, we will consult with the appropriate hearing office chief administrative law judge to determine if there are any reasons why we should not set the time and place of the administrative law judge's hearings. If the hearing office chief administrative law judge does not state a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will then consult with the administrative law judge before deciding whether to begin to exercise our authority to set the time and place for the administrative law judge's hearings. If the hearing office chief administrative law judge states a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will not exercise our authority to set the time and place for the administrative law judge's hearings. We will work with the hearing office chief administrative law judge to identify those circumstances where we can assist the administrative law judge and address any impediment that may affect the scheduling of hearings.

(h) *Pilot program.* The provisions of the first and second sentences of paragraph (a), the first sentence of paragraph (c), and paragraph (g) of this section are a pilot program. These provisions will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

■ 4. In § 404.938, revise the first sentence of paragraph (a) to read as follows:

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

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. * * *

* * * * *

■ 5. In § 404.950, revise the third sentence of paragraph (b) to read as follows:

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

* * * * *

(b) * * * Even if all of the parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing, if the administrative law judge believes that a personal appearance and testimony by you or any other party is necessary to decide the case.

* * * * *

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

Subpart N—[Amended]

■ 6. The authority citation for subpart N of part 416 continues to read as follows:

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

■ 7. In § 416.1432, revise the second sentence of paragraph (b) to read as follows:

§ 416.1432 Parties to a hearing before an administrative law judge.

* * * * *

(b) * * * In addition, any other person may be made a party to the hearing if his or her rights may be

adversely affected by the decision, and we notify the person to appear at the hearing or to present evidence supporting his or her interest.

■ 8. In § 416.1436, revise the first and second sentences of paragraph (a), paragraphs (c) and (d), and the introductory text of paragraph (e), and add paragraphs (g) and (h), to read as follows:

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

(a) *General.* We may set the time and place for any hearing. We may change the time and place, if it is necessary. * * *

* * * * *

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, we will consult with the administrative law judge in order to determine the status of case preparation and to determine whether your appearance or that of any other party who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will determine that the appearance of a person be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. Section 416.1450 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

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

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

* * * * *

(g) *Consultation procedures.* Before we exercise the authority to set the time and place for an administrative law judge's hearings, we will consult with the appropriate hearing office chief administrative law judge to determine if there are any reasons why we should not set the time and place of the administrative law judge's hearings. If the hearing office chief administrative law judge does not state a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will then consult with the administrative law judge before deciding whether to begin to exercise our authority to set the time and place for the administrative law judge's hearings. If the hearing office chief administrative law judge states a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will not exercise our authority to set the time and place for the administrative law judge's hearings. We will work with the hearing office chief administrative law judge to identify those circumstances where we can assist the administrative law judge and address any impediment that may affect the scheduling of hearings.

(h) *Pilot program.* The provisions of the first and second sentences of paragraph (a), the first sentence of paragraph (c), and paragraph (g) of this section are a pilot program. These provisions will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

■ 9. In § 416.1438, revise the first sentence of paragraph (a) to read as follows:

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

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. * * *

* * * * *

■ 10. In § 416.1450, revise the third sentence of paragraph (b) to read as follows:

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

* * * * *

(b) * * * Even if all of the parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing, if the administrative law judge believes that a personal appearance and testimony by you or any other party is necessary to decide the case.

* * * * *

[FR Doc. 2010–16549 Filed 7–7–10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0295]

RIN 1625–AA08

Special Local Regulation for Marine Events; Mattaponi River, Wakema, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish special local regulations during the Mattaponi Madness Drag Boat Event, a series of power boat races to be held on the waters of the Mattaponi River, near Wakema, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic during the power boat races on the Mattaponi River immediately adjacent to the Rainbow Acres Campground, located in King and Queen County, near Wakema, Virginia.

DATES: This rule is effective from 9 a.m. on August 28, 2010 until 7 p.m. on August 29, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0295 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0295 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–