

regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve a same-day recovery time objective in the event of a wide-scale disruption.

\* \* \* \* \*

8. Add Appendix E to Part 40 to read as follows:

**Appendix E to Part 40—Guidance on Critical Financial Market and Core Clearing and Settlement Organization Determination**

(a) *Critical financial market determination.* (1) The Commission may determine, in its discretion, whether a designated contract market is a critical financial market. In making such a determination, the Commission will evaluate each such entity on a case-by-case basis, giving consideration to whether the entity provides the means for financial institutions to adjust their financial positions and those of their customers in order to manage liquidity, market, and other risks to their organizations, and provides support for the provision of a wide range of financial services to businesses and consumers in the United States; or whether the entity conducts trading that impacts Federal funds, foreign exchange, commercial paper, U.S. government and agency securities, corporate debt, equity securities, or physical commodities of broad, major importance to the national and international economy. The Commission may also consider other relevant factors that it finds important.

(2) The Commission will notify the designated contract market that it intends to undertake a determination with respect to whether it is a critical financial market. The entity may provide written data, views, and arguments relevant to the Commission's determination. Any such written data, views, and arguments shall be filed with the Secretary of the Commission, in the form and manner specified by the Commission, within 30 calendar days of receiving notice or within such other time specified by the Commission. After prompt consideration of all relevant information, the Commission will issue an order directly to the designated contract market explaining the Commission's determination of whether it is a critical financial market as defined by § 40.1(j).

(b) *Core clearing and settlement organization determination.* (1) The Commission may determine, in its discretion, whether a derivatives clearing organization is a core clearing and settlement organization. In making such a determination, the Commission will evaluate each such entity on a case-by-case basis, giving consideration to whether the entity provides clearing and settlement services integral to a critical financial market (or to multiple designated contract markets that are critical financial markets on a collective rather than individual basis). The Commission may also consider other relevant factors that it finds important.

(2) The Commission will notify the derivatives clearing organization that it intends to undertake a determination with

respect to whether it is a core clearing and settlement organization. The entity may provide written data, views, and arguments relevant to the Commission's determination. Any such written data, views, and arguments shall be filed with the Secretary of the Commission, in the form and manner specified by the Commission, within 30 calendar days of receiving notice or within such other time specified by the Commission. After prompt consideration of all relevant information, the Commission will issue an order directly to the derivatives clearing organization explaining the Commission's determination of whether it is a core clearing and settlement organization as defined by § 40.1(k).

Issued in Washington, DC, on July 14, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010-17606 Filed 7-21-10; 8:45 am]

**BILLING CODE P**

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 416**

[Docket No. SSA-2007-0092]

RIN 0960-AG72

**Amendments to Procedures for Certain Determinations and Decisions**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to revise the procedures for how claimants who request hearings before administrative law judges (ALJs) may seek further review of their fully favorable revised determinations based on prehearing case reviews or fully favorable attorney advisor decisions. We also propose to notify claimants who receive partially favorable determinations based on prehearing case reviews that an ALJ will still hold a hearing unless all parties to the hearing tell us in writing that we should dismiss the hearing requests. We expect that these changes will simplify the process and free up scarce administrative resources that we can better use to reduce the hearings level case backlog.

**DATES:** To ensure that your comments are considered, we must receive them no later than September 20, 2010.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2007-0092 so that we can associate your comments with the correct regulation:

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function of the Web page to find docket number SSA-2007-0092 and then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately as we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966-2830.

3. *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 594-2128. 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>.

**Background**

In most cases, we decide claims for benefits using an administrative review process that consists of four levels: Initial determination, reconsideration, hearing, and appeal. 20 CFR 404.900 and 416.1400. We make an initial determination at the first level. A claimant who is dissatisfied with the initial determination may request

reconsideration.<sup>1</sup> A claimant dissatisfied with the reconsidered determination may request a hearing before an ALJ. Finally, if dissatisfied with the ALJ's decision, a claimant may request that the Appeals Council review that decision.<sup>2</sup> After a claimant has completed these administrative steps and received our final decision, he or she may request judicial review of the final decision in Federal district court.

We handle requests for ALJ hearings in several ways. Most claimants receive a decision from an ALJ.<sup>3</sup> An ALJ may hold a hearing and issue a fully favorable, partially favorable, or unfavorable decision. An ALJ may issue a decision without holding an oral hearing if the claimant and any other parties waive their right to appear at a hearing or if the decision is fully favorable.

At the ALJ hearing level, there are two other ways we may issue favorable determinations or decisions without holding hearings. A State agency or one of our components may issue a fully favorable revised determination under the prehearing case review process in 20 CFR 404.941 and 416.1441. An attorney advisor may issue a fully favorable decision under the attorney advisor process in 20 CFR 404.942 and 416.1442. These processes help us adjudicate cases pending at the hearing level more quickly while preserving claimants' right to a hearing before an ALJ.

### Current Prehearing Case Review

The prehearing case review process allows us to refer a case back to the component that issued the determination under review. That component decides whether to revise its determination and issue a fully or partially favorable revised determination. We may conduct a prehearing case review if:

1. Additional evidence is submitted;

<sup>1</sup> For disability claims, ten States participate in a "prototype" test under 20 CFR 404.906 and 416.1406. In these States, we eliminated the reconsideration step of the administrative review process. Claimants and other parties who are dissatisfied with the initial determinations on their disability cases may request a hearing before an ALJ. The ten States are: Alabama, Alaska, California (Los Angeles North and West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania.

<sup>2</sup> We define the words "determination" and "decision" in 20 CFR 404.901 and 416.1401. At the initial and reconsideration levels of the administrative review process, we issue "determinations." ALJs issue "decisions," as does the Appeals Council when it reviews an ALJ's decision.

<sup>3</sup> An ALJ may also send the case to the Appeals Council with a recommended decision or dismiss a request for a hearing. 20 CFR 404.953(c), 404.957, 416.1453(d), and 416.1457.

2. There is an indication that additional evidence is available;

3. There is a change in the law or regulations; or

4. There is an error in the file or some other indication that the prior determination may be revised.

20 CFR 404.941(b), 416.1441(b).

Our current regulations state that, if we issue a fully favorable revised determination, we notify the claimant and all other parties that the ALJ will dismiss the hearing request unless a party requests that the hearing proceed. The claimant or other party must make this request in writing within 30 days after the date we mail the notice of the revised determination.

If we issue a partially favorable revised determination, we notify the claimant and all other parties that we will continue with the ALJ hearing unless the claimant and all other parties agree to dismiss the hearing request. However, our current regulations do not specify how the claimant and all other parties must tell us that they agree to dismiss this hearing request.

### Current Prehearing Decisions by Attorney Advisors

Attorney advisors in our Office of Disability Adjudication and Review may conduct specific prehearing proceedings and, if appropriate, make fully favorable decisions based on the record. Attorney advisors may conduct prehearing proceedings under circumstances similar to those under which we conduct prehearing case reviews. 20 CFR 404.942(b) and 416.1442(b). If an attorney advisor issues a fully favorable decision, we wait 30 days before we dismiss the hearing request. We created the 30-day period to allow time for a claimant or other party to ask us to proceed with the hearing.

### Proposed Changes

Our adjudicative experience shows that claimants who receive a fully favorable determination or decision rarely ask us to continue with a hearing. Our experience shows that claimants may become confused when they receive a notice dismissing their request for a hearing several weeks after they received a fully favorable determination or decision on their claim. As a result, we spend administrative resources: (1) Processing the dismissals of requests for hearing because we must wait until the 30-day period ends before we dismiss the request for hearing; (2) answering claimants' questions; and (3) explaining what the dismissal notice means.

We believe that changing our procedures would both simplify the process and free scarce administrative

resources that we can better use to reduce the hearings level case backlog.

Therefore, we propose to revise the way claimants can obtain further review fully favorable and partially favorable prehearing case review determinations and fully favorable attorney advisor decisions. The proposed changes preserve a claimant's right to have an ALJ hearing, even when we have issued a fully favorable determination or decision under one of these processes.

As is our current policy, whenever a claimant or other party seeks further review of a favorable determination or decision, we consider the entire case record and determination or decision. Further review of a favorable determination or decision may result in a determination or decision that is less favorable or unfavorable to a claimant.

### Proposed Procedures for Prehearing Case Reviews

If we issue a fully favorable revised determination in the prehearing case review process, we propose that an ALJ will dismiss a request for a hearing soon after the reviewing component issues the fully favorable determination. The notice accompanying the ALJ's order of dismissal will advise all parties that they have 60 days from the date they receive the notice to request that the ALJ vacate the dismissal of the hearing request. The administrative law judge will extend the 60-day time limit if a party making a request shows that he or she had good cause for missing the deadline. If a party timely requests that the ALJ vacate the dismissal, the ALJ will vacate the dismissal, reinstate the request for a hearing, and offer all parties an opportunity for a hearing.

If we issue a partially favorable determination in the prehearing case review process, we propose that an ALJ will proceed to hold a hearing unless all parties to the hearing tell us in writing that they agree to dismiss the hearing request. If we receive a written statement(s) agreeing to a dismissal before an ALJ mails a notice of his or her decision, we will dismiss the request for a hearing.

We propose to include these changes in 20 CFR 404.941, 404.960, 416.1441, and 416.1460.

### Proposed Procedures for Attorney Advisor Prehearing Decisions

If an attorney advisor issues a fully favorable decision, we propose to consider the decision to be a hearing-level decision, and we will not issue a notice of dismissal of the hearing request. We propose that if a party to the hearing disagrees with the attorney advisor's decision for any reason, the

party will have 60 days after receiving notice of the decision to request that an ALJ reinstate the request for a hearing. The ALJ will extend the 60-day time limit if the party making the request shows that he or she had good cause for missing the deadline. If a party timely requests that the ALJ reinstate the request for a hearing, the ALJ will reinstate the request for a hearing and offer all parties to the hearing an opportunity for a hearing. We will process the fully favorable attorney advisor's decision while the hearing proceeds normally.

We propose to include these changes in 20 CFR 404.942 and 416.1442.

### Other Changes

We propose to change "wholly favorable" to "fully favorable" in 20 CFR 404.941, 404.948, 416.1441, and 416.1448. We also propose to make additional changes for clarity in 20 CFR 404.948, 404.960, 416.1448, and 416.1460. These minor changes would make the language in these sections consistent with other related sections but would not alter their meaning.

Finally, if we issue these proposed rules as final rules, we will review and determine whether we need to revise Social Security Ruling 97-2p, which explains our current procedures for prehearing case reviews when new medical evidence is submitted.

### Clarity of These Proposed Rules

Executive Order (E.O.) 12866 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:

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

### When Will We Start To Use These Rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective

date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of relevant comments we received, responses to them, and an explanation of how we will apply the new rules.

### Regulatory Procedures

#### *Executive Order 12866*

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, OMB reviewed them.

#### *Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

#### *Paperwork Reduction Act*

These regulations impose no new reporting or recordkeeping requirements and are not subject to OMB clearance.

(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; 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 forth in the preamble, we propose to amend title 20 of the Code of Federal Regulations part 404 subpart J and part 416 subpart N 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 § 404.941 by revising paragraphs (c), (d), and, (e) to read as follows:

#### **§ 404.941 Prehearing case review.**

\* \* \* \* \*

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we will mail a written notice of the revised determination to all parties at their last known addresses. We will state the basis for the revised determination and advise all parties of the effect of the revised determination on the request for a hearing.

(d) *Effect of a fully favorable revised determination.* If the revised determination is fully favorable to you, we will tell you in the notice that an administrative law judge will dismiss the request for a hearing. When the administrative law judge dismisses the request for a hearing, the notice of dismissal will tell you that, if you or another party to the hearing disagrees with the revised determination for any reason, you or another party may request that the administrative law judge vacate the dismissal and reinstate your request for a hearing. If you wish to request that the administrative law judge vacate the dismissal and reinstate your hearing request, you must do so within 60 days after you receive the dismissal notice. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 404.911 to determine whether good cause exists. If the request is timely, an administrative law judge will vacate the dismissal, reinstate the request for a hearing, and offer you an opportunity for a hearing.

(e) *Effect of a partially favorable revised determination.* If the revised determination is partially favorable to you, we will tell you in the notice what was not favorable. We will also tell you that an administrative law judge will proceed to hold the hearing you requested unless you and all other parties to the hearing agree in writing to dismissal of the request for a hearing. If we receive the written statement(s) agreeing to dismissal of the request for a hearing before an administrative law judge mails a notice of his or her

hearing decision, an administrative law judge will dismiss the request for a hearing.

3. Amend § 404.942 by revising paragraphs (d), (e) introductory text, (e)(1), and (f)(3) to read as follows:

**§ 404.942 Prehearing proceedings and decisions by attorney advisors.**

\* \* \* \* \*

(d) *Notice of a decision by an attorney advisor.* If the attorney advisor issues a fully favorable decision under this section, we will mail a written notice of the decision to all parties at their last known addresses. We will state the basis for the decision and advise all parties that, if a party disagrees with the decision for any reason, the party may request that an administrative law judge reinstate the request for a hearing. If a party wishes to request that the administrative law judge reinstate the hearing request, the party must do so within 60 days after receiving notice of the decision. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 404.911 to determine whether good cause exists. If the request is timely, an administrative law judge will reinstate the request for a hearing and offer you an opportunity for a hearing.

(e) *Effect of an attorney advisor's decision.* An attorney advisor's decision under this section is binding unless—

(1) You or another party to the hearing submits a timely request that an administrative law judge reinstate the request for a hearing under paragraph (d) of this section;

\* \* \* \* \*

(f) \* \* \*

(3) Make the decision of an attorney advisor under paragraph (d) of this section subject to review by the Appeals Council if the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the decision under § 404.969.

\* \* \* \* \*

4. Amend § 404.948 by revising the second sentence of paragraph (a), and paragraph (b)(1)(ii), to read as follows:

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

(a) *Decision fully favorable.* \* \* \* The notice of the decision will state that you have the right to an oral hearing and to examine the evidence on which the ALJ based the decision.

(b) \* \* \*

(1) \* \* \*

(ii) You live outside the United States, you do not inform us that you wish to

appear, and there are no other parties who wish to appear.

\* \* \* \* \*

5. Revise § 404.960 to read as follows:

**§ 404.960 Vacating a dismissal of a request for a hearing before an administrative law judge.**

(a) Except as provided in paragraph (b) of this section, an administrative law judge or the Appeals Council may vacate a dismissal of a request for a hearing if, within 60 days after the date you receive the dismissal notice, you request that we vacate the dismissal and show good cause why we should not have dismissed the request for a hearing. The Appeals Council may decide to vacate a dismissal on its own initiative within 60 days after we mail the notice of dismissal. The Appeals Council will inform you in writing if it vacates the dismissal.

(b) If an administrative law judge dismissed your request for a hearing because you received a fully favorable revised determination under the prehearing case review process in § 404.941, but you still wish to proceed with the hearing, then you must follow the procedure in § 404.941(d) to request that an administrative law judge vacate his or her order dismissing your request for a hearing.

**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. Amend § 416.1441 by revising paragraphs (c), (d), and, (e) to read as follows:

**§ 416.1441 Prehearing case review.**

\* \* \* \* \*

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we will mail a written notice of the revised determination to all parties at their last known addresses. We will state the basis for the revised determination and advise all parties of the effect of the revised determination on the request for a hearing.

(d) *Effect of a fully favorable revised determination.* If the revised determination is fully favorable to you, we will tell you in the notice that an administrative law judge will dismiss the request for a hearing. When the

administrative law judge dismisses the request for a hearing, the notice of dismissal will tell you that, if you or another party to the hearing disagrees with the revised determination for any reason, you or another party may request that the administrative law judge vacate the dismissal and reinstate your request for a hearing. If you wish to request that the administrative law judge vacate the dismissal and reinstate your hearing request, you must do so within 60 days after you receive the dismissal notice. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 416.1411 to determine whether good cause exists. If the request is timely, an administrative law judge will vacate the dismissal, reinstate the request for a hearing, and offer you an opportunity for a hearing.

(e) *Effect of a partially favorable revised determination.* If the revised determination is partially favorable to you, we will tell you in the notice what was not favorable. We will also tell you that an administrative law judge will proceed to hold the hearing you requested unless you and all other parties to the hearing agree in writing to dismissal of the request for a hearing. If we receive the written statement(s) agreeing to dismissal of the request for a hearing before an administrative law judge mails a notice of his or her hearing decision, an administrative law judge will dismiss the request for a hearing.

8. Amend § 416.1442 by revising paragraphs (d), (e) introductory text, (e)(1), and (f)(3) to read as follows:

**§ 416.1442 Prehearing proceedings and decisions by attorney advisors.**

\* \* \* \* \*

(d) *Notice of a decision by an attorney advisor.* If the attorney advisor issues a fully favorable decision under this section, we will mail a written notice of the decision to all parties at their last known addresses. We will state the basis for the decision and advise all parties that, if a party disagrees with the decision for any reason, the party may request that an administrative law judge reinstate the request for a hearing. If a party wishes to request that the administrative law judge reinstate the hearing request, the party must do so within 60 days after receiving notice of the decision. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 416.1411 to determine

whether good cause exists. If the request is timely, an administrative law judge will reinstate the request for a hearing and offer you an opportunity for a hearing.

(e) *Effect of an attorney advisor's decision.* An attorney advisor's decision under this section is binding unless—

(1) You or another party to the hearing submits a timely request that an administrative law judge reinstate the request for a hearing under paragraph (d) of this section;

\* \* \* \* \*

(f) \* \* \*

(3) Make the decision of an attorney advisor under paragraph (d) of this section subject to review by the Appeals Council if the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the decision under § 416.1469.

\* \* \* \* \*

9. Amend § 416.1448 by revising the second sentence of paragraph (a), and paragraph (b)(1)(ii), to read as follows:

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

(a) *Decision fully favorable.* \* \* \* The notice of the decision will state that you have the right to an oral hearing and to examine the evidence on which the ALJ based the decision.

(b) \* \* \*

(1) \* \* \*

(ii) You live outside the United States, you do not inform us that you wish to appear, and there are no other parties who wish to appear.

\* \* \* \* \*

10. Revise § 416.1460 to read as follows:

**§ 416.1460 Vacating a dismissal of a request for a hearing before an administrative law judge.**

(a) Except as provided in paragraph (b) of this section, an administrative law judge or the Appeals Council may vacate a dismissal of a request for a hearing if, within 60 days after the date you receive the dismissal notice, you request that we vacate the dismissal and show good cause why we should not have dismissed the request for a hearing. The Appeals Council may decide to vacate a dismissal on its own initiative within 60 days after we mail the notice of dismissal. The Appeals Council will inform you in writing if it vacates the dismissal.

(b) If an administrative law judge dismissed your request for a hearing because you received a fully favorable revised determination under the prehearing case review process in § 416.1441, but you still wish to proceed with the hearing, then you must follow

the procedure in § 416.1441(d) to request that an administrative law judge vacate his or her order dismissing your request for a hearing.

[FR Doc. 2010-17896 Filed 7-21-10; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 650

[FHWA Docket No. FHWA-2008-0038]

RIN 2125-AF24

#### National Tunnel Inspection Standards

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA solicits comments concerning the establishment of National Tunnel Inspection Standards (NTIS). The NTIS would set minimum tunnel inspection standards that apply to all tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways. The agency proposes modeling the NTIS after the existing National Bridge Inspection Standards (NBIS) as applicable. The NTIS would include requirements for inspection procedures for structural elements and functional systems, including mechanical, electrical, hydraulic and ventilation systems; qualifications for inspectors; inspection frequencies; and a National Tunnel Inventory (NTI).

**DATES:** Comments must be received on or before September 20, 2010. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, or submit electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search

the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jesus M. Rohena, P.E., Office of Bridge Technology, HIBT-10, (202) 366-4593, or Mr. Robert Black, Office of the Chief Counsel, HCC-30, (202) 366-1359, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

You may submit or retrieve comments online through the Federal Docket Management System at <http://www.regulations.gov>. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

##### Background

The safety and security of our Nation's tunnels are of paramount importance to the FHWA. Recognizing that tunnel owners are not mandated to inspect tunnels routinely and that inspection methods vary among entities that inspect tunnels, the FHWA and the Federal Transit Administration developed guidelines for the inspection of tunnels in 2003. The guidelines, known as the "Highway and Rail Transit Tunnel Inspection Manual," (HRTTIM) were updated in 2005.<sup>1</sup> In addition, the FHWA developed Tunnel Management Software to help tunnel owners manage their tunnel inventory. However, tunnel owners have not adopted the software uniformly, and the FHWA recognizes the limitations of the software.

After investigating the fatal July 2006 suspended ceiling collapse in the Central Artery Tunnel in Boston,

<sup>1</sup> The Federal Highway Administration/Federal Transit Administration "Highway and Rail Transit Tunnel Inspection Manual," 2005 edition, is available in electronic format at: <http://www.fhwa.dot.gov/bridge/tunnel/management/>.