

4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 416, and 422

RIN 0960-AG31

Administrative Review Process for Adjudicating Initial Disability Claims

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration is committed to providing the high quality of service the American people expect and deserve. In light of the significant growth in the number of disability claims and the increased complexity of those claims, the need to make substantial changes in our disability determination process has become urgent. We are publishing a final rule that amends our administrative review process for applications for benefits that are based on whether you are disabled under title II of the Social Security Act (the Act), or applications for supplemental security income (SSI) payments that are based on whether you are disabled or blind under title XVI of the Act. We expect that this final rule will improve the accuracy, consistency, and timeliness of decision-making throughout the disability determination process.

DATES: This rule is effective August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Chatel, Executive Director, Disability Service Improvement, Social Security Administration, 500 E Street, SW, Suite 854, Washington DC, 20254, 202-358-6094 or TTY 410-966-5609, 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 [www.socialsecurity.gov](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

Today, as part of our continuing efforts to make fundamental improvements in our disability decision-making, we are publishing this rule establishing our new disability determination process, known as the Disability Service Improvement (DSI) process. This rule explains our new procedures for adjudicating the disability portion of initial claims for Social Security disability insurance (DI) benefits and for supplemental security income (SSI) based on disability or blindness. The purpose of the rule is to improve the accuracy, consistency, and fairness of our disability determination process and to make the right decision as early in the process as possible.

Under this rule, the administrative review process consists of several steps, which must be requested within certain time periods. When you file for benefits, we will make an initial determination on your claim, and in certain circumstances refer your claim for a quick disability

determination (QDD). If you are dissatisfied with our initial determination, you may request review by a Federal reviewing official. If you are dissatisfied with the Federal reviewing official's decision, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless your claim is referred to the Decision Review Board (DRB). When the DRB reviews your claim and issues a decision, that decision is our final decision. If you are dissatisfied with our final decision, you may seek judicial review in Federal district court.

Following is a description of our various initiatives towards improving the disability process, an explanation of the new process created by this rule, and a discussion of the comments that we received in response to our notice of proposed rulemaking (NPRM), 70 FR 43590 (July 27, 2005).

## Background

During the five decades that have elapsed since its enactment, the DI program has provided many millions of disabled American workers and their families with critically needed income support. The SSI program, enacted 34 years ago, has similarly helped many millions of low income disabled individuals meet their basic needs. These two programs are a vital part of the nation's social insurance and income support systems.

The number of disability beneficiaries in our programs has grown significantly over the years. In January 2005, nearly eight million disabled workers and their dependents received DI benefits,

double the number of beneficiaries in 1985 (about a 100% increase). Nearly six million disabled adults and children received SSI disability payments, more than double the number in 1985 (a 130% increase).

The adjudication of disability claims now constitutes the major part of our workload and nearly every one of our components has a role in administering the disability programs. In fiscal year 2005, the State disability determination services (DDSs) processed more than 2.6 million initial claims for DI benefits and SSI based on disability or blindness. Our hearing offices processed approximately 500,000 disability claims on behalf of claimants who appealed their denials.

As the disability programs have grown in both size and complexity, we have been increasingly challenged to provide the high quality of service that disabled claimants and the public expect and deserve. Over the last four years we have undertaken a number of major initiatives designed to fundamentally improve the administration of these programs.

To further one of those initiatives, on July 27, 2005, we published an NPRM that described the changes we have already begun and those we intend to make in the months to come to improve the accuracy, consistency, and fairness of our disability determination process, to make the right decision as early in the process as possible, and to assist disabled individuals who want to work to do so.

We determined that to accomplish these objectives, we needed a two-pronged strategy: (1) strengthen our disability determination process through structural and qualitative change, and (2) make important institutional improvements to better support our disability programs. The important institutional improvements we are making include:

- implementing a new electronic disability system;
- establishing a new, integrated, and more comprehensive quality system;
- enhancing our management information;
- updating medical and vocational policy and strengthening our ability to address policy issues; and
- implementing new work opportunity initiatives.

These improvements go hand-in-hand with the process changes that we are making in this rule. Both are essential if our disability programs are to meet the needs of the claimants and public whom we serve.

#### A New Electronic Disability System

At this time, we are well along in replacing our old paper disability approach with an electronic system that will enable us to handle all new claims in an expedited manner. Each component in our adjudicative process, from beginning to end, is increasingly able to process claims electronically. This new electronic system, which we call eDib, permits us to avoid delays that result from having to mail, locate, and organize paper folders. It also enables more

than one employee or component to work on a claim at the same time, thus speeding up the process. Medical records can be quickly scanned into the system and made readily accessible to adjudicators. The electronic system also includes safeguards to help adjudicators avoid mistakes, which will result in more accurate decision-making. It also protects the confidentiality of claimant information.

The implementation of this new electronic system has progressed rapidly. All of our 1,338 field offices are now using the Electronic Disability Collect System (EDCS), taking 20,000 claims per day. This system enables them to immediately transfer a disability claim to a DDS, thus avoiding delays.

The rollout of eDib in the DDSs has been phased in gradually so that we can provide each DDS with the support needed for successful implementation. Once rollout begins in a DDS, the number of DDS decision-makers working with electronic folders gradually expands as the DDS develops expertise with the process. To date, all of the 50 States have rolled out the electronic disability folder. Nationally, over 80% of DDS decision-makers are now adjudicating cases in an electronic environment.

In January 2005, the Mississippi DDS became the first in the nation to start processing its cases in a totally electronic environment. Another 20 States have joined Mississippi and are processing all new disability claims in a totally electronic environment, thus eliminating the need for a paper folder. We plan to continue implementation in the DDSs in 2006.

Within the Office of Hearings and Appeals (OHA), all of our hearing offices are outfitted with our new electronic Case Processing and Management System (CPMS), which controls case flow and provides current management information. In addition, hearing offices in 47 States are equipped to work cases electronically.

eDib also improves our ability to manage decisional quality. Access to the electronic folder provides quality reviewers greater flexibility. This will allow us to transition to our new quality system that will rely on both in-line and end-of-line reviews and will provide timely and efficient feedback to decision-makers to enable them to improve how we administer our programs.

In 2006, each of the field offices, DDSs, and hearing offices will be processing workloads with electronic disability folders on a regular basis.

### A New Quality System

Over the last two years we have been designing a new integrated quality system that we believe will significantly improve our disability determination process as well as other program areas within our responsibility, including the Social Security retirement program and the SSI age-based program. We expect to begin the implementation of our new quality system this spring. This system employs a multi-dimensional definition of quality that includes five elements: accuracy, service, timeliness, productivity, and cost. It will emphasize in-line, as well as end-of-line, quality assurance.

The new, comprehensive quality system will be implemented throughout our Agency, including in teleservice centers, program service centers, field offices, DDSs, and hearing offices, as well as for the Federal reviewing official, Medical and Vocational Expert System (MVES), and the DRB. The centrally-managed quality system will replace the current regionally-based Disability Quality Branches that review State DDS determinations.

Data will be gathered in-line and end-of-line to provide timely, meaningful feedback. Specialized units comprised of trained employees who will be responsible for fostering continuous improvements in the Agency's work products will work together with employees in all components to improve the process on an ongoing basis. Quality will not be separate from, but will be integrated into every step of, the process.

The new quality system is being designed to improve accountability and to provide feedback to adjudicators at all administrative levels, including the individual, unit, component, State, region, and headquarters. The system will provide administrators with the detailed data they need to understand the strengths and weaknesses of their performance, and what they need to do to improve it. To ensure successful implementation, we will be providing training so that employees will understand what is expected of them and will be able to fulfill their responsibilities. This will improve the quality of our decisions throughout the disability determination process.

Improving Management Information

The new DSI process that we describe below is intended to improve our service to the public. Critical to achieving this objective is having the management information that is needed to measure both the overall impact of the new disability determination process and the effectiveness of its component parts.

We are currently undertaking a major effort to enhance our management information capacity. We anticipate that these enhancements will not only improve our current capability to perform such ongoing functions as tracking program and administrative costs, but will also help us measure the success of the new DSI process. These enhancements will enable us to determine whether our performance matches our business goals, and whether these changes result in the intended objectives.

For example, we will be able to answer the following types of questions:

- Did overall disability processing time improve? Did the new QDD process contribute to that improvement?
- Did our new Medical and Vocational Expert System (MVES) enhance adjudicators' access to the medical and vocational expertise they need to make better decisions?
- Did the accuracy, timeliness, and consistency of decisions improve as a result of our new in-line and end-of-line quality initiatives?

We intend to use our improved management information tools dynamically, resolving management problems as we find them, and making continuous improvements as the new process is rolled out.

### Improvements in Policy

We are undertaking a major effort to review, and update if necessary, our medical and vocational policies and to improve our capacity to identify and make needed changes in our disability policies and procedures.

Medical Policy. As part of this effort, we have implemented a new business process to streamline the updating of our medical listings.

In fiscal year 2005, we published revised medical criteria for malignant neoplastic diseases, impairments that affect multiple body systems, and genitourinary impairments. In addition, we provided timely cross-component training and guidance on these provisions. We also published an NPRM for vision impairments. We will continue to update additional medical listings throughout fiscal year 2006. For example, the final cardiovascular listing was published in January 2006.

We have taken steps to increase outside participation in the development of our medical listings. As a first step, we now publish an advance NPRM to encourage members of the public

to comment on the current medical criteria and to provide suggestions on how the medical criteria could be updated.

In fiscal year 2005, we published advance notices involving impairments related to the respiratory and endocrine systems, growth impairments, and neurological impairments, as well as portions of the special senses (hearing impairments and disturbances of the labyrinthine-vestibular function). We also proposed the development of a new listing covering language and speech impairments.

Following up on the advance notices, we have held numerous public outreach events. These sessions provide an opportunity for medical experts, claimants, and advocates to comment on our current policies and to advise us on the future content of the medical criteria.

Vocational Policy. We are working to update and clarify our vocational policy to assist adjudicators in the field. We recently published a Social Security Ruling to communicate the Supreme Court's decision on how adjudicators should apply our rules when determining whether a claimant can return to his/her past relevant work. We are also building a comprehensive policy access tool, known as Disability Online, which will give our adjudicators electronic access to all vocational rules and training materials.

Disability Program Policy Council. Recognizing the need for a more integrated approach in addressing policy issues, we are establishing a new Disability Program Policy Council (DPPC) that will be responsible for recommending changes in our disability policies and procedures to

improve the quality of our disability determination process. This Council will be chaired by the Deputy Commissioner for Disability and Income Security Programs. It will include representatives from components that are responsible for policy and for the operations of the disability determination process, as well as the Office of Quality, the Office of the General Counsel, and the DRB. The Council will serve as a forum for making policy recommendations for consideration by the Commissioner.

Electronic Disability Guide. In support of our eDib initiative, we have created an electronic disability guide (eDG) for use by adjudicators. This guide consolidates disability policies and procedures in one convenient place and serves as an instructional manual for processing disability claims as we transition from paper to an electronic environment. This electronic repository is also accessible to the public. It has proven to be extremely helpful when we discover policy or procedural weaknesses that arise with the conversion from our paper approach to our new electronic system. In such instances, we identify the problem, make necessary changes, and update our eDG repository accordingly so that they can be implemented immediately.

#### Our Work Opportunity Initiatives

In addition to the above improvements in our infrastructure, we are implementing a number of initiatives designed to encourage and assist individuals to participate in employment opportunities.

Our initiatives recognize that the DI and SSI programs serve a diverse population of individuals with disabilities. Our beneficiaries are from various age groups with different impairments, levels of education, work experience, and capacities for working. While many cannot work at all on a sustained basis, others may be able to work part time or full time with reasonable accommodations and/or ongoing supports. As we have been developing our return-to-work initiatives, we have been mindful that the unique needs of every beneficiary cannot be met by one return-to-work program. In conjunction with our plans to improve our disability determination process, we will be conducting a number of diverse demonstration projects aimed at helping individuals who want to work to do so. Our demonstration projects are as follows:

DI Benefit Offset Demonstration Project. We are developing a benefit offset demonstration that will reduce DI benefits by \$1 for every \$2 earned over a certain threshold. Currently, a beneficiary could lose DI entitlement, and therefore all benefit payments, as soon as earnings exceed the substantial gainful activity level. This potential loss of benefits and eventually the corresponding access to Medicare benefits is thought to discourage many beneficiaries from attempting to work. We are working with a contractor on the design, implementation, and evaluation of the project. The contractor also will develop a model that will test an early intervention strategy focusing on DI benefit applicants. Enrollments in the national project are expected by the end of this year.

At the same time, we are conducting a small DI benefit offset demonstration project in four States: Connecticut, Utah, Vermont, and Wisconsin. To date, approximately 200 beneficiaries are enrolled.

Youth Transition Projects. We have cooperative agreements in six States for the purpose of assisting youths with disabilities to successfully transition from school, which may include post-secondary education, to employment and ultimately economic self-sufficiency. The States have formed partnerships with Federal, State, and local entities to improve employment outcomes for persons who are age 14-25 and who receive SSI or DI benefits on the basis of their own disability. The projects are providing a broad array of transition-related services and supports for these individuals.

Accelerated Benefits. Under current law, there is a 24-month wait before Medicare is available to a person whom we determine to be disabled and eligible for DI. A contract was recently awarded to implement and evaluate the accelerated benefits demonstration project, which will provide immediate private health insurance to individuals who have medical impairments expected to improve within two to three years. Project participants will be recruited at the point that disability beneficiaries are informed of their benefit allowance. Participants will also be provided with employment supports with return to work as the goal at the end of the two to three-year time frame. At the end of the time frame, participants will be assessed to see whether they have medically improved. Enrollments are expected by the end of this year.

Mental Health Treatment Study. We will provide comprehensive health care to DI beneficiaries who have schizophrenia or affective disorders. The purpose of this study is to determine what treatment and support variables for persons with mental illness lead to better employment outcomes. The project will use provider networks that offer a range of psychiatric,

pharmaceutical, and employment supports. The project will provide an individualized, comprehensive care and support plan for each participant. Services will be provided in 21 nationally representative sites across the United States. We expect participants will be enrolled by summer 2006.

Human Immunodeficiency Virus/Auto-Immune Disorder (HIV/AI) Demonstration. The HIV/AI demonstration will provide support services and private health benefits to current DI beneficiaries with a diagnosis of HIV, immune disorder, and/or auto-immune disorder. The purpose of this California-based demonstration is to provide immediate access to comprehensive health care services and resources required for a successful return to work. The health benefits will be designed to provide beneficiaries with HIV or other immune-related disorders with health coverage to ensure they receive necessary medical treatment for their impairments. Project participants will also receive employment service coordination. Each beneficiary enrolled will be assessed to determine the types of services and/or interventions needed for a sustained and successful return to work. An expert medical unit, comprised of medical specialists in the HIV/auto-immune field, will be established to provide expert guidance regarding issues relevant to this population.

#### Development of the New Disability Service Improvement Process

We believe that the improvements described above will provide a strong underpinning for the successful operation of our new DSI process. The new process will apply to claims for DI benefits and for SSI payments based on disability or blindness.

The new approach was presented to the Subcommittee on Social Security of the House Committee on Ways and Means in September 2003. As we discussed in the July 2005 NPRM, this initial presentation was followed by extensive discussions with all interested parties so that we could have the benefit of their views and recommendations in developing our new proposed rules. We met with hundreds of interested organizations, groups, and individuals, including Members of Congress and congressional staff; representatives of claimants and beneficiaries; organizations representing the legal and medical professions, including Federal judges; and organizations representing State and Federal employees who are engaged in the disability determination process. We also established an Internet site to provide additional access to individuals and organizations who wanted to submit their views and recommendations.

As a result of this outreach effort, the July 27, 2005 NPRM included numerous improvements over our original proposal. During the 90-day comment period after our NPRM was published, we received nearly 900 new written comments from interested individuals and organizations. We have carefully read and considered each of them. They are available on our website, [www.ssa.gov](http://www.ssa.gov).

The comments we received were detailed and insightful, and they have been extremely helpful to our deliberations. We deeply appreciate the extraordinary effort that was expended to help us make the decisions that are needed to bring about fundamental improvement in our disability process. The final rule that we are publishing today contains a number of changes from our NPRM and reflects the thoughtful input that the many individuals and organizations

have provided. Below we discuss and respond to the significant comments; we have not addressed, however, most technical comments, those comments that are outside the scope of the NPRM, or those comments that do not otherwise require a response.

## Summary of Differences between the Proposed Rule and the Final Rule

### Quick Disability Determinations

The proposed rule stated that in order for a State DDS to make a quick disability determination, a medical or psychological expert must verify the claimant's diagnosis. The final rule clarifies this language by providing that the expert must "verify that the medical evidence in the file is sufficient to determine" that the claimant's impairments meet the standards we establish for making QDDs. The final rule provides further that if there is disagreement between the examiner and the expert as to whether a claim meets the QDD standards, the claim will not be allowed as a quick disability determination. Rather, it will be transferred out of the QDD unit to be processed by the DDS in the normal manner.

The proposed rule established a 20-day processing standard for States to make QDDs, but did not address performance support for the States. The final rule keeps the 20-day processing standard but adds a provision stating that we may offer, or the State may request, performance support to assist a DDS in enhancing performance. If monitoring and review reveal that the processing standard is not met for one calendar quarter, we will provide mandatory performance support to a DDS. The preamble to the final rule also makes clear that we will not find that a

State has substantially failed to meet our processing standard until the predictive model that is used to identify QDDs has been implemented and tested for one year. Thereafter, as new States begin implementation of the QDD process they will be given a six-month grace period before sanction provisions will be applied to them.

The proposed rule stated that when we provide notice of the initial determination, we would inform the claimant of the right to review by a Federal reviewing official. The final rule adds that the notice will also explain that the claimant has the right to be represented.

#### Medical and Vocational Expertise

The name of the expert system was changed in the final rule from Federal Expert Unit to Medical and Vocational Expert System (MVES). The rule clarifies the organizational structure to provide that the MVES will be comprised of a Medical and Vocational Expert Unit that will oversee a national network of medical, psychological, and vocational experts and will also maintain a national registry of vocational experts.

The proposed rule stated that the expert system would provide assistance to adjudicators at all levels of the disability review process. The final rule does not provide for assistance from the MVES in reviewing a claim at the DRB level.

The preamble to the proposed rule stated that we expect to issue qualification standards for experts on or before the issuance of a final rule, but that they would be published no later than

six months after the effective date of the final rule. The preamble to the final rule states that we expect to issue initial qualification standards in the near future.

#### Federal Reviewing Official Level

We added language to the final rule to make it clear that a claimant may submit additional evidence to the Federal reviewing official even if that evidence is not originally submitted by the claimant when the claimant requests review. In addition, we added language in the final rule to make clear that a claimant may request additional time to file a request for Federal reviewing official review before the 60-day period has ended as well as after it has ended.

The proposed rule provided that a Federal reviewing official may remand a claim to the State DDS under specified circumstances. The final rule does not permit a Federal reviewing official to remand a claim to a State DDS but does permit the Federal reviewing official to ask the State agency to clarify or provide additional information about the basis for its determination. In such a situation, the Federal reviewing official retains the authority to make the decision as to whether a claimant is disabled.

The proposed rule did not address subpoena authority at the Federal reviewing official level. The final rule adds subpoena authority and states that the Office of the General Counsel may seek enforcement of the subpoena.

#### Administrative Law Judge Hearing Level

The proposed rule stated that claimants must submit evidence no later than 20 days before a hearing. The final rule provides that claimants must submit evidence no later than five business days before the hearing. The proposed rule stated that there were only two exceptions to the 20-day limit and both had to be raised at the hearing. The final rule makes clear that the five-day limit is subject to several exceptions, depending on when the claimant attempts to submit the additional evidence and expands the range of circumstances under which an administrative law judge may accept and consider evidence that the claimant does not submit timely.

The proposed rule stated that the administrative law judge must notify the claimant of the hearing date at least 45 days before the date of the hearing. The final rule states that the administrative law judge will notify the claimant of the time and place of the hearing at least 75 days before the date of the hearing.

The proposed rule provided that claimants must submit all available evidence that supports the claim, even evidence that might undermine or appear contrary to the allegations. The final rule states that claimants must provide evidence, without redaction, showing how their impairments affect functioning during the time they say they are disabled.

#### Decision Review Board

The final rule allows claimants whose claims are reviewed by the DRB to submit statements explaining why they agree or disagree with the administrative law judge's decision, regardless of

whether the DRB requests the statement. The proposed rule provided that such statements may be no longer than three pages with typeface no smaller than 12 point font. The final rule provides that such statements may be no longer than 2,000 words and, if typed, that the typeface must be 12 point font or larger.

#### Reopening; Other Provisions

The proposed rule revised the current reopening criteria that allow us to reopen a determination or decision within one year of the date of the notice of initial determination for any reason. The proposed rule also deleted new and material evidence as a basis for finding good cause to reopen. Under the final rule, our existing reopening rules continue to operate for all claims adjudicated prior to the hearing level. The final rule only makes changes at the post-administrative law judge decision level so that once a decision is issued, reopening for good cause is limited to six months. Under the final rule, “new and material evidence” is not a basis for finding good cause in such circumstances.

The proposed rule stated that claimants may establish good cause for missing a deadline if they show that “some other unusual and unavoidable circumstance” beyond their control prevented timely filing. The final rule states that claimants can establish good cause for missing a deadline if they can show that “some other unusual, unexpected, or unavoidable circumstance” beyond their control prevented timely filing.

The proposed rule provided that discrimination complaints must be filed by a claimant within

60 days of the date upon which the claimant becomes aware of the discrimination. The final rule changes the date by which a claimant must file a discrimination claim with us from 60 days to 180 days of the date upon which the claimant becomes aware of the discrimination.

### Implementation

The final rule changes this section by specifying that Boston is the first region for implementation and that we will wait at least one year after implementing in Boston before we implement in a second region. We added a provision to the final rule to address instances where a claimant moves from a region where DSI has been implemented to a region where it has not, and visa versa. In such situations, the claim will continue to be reviewed using the same procedures under which the claim was originally filed.

The final rule adds language making it clear that throughout the period during which we are implementing these new rules across the country, the Appeals Council will continue to perform the non-disability review functions and some of the other review functions that it currently performs (e.g., review of retirement and survivors insurance cases and overpayment waiver claims).

### Overview of the New DSI Process

In summary, the rule we are publishing today provides for the following:

- Individuals who are clearly disabled will have a process through which favorable determinations can be made within 20 calendar days after the date the DDS receives the claim.
- The Medical and Vocational Expert System will enhance the quality and availability of medical and vocational expertise that our adjudicators need to make accurate and timely decisions.
- A new position at the Federal level - the Federal reviewing official - will be established to review DDS initial determinations upon the request of the claimant.
- The right of claimants to request and be provided a de novo hearing conducted by an administrative law judge is preserved.
- The record will be closed after the administrative law judge issues a decision, with provision for good cause exceptions to this rule.
- A new body, the Decision Review Board, will be created to identify and correct decisional errors and to identify issues that may impede consistent adjudication at all levels of the process.
- The Appeals Council will be gradually phased out as the new process is implemented throughout the nation.

This final rule contains a significant number of changes designed to provide the high quality of service that the public expects and deserves. In drafting this final rule, we understood that, although there was broad agreement on the need for change, numerous commenters perceived our proposed rule as favoring administrative efficiency over fairness. Our expectation is that the changes we are making will give claimants a meaningful opportunity to present their claim and at the same time provide them with more accurate, consistent, fair, and timely decisions. Our

improvements are aimed at strengthening the disability determination process from beginning to end. If, as implementation proceeds, we find that further improvements are needed, we will make them.

We also recognize that for various reasons many of our claimants need assistance in pursuing their claims, and we continually assist claimants throughout the claims process by:

- obtaining information needed to support a claim;
- arranging for a representative payee to assist in the development of the information for the claim and to administer the benefit payment, if a claimant is mentally incompetent;
- providing extra assistance to the homeless to complete the proper forms and obtain evidence and an interpreter if the claimant has limited English proficiency, or is hearing impaired;
- using the expedited procedures in place for terminal illness cases, military service casualties, severe impairment, and disaster cases;
- explaining denial notices and how to file an appeal; and
- referring claimants for services outside the scope of the Social Security program using information and referral files that detail public and private agencies available in the service area to assist with housing, food, clothing, counseling, child care, medical needs, legal services, and other needs.

DDSs and hearing offices also have the responsibility of helping claimants who need assistance in collecting medical evidence. They request evidence from treating sources and arrange and pay for consultative examinations when medical evidence from a treating source is

unobtainable or incomplete. Some field offices also have special arrangements with hospitals and mental institutions to obtain medical evidence. We are currently working with medical sources to encourage the submission of evidence electronically whenever possible in order to expedite the decisional process. Special arrangements are in place to obtain both medical and non-medical records from large governmental agencies such as the Department of Veterans Affairs, the Military Personnel Records Center, and the Division of Vital Statistics. Additionally, in 2005 we sponsored a national training conference to help educate DDS employees on how best to secure electronic medical evidence (EME). We also recently hosted a national outreach conference for major providers of EME to help them gain familiarity with new options for submitting EME.

As we roll out the new DSI process, we intend to continue and expand our efforts to ensure that all adjudicators make their disability determinations and decisions based upon a record that is as complete as possible. We intend to review and improve our informational services to claimants and to medical providers so that they will better understand what adjudicators need to make accurate determinations or decisions. As noted below, we also intend to develop requirements for training and certification of physicians who perform our consultative examinations to make certain that they understand our disability determination process and the information we need to make accurate determinations and decisions. We are developing templates that adjudicators will use when they request consultative examinations for common types of cases to ensure that the appropriate information is requested.

We have also been developing decisional templates for use by adjudicators at the DDS, Federal reviewing official, and administrative law judge levels that will assist them in writing decisions. Each of these levels of adjudication will have a template that is appropriate for that level. We believe that the use of these templates will help to ensure that disability claims are properly developed and that decisions are legally sustainable and consistent with our policies. These templates are being developed and tested in close consultation with adjudicators in the field. All adjudicators will receive training in their use.

#### Initial Determination Level

#### Quick Disability Determinations (QDDs)

We believe that many individuals who are clearly disabled are being required to wait too long to get DI or SSI payments based on disability or blindness. Therefore, as we proposed in our NPRM, this rule provides for establishing at the initial claims level a system for expediting fully favorable decisions for those individuals.

A predictive model will identify claims that involve a high potential that the claimant is disabled and that evidence of the claimant's allegations can be easily and quickly obtained. Through the predictive model, selected claims will be automatically referred from the field office to a State QDD unit. This rule provides that any State that currently performs the disability determination function will be deemed to have given us notice that it wishes to perform the QDD

function. In order to participate in the QDD process, however, each DDS must establish a separate QDD unit to process the QDD claims.

Given the importance we assign to the QDD process, we believe that the DDS employees who are involved in making these decisions must be examiners who are experienced in making disability determinations. Several commenters opposed our decision to use experienced disability examiners for the QDD process. One commenter thought it would be a waste of resources, while another thought that we could use inexperienced examiners if we clearly delineated a set of conditions and symptoms that would establish disability. It was also suggested that this requirement might lead to a decline in the quality of cases that are not adjudicated by the QDD units. It is critical that QDDs be made both quickly and accurately. We intend that DDS administrators should use their considered judgment, assigning to the QDD unit those examiners who have demonstrated that they have the skills that are needed to meet our performance requirements. QDDs will be subject to both processing and quality standards, and it is important to us, to DDSs, and claimants that these standards be met.

We understand the concern expressed by smaller DDSs that have limited numbers of staff and want flexibility to assign them to where they are most needed. We intend that they will have that flexibility. For example, if the DDS director determines that an examiner is needed only half-time to carry out the QDD assignment, the DDS examiner may be assigned to non-QDD work as well as to the QDD unit.

The objective is to ensure that QDDs are processed by individuals with the knowledge, training, and experience to effectively carry out the QDD function and that they will be held accountable for performing this important task.

This rule makes clear that a QDD will be made using a team approach involving sign-off by both an examiner and a medical expert. The medical expert may be employed by or under contract with the DDS, or be part of the national network of medical experts that we maintain. The role of the expert will be to verify that the medical evidence that has been provided is sufficient to determine that a claim meets the standards relating to a claimant's medical condition established by us for making a QDD. If there is disagreement between the examiner and the expert as to whether a claim meets our QDD standards, the claim will not be allowed. Instead, it will be transferred out of the QDD unit to be processed by the DDS according to the date the claim originally was received by the QDD unit so that there will be no delay in making a determination regarding those claims.

This rule requires that the DDS meet timeliness standards for processing QDDs in order to retain their QDD adjudication responsibilities. We provide that QDD units must make favorable determinations for those who meet our QDD criteria within 20 calendar days after they receive a claim from the field office. (We also plan to carry out expedited pre-effectuation reviews of some of these determinations within this 20-day period.) If the QDD unit determines that a fully favorable determination cannot be made within 20 days of receiving the claim or if there is disagreement between the disability examiner and the medical or psychological expert, the DDS

will transfer the claim out of the QDD unit and adjudicate it using its regular claim determination procedures.

One commenter indicated that the proposed regulation was not clear as to whether the 20-day restriction means 20 working days or 20 calendar days. The rule clearly defines “day” to mean calendar day, unless otherwise indicated. Thus, the 20-day time frame for a QDD includes all weekends and holidays.

We will monitor the performance of the QDD units to ensure that these claims are being processed in conformance with our regulations. As with other claims, QDDs will be subject to quality review by the Office of Quality. We will also review claims that are transferred out of the QDD unit for regular adjudication to ascertain that these transfers are being made appropriately.

We will be issuing administrative guidance to the States which will further explain how we expect DDSs to carry out these requirements and the flexibility that they will be given to ensure that they can perform as required.

We anticipate that the number of QDD claims will initially be relatively small. As we gain experience with the new QDD system, we expect that the number and characteristics of claims that are identified as potential QDDs will gradually increase.

The predictive model that we will use to identify potential QDD claims will score claims by taking into account such factors as medical history, treatment protocols, and medical signs and findings. As noted above, those claims with scores that indicate a high likelihood of a quick allowance will be referred to a QDD unit.

We intend to carefully test the QDD predictive model to ensure its efficacy and integrity before we will implement the provision in this rule that requires a DDS to meet our processing requirements or be subject to sanction. In addition, this rule provides for performance support at any time that the regular monitoring and review process reveals that support could enhance performance. However, if for two or more consecutive calendar quarters a State agency falls below our 20-day QDD processing standard without good cause, we will notify the State agency that we propose to find that it has substantially failed to comply with our standards. After notice and opportunity for a hearing, if it is found that a State agency has substantially failed to meet our standards, we will assume responsibility for performing the QDD function. However, we will not make this finding with respect to any State agency until the model has been initially implemented and tested for one year. Additionally, as new States begin implementation of the QDD process they will be given a six-month grace period before our sanction provisions will be applied to them.

This rule provides that we will not impose sanctions if we determine that a State agency's failure to meet our requirements is the result of: a natural disaster that affects the agency's ability to carry out its work; strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function; or sudden and

unanticipated workload changes that result from changes in Federal law, regulations, or written guidelines, systems modification or systems malfunctions, or rapid, unpredictable caseload growth for a six-month period or longer.

We intend to process presumptive disability and terminally ill cases under current procedures.

#### Requirements for DDS Determination Notices

This rule requires that DDS notices sent to claimants will explain in clear and understandable language the specific reasons for and the effect of the initial determination. Claimants must also be informed of the right to review by a Federal reviewing official and their right to representation. We believe that better articulation of the reasons for the determination will result in more accurate decisions and will assist in any further adjudication by a Federal reviewing official, an administrative law judge, or the DRB.

#### Response to Public Comments about Initial Determinations Including QDDs

While many commenters voiced broad support for the QDD process generally, some had questions about how it would operate. We have clarified that DDSs will adjudicate QDDs, using the same definition and procedural rules as are applied to all other initial determinations. Some comments suggested that State adjudicators should have the power to make determinations without the use of a medical or psychological expert. We are making clear that QDDs will require sign-off by both a disability examiner and a medical expert, reflecting our decision to

maintain a team approach. Other comments revealed confusion regarding the role of the expert in making a QDD, and for clarity we have revised the rule. Instead of indicating that the expert will be used to verify a claimant's diagnosis, our final rule states that the expert will verify that the medical evidence in the file is sufficient to determine that as of the claimant's alleged onset date, the claimant's impairment(s) meets the standards we establish.

A number of commenters supported, but provided suggestions regarding, our proposal to use a predictive model software tool to identify claims for processing by the QDD units. Additionally, several commenters asked us to provide a list of conditions that would be identified by the predictive model. The predictive model will not necessarily identify specific conditions. Instead, as described above, it will consider a variety of factors, including medical history, treatment protocols, and medical signs and findings.

Some commenters suggested that implementation of the new process be delayed until the predictive model software is fully tested and one commenter stated that we should not require that State agencies establish separate QDD units until we have sufficient data and workload estimates. We have decided not to postpone implementation of the QDD because we believe the new, expedited process will be of such great benefit to many claimants. However, as noted above, we do have a careful rollout plan that should alleviate any concerns. Finally, we had invited comments on whether to accelerate the rollout of the QDD process and we received only one comment on the issue. We will continue to examine the issue of the manner in which the QDD process should be rolled out.

We agree with those commenters who recommended that we give State agencies input as we complete the development of the predictive model screening software. In fact, the QDD predictive model will be based upon the analysis of actual DDS determination data: nearly two million initial DDS determinations were analyzed to determine factors which consistently resulted in quick allowances.

A number of commenters thought that the 20-day time period in which to make a QDD was impractical because it would be difficult for some applicants, especially individuals with low incomes or those who are homeless and have little or no medical care, to obtain necessary documentation in that time frame. Claimants will not have an unusual burden to obtain medical evidence under the QDD process. In fact, because the predictive model is designed to identify those applicants with obvious, severe, disabling conditions that do not require an assessment of residual functional capacity, it is likely that the available or readily obtainable medical records of individuals whose cases have been selected for the QDD process will be sufficient.

Given the difficulty and complexity of implementing this proposal, we will not implement suggestions by other commenters to have pre-determination contact, either face-to-face or via video teleconference, with the State agency. As noted elsewhere in this preamble, however, we do regard as a high priority the adequate development of the evidence so that our adjudicators can make accurate determinations and decisions and we are including in this rule a number of requirements that we believe will help to achieve this objective. In addition, claimants will retain the right to a face-to-face hearing before an administrative law judge.

Additionally, although the comments revealed some confusion regarding the public availability of any expert opinions we receive during the initial determination process, we intend that all expert evidence will be made part of the record to assist both the claimant and our adjudicators with any further review.

Commenters disagreed about whether a standardized decision-writing format should be utilized for QDDs or whether a detailed rationale is necessary for initial determination notices. We believe that better articulation of the reasons for the determination is central to more accurate decisions and will assist in any further adjudication by Federal reviewing officials, administrative law judges, or the DRB. Accordingly, we are developing and intend to use standardized decision-writing formats at each level of adjudication, including QDDs. We agreed with the suggestion that our initial determination notices should include information regarding a claimant's right to representation, and, as noted above, we have revised §405.115 to state this requirement.

Several commenters opposed §405.835, under which we would notify the State agency that it has failed to comply with our QDD standards, and suggested that we provide technical assistance to the State agency before we propose to take action. We agree and have changed the rules to provide for mandatory and optional technical assistance to State agencies. As explained above, we also intend to test thoroughly the QDD predictive model before implementing our sanction provisions. State agencies will be given a grace period before any sanctions will be applied to them.

## Enhanced Medical and Vocational Expertise

### Description of the Medical and Vocational Expert System (MVES)

We believe that the quality of the disability determination process at all levels of adjudication will be significantly enhanced if we provide adjudicators with the medical, psychological, and vocational expertise they need to make accurate and consistent decisions. We have studied the approaches used by other entities that must make these complex decisions, including those in the private sector. We have also sought the advice of the Institute of Medicine (IOM), National Academy of Sciences. The IOM established a Committee on Improving the Disability Process in January 2005 and published an interim report with recommendations to us in December 2005.

We have heard broad agreement on the part of persons both within our Agency and without, that the expertise needed by our disability adjudicators is currently not available at all levels of the process or in all parts of the country. We have therefore determined that we need to make major changes both in our institutional arrangements and procedures. The changes we are making in this rule are based on careful study and analysis of our needs.

While many disability impairments may be properly evaluated by medical generalists, claims that involve difficult or complex issues require medical specialist or subspecialist expertise. We therefore provide in this rule for the establishment of an MVES, which will provide the expert assistance that adjudicators need to render disability determinations and decisions that are accurate, consistent, and fair. The MVES will be composed of a Medical and Vocational Expert

Unit (MVEU) and a national network of medical, psychological, and vocational experts who meet qualification standards required by the Commissioner. After we establish qualification standards for vocational experts, the MVEU will maintain a separate registry of vocational experts who meet those standards which will be available for use by DDSs.

The MVEU will be staffed by individuals who will be able to advise adjudicators on the nature of the expertise that they may need and to arrange for the provision of that expertise. It will develop and oversee a national network of medical and psychological experts who will be available to advise on complex medical issues, and it will arrange for consultative examinations that are requested by Federal reviewing officials and administrative law judges. Federal reviewing officials and administrative law judges who request the assistance of a medical, psychological, or vocational expert must do so through the MVEU. When the MVEU arranges for medical, psychological, or vocational expertise needed by Federal reviewing officials and administrative law judges, it will do so on a rotational basis, ensuring that the expert has not been involved in the claim at a prior level of adjudication.

We are currently reviewing the IOM's interim report and expect to issue our initial qualification standards within the near future. We anticipate that over time we will establish additional qualification standards that experts will be required to meet in order to participate in the adjudication of claims involving those impairments that require special expertise. These qualification standards for specialists and subspecialists will apply to medical expert participation at all levels of the adjudication process, including DDSs, Federal reviewing officials, and administrative law judges. Experts who are employed by a State agency will have

to meet qualification standards established by us no later than one year after the date such standards are published. Thereafter, we will neither accept a medical sign-off from an expert who does not meet applicable qualification standards nor reimburse State agencies for the costs associated with work performed on our behalf by such experts.

Our plan is to develop a network capable of serving adjudicators throughout the country. Our electronic record will enable experts to examine case records regardless of the location of the claimant or the expert. We will establish safeguards to keep such information secure. Medical experts will be drawn from various sources, including medical schools and academic clinical research centers that focus on conditions that are difficult to evaluate. DDS physicians and psychologists who meet our standards will also qualify for service with the network. Medical, psychological, and vocational experts who are in the network will be compensated according to a fee schedule that we establish for services arranged by the MVEU.

In summary, this rule provides for use of the MVES by DDSs and by Federal reviewing officials and administrative law judges as follows:

If the DDS does not have a medical or psychological expert who meets our qualification standards, once they are established, for adjudicating a claim involving a specific impairment, the MVES will provide such an expert. If the DDS otherwise requests the assistance of a medical or psychological expert, the MVES will, to the extent practicable, provide such assistance. After standards for vocational experts are established, the DDSs may use the national registry of vocational experts maintained by the MVEU.

The Federal reviewing official must consult with an MVES medical or psychological expert (1) if the claim involves new medical evidence or (2) if the Federal reviewing official disagrees with the DDS determination.

Both Federal reviewing officials and administrative law judges may request evidence from a claimant's treating source, including requesting a treating physician to conduct a consultative examination. However, if they need additional medical, psychological, or vocational documentary or testimonial evidence to adjudicate a claim, they must use the MVES.

We are currently studying the recommendation by the IOM Committee that we should encourage the use of licensed medical personnel other than physicians or psychologists in appropriate cases, such as occupational therapists, physical therapists, registered nurses, and psychiatric social workers.

As noted above, a national registry of vocational experts will also be maintained by the MVEU. The Commissioner will issue qualification standards for participation in the registry. DDSs may arrange for vocational services by individuals on the registry and will be responsible for payment.

The IOM Committee also expressed the view that fuller case development at the front end of the process should reduce the impetus for appeal, reduce the number of reversals on appeal, and

shorten the average length of time before reaching final adjudication. The Committee made recommendations for strengthening claim development, beginning at the DDS level.

We believe there are a number of steps that we should take as quickly as possible. We agree with the IOM Committee that fully performing the DDS medical consultant role requires mastery of three domains of knowledge. Medical consultants must be experts in their medical field (e.g., cardiology and orthopedics); they need to understand how to evaluate disability; and they must be knowledgeable about SSA's policies and procedures. We believe that a nationally standardized training program for medical experts who are part of the national network will improve both the accuracy and consistency of our disability determinations. To achieve that objective, we intend to develop a program to provide both initial and ongoing training that all medical consultants and experts will attend. This training will concentrate on the second and third domains cited above.

We also intend to develop requirements for training and certification of physicians who perform our consultative examinations. The IOM report recommends that consultative examiner training should focus on two competencies: 1) evaluation of limitations on ability to work resulting from impairments; and 2) evidentiary and other requirements of our disability decision-making process. As another step in improving our consultative examination process, we are developing templates that adjudicators will use when they request consultative examinations for common types of cases to help ensure that the appropriate information is requested. In addition, we expect to develop qualification standards that consultative examiners must meet in order to perform consultative examinations in the case of impairments that require special expertise.

Recognizing the need of the DDSs for improved vocational expertise, we are also planning a standardized national training program for DDS personnel so that they will be better able to adjudicate claims that involve vocational issues. DDSs may also use the national registry of vocational experts that is maintained by the MVEU if they need expertise that is not otherwise available to them regarding vocational issues.

We will be consulting closely with adjudicators throughout the disability process as we move forward with these efforts.

#### Response to Public Comments about Enhanced Medical and Vocational Expertise

Many commenters supported our plan to establish a Federal Expert Unit with medical and psychological experts who have needed specialties. Some commenters raised concerns about our plan to use a centralized Federal Expert Unit. These commenters pointed out that having experts in only one part of the country would not be useful because the experts would not know how medicine is practiced in another part of the country. One commenter recommended that we continue to rely on “generalist” medical consultants in the State agencies, but supplement their expertise with regionally-based Federal Expert Units.

We expect that, through the network, we will be able to draw from expertise throughout the country. It is not necessary that medical experts are licensed to practice in the State in which a claimant lives or receives medical treatment. Our experience with the Federal Disability

Determination Services, which handles DDS cases from around the nation, also indicates that the lack of familiarity with local medical practice is not a barrier to providing the needed medical expertise. Using a national network will allow us to use such expertise in cases regardless of their location. One commenter suggested that we test the use of the national network and the expert unit. As described in the implementation section of this preamble, we will be rolling out the DSI process, including the implementation of the MVES, on a gradual basis. We intend to monitor its use and effectiveness carefully and to make improvements as needed.

Some commenters asked about the provision in proposed §405.15 which states that experts who are called by the claimant “and that the administrative law judge approves” are not required to be affiliated with the national network. The commenters asked what we intended by this provision and whether it would be used to suppress evidence from claimants’ experts. We have removed that language, but under this rule, an adjudicator would not exclude evidence from a claimant’s physician or reject the opinion of a claimant’s physician because he/she is not a member of the network. The evidence would be admissible and if it is opinion evidence, must be evaluated under our evaluation-of-opinion-evidence rules at 20 CFR 404.1527 and 416.927.

#### Federal Reviewing Official Level

#### Description of Federal Reviewing Official Level

For many years there has been a perception that initial determinations of disability are not being made in a consistent manner. We believe that confidence in decision-making can be

significantly enhanced by establishing a new Federal position – the Federal reviewing official – to review initial determinations upon the request of a claimant. A major objective of using Federal reviewing officials to review disability claims is to ensure to the maximum extent possible the accuracy and consistency – and thus the fairness – of determinations made at the front end of the process.

The Federal reviewing official position will be centrally managed. The comments were split in favor of and against our proposal to hire attorneys for this position. As proposed in our NPRM, we intend to hire attorneys to serve as Federal reviewing officials. We believe that attorneys are ideally suited to perform certain activities that are essential to the Federal reviewing official function, including careful development and documentation of the evidence and the drafting of a legally sound decision.

We received many comments on the Federal reviewing official's role in developing the evidentiary record. The comments ranged from recommending that the Federal reviewing official assist claimants in obtaining all available evidence to recommending that the Federal reviewing official have authority to subpoena records from uncooperative medical providers. We are committed to giving the Federal reviewing official both the responsibility and the resources to assure that a claimant's record is adequately developed. To further this objective, we are giving the Federal reviewing official specific authority to issue a subpoena if an evidentiary source is uncooperative in responding to a request for evidence.

We plan to employ highly qualified individuals who are thoroughly trained in the policies and procedures of our disability programs. Federal reviewing officials will be able to affirm, deny, or modify the initial determination. If, in reviewing a claim, the Federal reviewing official determines that additional medical evidence is necessary, the Agency may obtain such evidence from other sources, including from the State agency or a treating source. The Federal reviewing official may ask the State agency to clarify or to provide additional information about the basis for its determination. In such circumstances, the Federal reviewing official will retain the authority to make the decision as to whether you are disabled.

This rule specifies that the Federal reviewing official will consult with an MVES medical expert in cases involving medical evidence that was not considered by the DDS. The Federal reviewing official will also consult with an MVES medical expert before issuing a decision that disagrees with the DDS determination. After consultation, the Federal reviewing official will issue a decision as to whether a claimant is disabled under our rules. To ensure decisional objectivity, any medical expert used by the Federal reviewing official for these purposes must not have been involved in the DDS initial determination.

Some commenters believed that under the proposed rules, the Federal reviewing official did not need to consider new medical evidence unless the claimant submitted it at the time that he/she requested review. This is incorrect. In making a decision, the Federal reviewing official will consider evidence submitted by the claimant, even if not submitted with the request for review, as well as any other evidence that the Federal reviewing official obtains. The Federal reviewing official may order a consultative examination if the Federal reviewing official

determines that this is necessary. This rule provides that a claimant should submit additional evidence (evidence obtained since the prior decision) when making the request for review by the Federal reviewing official, but may submit evidence up to the date the Federal reviewing official issues a decision.

The Federal reviewing official will make a decision based on the developed record. Although several commenters suggested that Federal reviewing officials conduct hearings, we decided that in the interests of efficiency claimants will not be given a hearing before the Federal reviewing official.

The Federal reviewing official's decision will explain in clear and understandable language the specific reasons for the decision, including an explanation as to why the Federal reviewing official agrees or disagrees with the rationale articulated in the initial determination. We believe that this requirement will provide a clearer understanding of why the claimant is or is not disabled under our rules. The decision will be sent to the State agency that made the determination, thereby providing feedback to DDS adjudicators and managers.

The Federal reviewing official will mail a written notice of his/her decision to the claimant at the claimant's last known address. The notice will also inform the claimant of his/her right to a hearing before an administrative law judge.

In our NPRM we provided that, if a claimant does not request review of an initial determination timely (within 60 days after receiving notice of the initial denial), the claimant

may ask for more time to request review. In response to a commenter's recommendation, this rule clarifies that a claimant may request an extension of time both before and after the 60-day period has elapsed.

We intend to address performance requirements for the Federal reviewing official position when we announce our plan for a new quality system. Two commenters recommended that we include performance standards for Federal reviewing officials like those the State agencies must meet under the current reconsideration process. We are developing performance standards for Federal reviewing officials but have not included them in this rule. We also intend that Federal reviewing official decisions will be subject to both in-line and end-of-line review, including pre-effectuation review by the Office of Quality.

#### Response to Public Comments about Federal Reviewing Official Level

Some commenters objected to the creation of the Federal reviewing official position because they believed that this administrative step would cause delays. Others expressed concern based on their experience with other models of pre-hearing review that have been tested by the Agency. They suggested we impose a limit on the time a Federal reviewing official has to make a decision. We believe that the benefit from review by a Federal reviewing official will far outweigh the time that this administrative step will take because we expect Federal reviewing officials will work to create a complete record and will explain fully the rationale underlying their decisions. In addition, we wanted to ensure that claimants retain the right to two levels of Federal review. Further, claims may be selected for review by the DRB.

We also received comments concerning the particular evidence the claimant must submit to the Federal reviewing official. We wish to emphasize that we are not requiring the claimant to submit any particular evidence to the Federal reviewing official. Section 405.210(a) requires only that the request for review be in writing and lists several items that “should” be included in a request for review. Nevertheless, in response to these comments, we have revised the section to clarify that the claimant should, but is not required to, specify reasons why he/she disagrees with the initial determination.

Some commenters questioned what we meant by “available” in the request to submit available evidence along with the request for Federal reviewing official review in §405.210(a)(4) (and in §405.310 at the administrative law judge level). We believe that it is sufficiently clear and that our rule will encourage claimants to present evidence to us as early as possible.

We received a number of comments expressing concern that the proposed rule did not sufficiently describe the circumstances under which a Federal reviewing official can remand the case to the State agency. We have revised the rule and deleted the Federal reviewing official authority to remand a case back to the State agency. If the Federal reviewing official determines that additional information from the State agency is necessary, we may ask the State agency to clarify or provide additional information about the basis for its determination. Under these circumstances, the Federal reviewing official will retain authority over the claim.

We received a comment recommending that the Federal reviewing official be allowed to dismiss a request for review in the event that the claimant withdraws the request for review, is not entitled to review, or requests review in an untimely manner and cannot demonstrate good cause for late filing. We have decided not to give the Federal reviewing official dismissal authority. Rather, under the circumstances mentioned above, the field office will retain the authority to dismiss the request for review.

One comment suggested that we not call the Federal reviewing official's work product a "decision." The commenter believed the use of the term "decision" at the Federal reviewing official level could undermine the separate and independent status of the administrative law judge's decision and confuse claimants. We have decided to continue calling the Federal reviewing official's work product a decision. The Federal reviewing official level is a level of Federal review. Accordingly, we believe that it is appropriate to call the work product a decision. The rule makes clear that the Federal reviewing official's decision is not evidence; thus, we do not believe that there is any undermining of the separate and independent status of the administrative law judge's decision-making authority.

We received a number of comments suggesting that a claimant not be required to separately request a hearing if the claimant is dissatisfied with the Federal reviewing official's decision, but instead allow an automatic appeal. Under usual administrative adjudication processes, an administrative agency's determination is final unless the claimant timely requests further review. We believe that allowing an automatic appeal to the administrative law judge or making the Federal reviewing official's decision only a recommended decision would run counter to the

normal administrative adjudication process. Additionally, the hearing before an administrative law judge is de novo, which allows the administrative law judge to consider the matter anew, as if no determination had previously been made. We believe that allowing an automatic appeal or making the Federal reviewing official's decision a recommended decision would inappropriately tie the hearing to the proceedings and decision that went before.

We also received comments concerning the Federal reviewing official's role in increasing the quality and consistency of the State agency determinations. One commenter recommended that the Federal reviewing official review a random sample of all favorable State agency determinations, and one commenter believed that the Federal reviewing official should function in a manner similar to the current Disability Quality Branches, which review determinations by the State agencies. The Federal reviewing official is not a quality reviewer for the State agencies, so we have decided not to require random reviews of State agency determinations by Federal reviewing officials. However, as already noted, Federal reviewing official decisions will be sent to the State agency that made the initial determination to provide qualitative feedback to the DDS. In addition, under the Agency's new quality system, both DDS allowances and denials will be subject to quality review.

Administrative Law Judge Hearing Level

Description of Administrative Law Judge Hearing Level

This rule preserves a claimant's right to a de novo hearing before an administrative law judge if the claimant disagrees with the decision of the Federal reviewing official.

We are, however, changing some of the procedures to improve the disability decision-making process at the hearing level. For example, in order to improve timeliness, we are revising the rule that addresses the time frames for submitting evidence to the administrative law judge. Our current rule states that, if possible, a claimant should submit the evidence, or a summary of the evidence, within 10 days after filing the request for a hearing. In many cases, however, claimants submit evidence to us well after that time frame.

Our program experience has convinced us that the late submission of evidence to the administrative law judge significantly impedes our ability to issue hearing decisions in a timely manner. When new and voluminous medical evidence is presented at the hearing or shortly before, the administrative law judge does not have the time needed to review and consider that evidence. We often must reschedule the hearing, which not only delays the decision on that claim, but also delays other claimants' hearings.

To improve the timeliness of our hearing process and to ensure appropriate consideration of all claims, we are setting as an administrative goal that within 90 days of the date we receive a hearing request, the administrative law judge will establish the time and place for the hearing. In response to comments that Agency goals should not be made a part of the rule, we removed this 90-day goal from the rule, but are retaining it as an administrative goal. This 90-day time frame does not provide the claimant with a substantive right to have the hearing date established within

this period. However, by setting this administrative goal we are stressing to our hearing offices and administrative law judges our commitment to providing timely service.

To ensure claimants have adequate time in which to prepare for the hearing, this rule requires administrative law judges to notify a claimant of the time and place of the hearing at least 75 days before the date of the hearing, unless the claimant agrees to a shorter notice period.

This rule provides that if a claimant objects to the time or place of the hearing, the claimant should notify the administrative law judge in writing as soon as possible after receiving the notice of hearing, but no later than 30 days after receiving the notice. If the claimant objects to the issues to be decided at the hearing, the claimant will be required to notify the administrative law judge in writing at least five business days prior to the hearing date.

Claimants will be encouraged to submit evidence as soon as possible after they file their request for a hearing. They will be required to submit all of the evidence to be relied upon in a case no later than five business days before the hearing. This is a reasonable deadline given that we also require the administrative law judge to notify the claimant of the hearing date at least 75 days before the hearing. It will ensure that the administrative law judge and any medical or vocational expert or other individual who will be participating in the hearing will have time to review the record before the hearing in order to adequately prepare for the hearing, and that the hearing will not have to be postponed.

The five-day time limit for submitting evidence is subject to exceptions, depending on when the claimant attempts to submit additional evidence. If the claimant requests to submit evidence within the five-day time limit before the hearing takes place, the administrative law judge will accept and consider the evidence if:

1. our action misled the claimant;
2. the claimant had a physical, mental, educational, or linguistic limitation(s) that prevented him from submitting the evidence earlier; or
3. some other unusual, unexpected, or unavoidable circumstance beyond the claimant's control prevented the claimant from submitting the evidence earlier.

If the claimant requests to submit evidence after the hearing but before the hearing decision is issued, the administrative law judge will accept and consider the evidence if the claimant makes one of these three showings and there is a reasonable possibility that the evidence would affect the outcome of the claim.

Our rule provides that when a claimant files a written request for a hearing, the claimant should include in the request his/her name and social security number, the specific reasons why the claimant disagrees with the Federal reviewing official's decision, a statement of the medically determinable impairment(s) that the claimant believes prevents him/her from working, any evidence that is available to the claimant, and the name and address of the claimant's representative, if any.

At any time before the hearing begins, a claimant may submit, or the administrative law judge may request the claimant to submit, a prehearing statement as to why the claimant is disabled. This statement should discuss briefly: (1) the issues involved in the proceeding, (2) facts, (3) witnesses, (4) the evidentiary and legal basis upon which the claim can be approved, and (5) any other comments, suggestions, or information that might assist in preparing for the hearing.

Also before the hearing, the administrative law judge may decide on his/her own initiative or at the claimant's request to conduct a prehearing conference if the administrative law judge believes that such a conference would facilitate the hearing or the decision in a claim. This rule provides that these conferences will normally be held by telephone unless the administrative law judge decides that it would be more efficient and effective to conduct the prehearing conference in a different manner. During these conferences, the administrative law judge will consider matters that may expedite the hearing, such as simplifying or amending issues or obtaining and submitting evidence. The administrative law judge will have a record made of the prehearing conference and will either summarize the actions taken as a result of the conference in writing or make a statement in the record summarizing them during the hearing. The rule also states that if neither the claimant nor the representative appears for the prehearing conference and there is not a good reason for the failure to appear, the claimant's hearing request might be dismissed.

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

This rule also provides that when setting the time and place of the hearing, the administrative law judge will determine whether the claimant and any other person will appear at the hearing in person, which for experts would include by telephone as is our current practice, or by video teleconference. As we explained in 2003 when we published the final rule on video hearings, we believe that the ability to conduct hearings via video teleconference provides us with greater flexibility in scheduling and holding hearings, improves hearing process efficiency, and extends another service delivery option to individuals requesting a hearing. Greater efficiency is accomplished through savings in administrative law judge travel time, faster case processing, and higher ratios of hearings held to hearings scheduled.

Our rule provides that unless a claimant objects to appearing at a hearing by video teleconference, the administrative law judge will direct that a person's appearance be conducted by video teleconference: (1) if video teleconferencing is available, (2) if use of the technology would be more efficient than conducting an examination of a witness in person, and (3) if the administrative law judge does not determine that there is another reason why a video hearing should not be conducted. If a claimant objects to appearing by video teleconference, the claimant's hearing will be rescheduled so that the claimant can appear in person before the administrative law judge. However, if the claimant objects to having any other person appear by video teleconference, the administrative law judge will decide whether that person should appear in person or by video teleconference.

The claimant may request, or the administrative law judge may decide, to hold a posthearing conference to facilitate the hearing decision. The conference will normally be held by telephone. If neither the claimant nor the representative appears at the posthearing conference and there is not a good reason for failing to appear, the administrative law judge will make a decision based on the hearing record.

In addition to these above provisions, this final rule specifies that the administrative law judge will retain discretion at the time of the hearing to hold the record open for the submission of additional evidence. If a claimant is aware of any additional evidence that the claimant was unable to obtain and submit before or at the hearing, or if the claimant is scheduled to undergo additional medical evaluation after the hearing for any impairment that forms the basis of the claim, the claimant should inform the administrative law judge of the circumstances during the hearing. If the claimant requests additional time to submit the evidence, the administrative law judge may exercise discretion and choose to keep the record open for a defined period of time to give the claimant the opportunity to obtain and submit the additional evidence. Once the additional evidence is received, the administrative law judge will close the record and issue a decision.

One of our major goals in promulgating this rule is to improve the quality of decision-making at all levels of our adjudicatory process. As discussed above, one of the new features of this process is the use of a Federal reviewing official who, upon the request of a claimant, will review the State agency's initial determination and make a decision on the claim. To help improve the quality of State agency determinations, we are requiring the Federal reviewing official to explain

in the decision why he/she agrees or disagrees with the rationale in the State agency's determination.

We are including a similar rule at the hearing level. Under the rule, the administrative law judge's decision will explain in clear and understandable language the specific reasons for the decision. While the administrative law judge will not consider the Federal reviewing official's decision to be evidence, the written decision will explain in detail why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the Federal reviewing official's decision. The decision will be made part of the record and will be sent to the Federal reviewing official who adjudicated the claim as well as to the claimant. We believe that this requirement will provide useful information to claimants. It also will be an important educational tool for Federal reviewing officials to help them improve the quality of their decisions, and will be very useful for management and training purposes.

The notice to the claimant which accompanies the decision will inform the claimant whether the decision is our final decision. If it is not, the notice will explain that the DRB, described below, will review the claim. If the DRB does not review the claim, the administrative law judge's decision will stand as our final decision, and the claimant may seek review of the administrative law judge's decision in Federal district court.

We recognize, however, that there are certain limited circumstances in which a claimant may have a good reason for failing to provide evidence in a timely manner to the administrative law judge. Therefore, for those cases where the claimant's decision has not been referred to the DRB,

we are providing that the administrative law judge will consider new evidence submitted after the issuance of the decision if, within 30 days of the date the claimant receives notice of the decision, the claimant requests consideration and shows that there is a reasonable probability that the evidence, alone or when considered with other evidence of record, would change the outcome of the decision, and that either: (1) our action misled the claimant; (2) the claimant had a physical, mental, educational, or linguistic limitation that prevented him from submitting the evidence earlier; or (3) some other unusual, unexpected, or unavoidable circumstance beyond the claimant's control prevented the submission of evidence earlier.

In those cases where the administrative law judge's decision is not our final decision, the claimant must submit the evidence to the DRB no later than 30 days after the date the claimant receives notice of the decision and make the same showings regarding the probity of evidence and the reasons why it was not provided earlier. The DRB will review and consider the evidence.

#### Response to Public Comments about the Administrative Law Judge Level

In general, commenters expressed concern with our proposed rules on the submission of evidence. Some supported the imposition of time limits and thought that the rules should be revised to give administrative law judges stronger authority to curb abuses in the submission of evidence. Others disagreed with our proposal to impose such time limits. They believed our proposed 20-day deadline unrealistic because many claimants do not contact a representative until shortly before the hearing and because it is difficult for some claimants, such as the homeless, to obtain medical evidence from medical providers and vocational sources, especially

HIV or mental health records, which often require specialized authorizations. As an alternative, they recommended that we notify claimants earlier than 45 days before the hearing or allow claimants to provide evidence to the administrative law judge less than 20 days before the hearing date. As explained in more detail above, we have decided to change our proposed rules in response to the public comments and will provide 75 days notice of the hearing date and allow evidence to be submitted up to five business days before the hearing with certain exceptions to that five-day requirement allowed.

We did not adopt a comment to revise proposed §405.301 to specify the circumstances under which we may assign a claim to another administrative law judge for decision because we believe the language of the regulation should be flexible enough to cover circumstances that we may not foresee today. One commenter suggested that we change the language in §405.302 that administrative law judge authority over these hearings derives from the Social Security Act. Although we deleted §405.302, we did not remove the concept because we added language to §405.1(a) clarifying that all adjudicators' authority derives from the Act.

Some commenters suggested that we delete "specific" from proposed §405.310(a)(3) because many unrepresented claimants may not be able to articulate specific reasons why they disagree with the initial determination. We did not delete "specific" from that provision because we believe it is important to highlight for adjudicators the issues that claimants wish them to review. We do not intend for this requirement to preclude administrative law judges from reviewing other issues raised in the claim, and we clarified in §405.320 that the administrative law judge "will look fully look into all of the issues raised by your claim."

We accepted suggestions to revise §405.310 to state that a claimant “should” include certain items with their request for a hearing, rather than “must include,” as the proposed rule states.

Consistent with comments, we revised proposed §405.310 to allow a claimant to request an extension of time to request a hearing before the time period has passed. Because many commenters were unclear regarding the video hearing provisions of the proposed rules, we revised them to follow our present rules and retain our present practice, except we also clarified in §405.315(c) that administrative law judges retain the authority to allow, over a claimant’s objection, witnesses other than the claimant to appear by video teleconference.

A number of commenters disagreed with the provisions of proposed §405.317(a), which would require a claimant to notify the administrative law judge in writing within 10 days after receiving the hearing notice if he/she objects to the time and place of the hearing. We agreed and have changed the time frame to allow the claimant 30 days to object. We changed the time limit for objecting to issues from 10 days after receipt of the notice to five business days before the date of the hearing.

Some commenters also raised concerns about proposed §§405.330(d) and 405.366(b), which would allow an administrative law judge to dismiss a hearing request if neither the claimant nor his/her representative appeared at either prehearing or posthearing conferences. Although we retained the authority to dismiss in prehearing situations because it is akin to failing to show for the hearing itself, we agree that it is not appropriate to dismiss the hearing request once the

hearing has been held. Thus, we will issue a decision based on the record if neither a claimant nor his/her representative appears at a posthearing conference. We decided not to define “reasonable” notice or include specific time frames for the prehearing conference notice because we expect that administrative law judges will understand reasonable notice and claimants will have the opportunity to raise the issue of unreasonable notice to the DRB if an administrative law judge dismisses a claim where the claimant failed to attend the conference. In response to a comment, we also modified §405.380 to address res judicata.

One commenter recommended that we allow DRB review of the administrative law judge’s finding that there is no good cause for the late submission of evidence. We have rejected this suggestion, but as discussed above, we relaxed the rules, before and after the hearing, regarding circumstances under which the late submittal of evidence would be excused.

Because a number of commenters asked about the provisions of proposed §405.333, which states that all documents must use type face no smaller than 12 point font, we clarified that the rule applies to documents that are prepared and submitted by the claimant or his/her representative, not to medical or other evidentiary documents.

Some commenters thought that we should revise or delete proposed §405.334 governing prehearing statements, recommending that we request claimants to file such a statement, and that we should not require these statements. We did not delete the provision because we believe such statements can be helpful for the adjudication process. However, we agreed with the commenters to make it a request rather than a requirement and to change the language regarding

the items to be included in the statement from “must discuss” to “should discuss.” We hope that, when requested, claimants and their representatives will take the opportunity to thoughtfully prepare such statements.

Some commenters objected to requiring an administrative law judge to explain why he/she disagrees with the Federal reviewing official’s decision, expressing concerns that the requirement could undermine the de novo nature of the administrative law judge hearing process, compromise an administrative law judge’s decisional independence, and add an unnecessary burden to the administrative law judge’s decision-making process. We have clarified that the Federal reviewing official’s decision is not evidence before the administrative law judge. Nevertheless, for purposes of quality feedback, the administrative law judge must address the Federal reviewing official’s substantive findings and rationale. We do not believe that this requirement infringes in any way on administrative law judges’ decisional independence.

We considered comments in favor of and against closing the record after the administrative law judge decision. Many thought that if we did close the record, there should be an exception that would allow claimants to submit new and material evidence within the meaning of section 205(g) of the Act. Some commenters, who recommended that we delete proposed §405.373, believed it harsh to require the submission of requests to consider new evidence within 10 days of the decision. They also objected to requiring an “unforeseen and material change” in the claimant’s condition and were concerned that the rule did not require the administrative law judge to keep the record open. Similarly, commenters objected to our proposed definition of “material,” believing it to be too restrictive.

Upon consideration of these concerns, we deleted “material” from the definitions section and for the most part specifically describe the likely effect, depending on when submitted, new evidence would need to have on a decision in order to be considered. For example, we changed the final rule on submitting new evidence after the administrative law judge’s decision is issued to allow claimants to submit such evidence within 30 days of receiving the decision, relaxed the materiality requirement to a “reasonable probability” standard, and required administrative law judges to consider the evidence if the claimant and his/her evidence meets the regulatory requirements.

Finally, we agreed to remove language requiring claimants to submit evidence adverse to their claims because the comments revealed that the requirement was too confusing. We clarified, however, that when claimants submit evidence, such as a medical report, the evidence must not be redacted.

Decision Review Board (DRB)

#### Description of DRB Level

This rule provides for establishing a new body, the DRB, and phasing out, in a very gradual and carefully monitored process, the current Appeals Council. We believe that the DRB, the members of which will be appointed by the Commissioner, will be a vital tool in our efforts to improve the decision-making process.

The purpose of the DRB is to promote accurate, consistent, and fair decision-making. In carrying out this purpose the DRB will review and correct administrative law judge decisions. It may also identify issues that may impede consistent adjudication at all levels of the disability adjudication process, and recommend ways to improve the process.

The DRB will review both allowances and denials. Claims will be reviewed before the decision of the administrative law judge has been effectuated. The DRB will have the authority to affirm, modify, or reverse the administrative law judge's decision. It may also remand a claim to the administrative law judge for further action and decision.

The DRB also may take any of these actions consistent with the instructions of a Federal court when the court has remanded a case to us for further administrative proceedings.

The DRB may also select a claim for review after the administrative law judge's decision has been effectuated for purposes of studying our decision-making process. In the case of such claims, however, the DRB will not change the administrative law judge's decision, except in those limited circumstances when our rules for reopening claims are applicable. These rules (which have been modified since we issued our NPRM) are described below.

The DRB will serve as the final step in the administrative review process if a request for a hearing has been dismissed by an administrative law judge. A claimant must timely request the

administrative law judge to vacate the dismissal order before requesting the DRB to vacate the order.

Consistent with its purpose, the claims that the DRB will review may include claims where there is an increased likelihood of error, or claims that involve new policies, rules, or procedures in order to ensure that they are being interpreted and used as intended. The DRB will review both allowances and denials of benefits. It will not review claims based on the identity of the administrative law judge who decided the claim.

If a claim is selected for review, the claimant will be notified at the same time that the claimant receives the decision of the administrative law judge. The claimant will be told that his/her claim is being reviewed by the DRB and the administrative law judge's decision is not our final decision. The notice will explain that the DRB will complete its action on the claim within 90 days of the date the claimant receives notice. The notice will also explain that if the DRB does not complete its action within the 90-day time frame, the administrative law judge's decision will become our final decision. If the claimant is dissatisfied with the final decision, the claimant may seek judicial review.

If the DRB does not complete its review of a claim within 90 days, it will take no further action with respect to the claim unless it determines that it can make a decision that is fully favorable to the claimant. In that case, it will reopen the administrative law judge's decision and revise it as appropriate. If the claimant has already sought judicial review, the DRB will notify the Office of the General Counsel, which will take appropriate action with the Department of

Justice in order to request that the court remand the case for the purpose of issuing the DRB's favorable decision.

When the DRB reviews a claim it will apply a substantial evidence standard to questions of fact and consider the record that was closed at the time that the administrative law judge issued the decision (subject to the exception described above when the claimant has good cause for failing to submit evidence timely). Some commenters agreed that the DRB should use a substantial evidence standard, while others advocated that the DRB should re-weigh the record and issue its own decision without remanding cases to administrative law judges. We retained the substantial evidence standard for DRB review of questions of fact, as well as the plenary standard for questions of law, because those are the usual standards for appellate review of decisions of triers of fact. In those cases where the record clearly shows that an administrative law judge's decision simply should be reversed, the DRB has that authority.

When the DRB issues a decision, it is our final decision. If a claimant is dissatisfied with the decision, the claimant may seek judicial review.

The DRB will be composed of experienced administrative law judges and administrative appeals judges who are highly knowledgeable about our decision-making process. Individuals who serve on the DRB will serve on a rotational basis, as the Commissioner determines, and terms will be staggered to ensure a high degree of continuity in DRB membership. It will be centrally located and will be supported by a highly qualified staff.

To enhance accountability and to provide feedback in the decision-making process, DRB decisions that are in disagreement with administrative law judge hearing decisions will be sent to the administrative law judge who issued the decision.

We believe that the DRB, as established in this rule, will significantly strengthen our disability adjudication process and that, in combination with the other changes we are making, our decisions will become more accurate, consistent, fair, and timely than under the current process.

We recognize, however, that there are many who are deeply concerned that elimination of the Appeals Council and the right to appeal, which we provide in this rule, may have a detrimental effect on claimants and result in an increased burden on the Federal courts.

To provide time for our new process to demonstrate its value while responding to these concerns, we intend to phase out the Appeals Council and the right to appeal gradually. As described more fully below, we will eliminate the right of claimants to appeal disability decisions to the Appeals Council only with respect to claims that have been initially filed in those States where our new process has been implemented. The claimants initially affected will be those filing a claim in one of our smallest regions, the Boston region. The only claims that will be affected will be those that have gone through the new process, including review by a Federal reviewing official and the de novo hearing as provided in this rule. Claimants will retain the right to appeal their claims to the Appeals Council in all other cases.

As we carefully roll out our new DSI process, we will closely monitor the effects our changes are having. If we determine that our proposed changes are not having the positive effects that we believe they will have, we will amend our regulations as necessary.

#### Response to Public Comments about the Decision Review Board

We received a large number of comments regarding our proposal to establish a DRB, and gradually shift the Appeals Council's functions to the DRB. Although some commenters agreed that the Appeals Council should be eliminated, many opposed the proposal, believing that the Appeals Council provides a reasoned, timely, and consistent response to claimants and intercepts a large number of claims that would not withstand district court review.

We believe that the DRB will perform more effectively than the Appeals Council and provide better relief for claimants, in that we can identify the most error-prone claims. Moreover, the DRB will review the claims that are most likely to be problematic and will be able to focus on promptly identifying decision-making errors that, when corrected, will improve decision-making at all levels of the disability determination process.

While claimants may appeal to the DRB a dismissal by an administrative law judge, we have decided not to allow the claimant the right to request DRB review of our final decision. Claimants have two levels of Federal administrative review after the initial determination, and the administrative law judge level of review allows the claimant the opportunity for a face-to-face hearing. Neither the Social Security Act nor due process requires further opportunities for

administrative review. We believe that our plan to gradually roll out the new process in a careful and measured manner will allow us to closely monitor any effects that our changes have on the disability determination process and will allow us to quickly address any unintended consequences.

Contrary to some of the comments, we do not believe the new process will be more complicated for the claimant. The claimant will receive notice of the administrative law judge's decision and, if the DRB has decided to review the case, the claimant will simultaneously receive notice of the DRB's intent to review. The claimant need take no further action until such time as the DRB issues its decision, although the claimant may submit a written statement to the DRB. The new process will benefit the claimant by providing an opportunity for further administrative review if the case is one that is likely to be problematic. Otherwise, the new process provides the claimant with a final decision more quickly so that the claimant can proceed to Federal district court if the claimant still disagrees with the decision.

Some commenters pointed out that the elimination of the claimant's right to request administrative review of an administrative law judge's decision would prejudice claimants because of the expenses associated with filing a civil action, including a filing fee, and because of the delays in the Federal court system. Still other commenters noted that eliminating the claimant's right to request review would increase the likelihood that erroneous administrative law judge decisions would not be reviewed, because the claimant's representative would be unable to alert the DRB to subtle problems with the administrative law judge's decision that may be overlooked in a screening process.

We do not agree that the removal of a right to appeal an administrative law judge's decision is prejudicial. We believe our selection process for DRB review will identify problematic cases and discrete issues, and we will continuously fine-tune the screening tools based on the experience and knowledge we gain. With respect to a representative's opportunity to alert the DRB to subtle problems, the final rule does allow claimants whose claims have been selected for review to submit a written statement to the DRB.

Some commenters questioned why persons who have claims that do not involve disability have a right to request Appeals Council review, while a disability claimant does not, and thought that retaining the ability of a claimant to request Appeals Council review in non-disability claims would be confusing. As explained in the implementation section, the Appeals Council will continue to review administrative law judge disability decisions in regions where the DSI has not been implemented or administrative law judge decisions that involve non-disability claims and issues, and in those circumstances, claimants will continue to have the right to seek Appeals Council review. Because our focus is on improving the disability claims process, our changes, including the elimination of Appeals Council review, do not include claims involving issues other than when a claimant is disabled. Our notices in individual claims will clearly explain where appeals will be held.

Some commenters were under the impression that the proposed rule allowed favorable decisions to be reviewed, but did not provide administrative review for unfavorable decisions. The commenters thought that this provision would make the review process more unbalanced.

Other commenters were concerned that the DRB might be used to target individual administrative law judges and that some administrative law judges on the DRB would not be inclined to overturn their “peers.” They suggested clarifying the roles and workloads of the DRB to alleviate these concerns, including specifying that the DRB will review favorable and unfavorable decisions in equal numbers.

As explained above, and as set out in §405.410, the DRB will review favorable, partially favorable, and unfavorable cases, and cases will not be selected for DRB review based on the identity of the administrative law judge. We do not believe that administrative law judges serving on the DRB will allow their peer status to interfere with their honest review of disability decisions because administrative law judges currently engage in such review through our peer quality review process.

Some commenters thought that we should not use a computer profile to identify error-prone administrative law judge decisions for review by the DRB and expressed other concerns with the DRB’s selection process. As explained above, we will select cases for review by the DRB in several different ways. This varied approach to selecting cases for review will efficiently identify problematic cases without unfairly targeting any specific category of claimant. We have decided against including in this rule a specific statement regarding the method and range of sample sizes because, as explained above, our methods of selecting cases for review will change over time as we gain experience and knowledge in the use of our computer-based tools.

One commenter asked us to clarify what we meant by cases that involve “fact patterns that increase the likelihood of error” in proposed §405.410(b)(2). We have revised §405.410, and it no longer contains that phrase.

Some commenters questioned how claimants will know when the 90-day period for DRB review of an administrative law judge’s decision specified in proposed §405.420(a)(2) has passed. Other commenters thought that the 90-day time period did not provide a meaningful time limit because the proposed rule did not specify how long the DRB could hold a claim before it issued a notice of intent to review the administrative law judge’s decision. Section 405.420(a)(2) explains that the 90-day period begins on the date the claimant receives notice that the DRB will review the claim. We intend that the DRB will make its decision on whether to review a claim within 10 days after the administrative law judge’s decision. If the DRB decides to review a claim, the claimant will receive notice of the DRB’s intent to review the claim at the same time that the claimant receives the administrative law judge’s decision.

Some commenters noted that the DRB must act within 90 days of the date that the claimant receives the administrative law judge decision, but they thought that the provision could conflict with the requirement in section 223(h) of the Act that we pay interim benefits to claimants in instances in which we do not make a final decision within 110 days after an administrative law judge makes a favorable decision. One commenter recommended that, rather than place a 90-day limit on the DRB’s action, we provide that we will pay a claimant interim benefits if the DRB does not act within 90 (or 110) days of the date of the administrative law judge’s decision.

As explained in §405.420(a), if the DRB decides to review a favorable administrative law judge decision, the administrative law judge's decision will not be our final decision. However, if the DRB does not complete its review within 90 days of the date the claimant receives notice that the DRB will review the claim, the administrative law judge's decision will become our final decision. Section 223(h) of the Act applies when the administrative law judge issues a favorable decision, the Appeals Council takes review of that favorable decision, and the Appeals Council fails to issue our final decision within 110 days after the date of the administrative law judge's decision. Section 223(h) will not apply to cases where the DRB does not complete its review within 90 days of the date the claimant receives notice that the DRB will review the claim because, at that point, the administrative law judge's decision will be our final decision.

A number of commenters objected to the provisions of proposed §405.425(b)(1), under which the DRB could request that the claimant submit a written statement of no longer than three pages to the DRB for its consideration. Some commenters thought that the proposed rule raised due process concerns. Others thought that the provision would result in significant legal and factual errors not being identified for the DRB, that the inability of claimants to submit briefs to the DRB would make the process more unbalanced against claimants, and that the page limit would deprive the DRB of an accurate recitation of the facts of the case. We do not believe the limits we have imposed regarding the length of submissions to the DRB raise any due process concerns as other administrative agencies and certainly courts impose similar limitations. In addition, we have amended §405.425 to allow the claimant to submit a written statement to the DRB, even without a request from the DRB. We have also amended the provision to allow for a maximum of 2,000 words to account for handwritten or typeface larger than 12 point.

Some commenters objected to the 10-day time limit for filing a request for permission to submit a written statement. We have removed the requirement for permission to submit a written statement. However, we have retained the 10-day time period for filing a written statement so that the DRB will be able to complete its review in a timely manner. The written statement need not be submitted by an attorney.

Some commenters objected to the provision of proposed §405.425(d), which would allow the DRB to obtain advice from experts affiliated with the national network. We have accepted the comments and have removed the provision. The DRB nevertheless may consult with the MVES for background information about various conditions, but not in the context of a specific case before it.

Many commenters, including the Administrative Office of United States Courts, thought that the shift of the Appeals Council's functions to the DRB would have an adverse effect on the Federal court system and would result in an increase in the number of cases appealed to the Federal courts. To address these concerns, we plan a gradual rollout to minimize the impact on the judiciary. We plan to begin implementation of the new process in the Boston region, which is one of our smallest regions. Because we are beginning in a small region, we will be able to have the DRB initially review all or most of the administrative law judge decisions that are issued in the Boston region. At the same time, we will be fine-tuning the screening tools for selecting cases for DRB review in those regions where we cannot review every decision. In addition, the DRB will monitor administrative law judge decisions in order to identify trends or

developments that we need to address. Lastly, we believe that comparing DSI with the process it is replacing fails to consider the many positive changes outlined in today's rule.

Another commenter recommended that we revise the rule to require us to provide unrepresented claimants with information about pursuing a civil action in Federal court, including the availability of in forma pauperis applications, and information regarding the name and address of the clerk of the district court in the venue in which review would be sought. We have amended §405.445 to clarify that, in addition to explaining how to seek judicial review, the notification of the DRB's action will explain the claimant's right to representation. We have decided against including more detailed information, such as information on the specific court, due to variations in the information that may be applicable to each jurisdiction.

Some commenters recommended that we provide that if the DRB fails to act within a specified time period, the claimant would receive a "right to sue" letter that would inform the person that he/she could seek judicial review within 60 days of the date the right to sue letter was received. We have not made any changes based on this recommendation because §405.420 already provides that the administrative law judge's decision becomes final if the DRB does not complete its review within 90 days of the date the claimant receives notice that the DRB will review the claim. Section 405.420 explains that the claimant may then seek judicial review of the administrative law judge's decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period.

Reopening

Our current rules allow us to reopen and revise a determination or decision that has become final under certain specified circumstances. We have amended this reopening rule to provide that a final decision made after a hearing may be reopened and revised within six months of the date of the final decision, and we have removed new and material evidence as a basis for finding good cause to reopen such claims. We have not made any other changes to our current reopening rules.

Many commenters opposed our proposal to limit the reopening of prior claims, believing that the proposed rules governing reopening were unfair to claimants who did not have representatives, had mental impairments, had impairments that were difficult to diagnose, such as multiple sclerosis, or whose date last insured had expired. A commenter recommended that we not have separate reopening rules for disability and non-disability claims, but that we use the same rules for all types of claims. Many commenters asked that we retain our current reopening policies. Many commenters recommended that we retain our current standard under which we consider reopening a claim based on “new and material” evidence in certain instances. Some commenters also opposed our proposal to eliminate the ability of adjudicators to reopen a prior determination or decision for one year after the date of the notice of the initial determination “for any reason.”

Given these comments, we decided to retain our existing reopening rules except that once an administrative law judge decision is made, reopening for good cause is limited to six months after the administrative law judge’s decision and new and material evidence will not be a basis

for good cause. We did this to reinforce our view that claimants should make every effort to submit evidence to us as soon as possible. Thus, our existing reopening rules continue to apply unchanged to determinations made by the State agency. In addition, the current reopening rules will apply to Federal reviewing official decisions that become final. Our amendments only apply to final decisions made after a claimant has received a hearing before an administrative law judge.

#### Response to Public Comments about Other Issues

Although some commenters supported our goal of providing a uniform, fair, and flexible standard for all good cause findings, several commenters recommended that we revise the language on good cause. Some commenters thought that we should include good cause exceptions for each of the time limits set out in the proposed rule. We agreed that, except for good cause for filing an appeal, we should state the good cause exceptions for the time limits.

Several commenters objected to our standards for determining good cause in proposed §405.20. They were concerned that the phrase “unusual and unavoidable circumstances beyond your control” was ambiguous and suggested that if we kept the standard, we should change “and” to “or.” We accepted the comment to change “and” to “or” and we added “unexpected,” but we retained “unusual” and “unavoidable” without adding further explanation because we have provided a non-exclusive list of situations that are examples of such circumstances.

Several commenters noted that proposed §405.20(a)(2) required a claimant to show that a “reasonable person” would have been prevented from complying with a deadline due to a physical, mental, educational, or linguistic limitation. These commenters questioned how we intended to use a “reasonable person” standard for individuals with mental impairments or those who were not proficient in English. We agree and have removed the “reasonable person” language.

One commenter questioned what we meant by the phrase “must document” in proposed §405.20(a). To clarify, we decided to simply use the term “show,” which allows adjudicators to consider various types of evidence in determining good cause for missing deadlines to file appeals.

Although some commenters supported proposed §405.30, which would govern the filing of discrimination complaints against adjudicators, a number of commenters thought that the provision lacked specificity. The commenters recommended that we revise the section to incorporate a thorough, complete, and meaningful complaint procedure that would explain matters such as to whom the complaint will be sent, how it will be investigated, and what relief could be afforded to the claimant.

We presently have procedures in place to deal with allegations of administrative law judge bias and complaints of discrimination from the public, but we did not believe that it was necessary to include those procedures in this particular rule which primarily concerns the

processing of disability claims, not discrimination complaints. Nevertheless, in response to a comment, we increased the time period for filing a claim of discrimination from 60 to 180 days.

#### How We Will Implement the New Process

As noted above, we plan to roll out the new DSI process in a measured and careful manner. Gradual implementation will allow us to monitor the effects that our changes are having on the entire disability determination process, and lessons learned during the early stages of implementation will allow us to proceed in an increasingly efficient and effective manner in the later stages of implementation. We will begin implementation in one of our smallest regions, the Boston region, which is comprised of the States of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.

We will carefully monitor the implementation process in the Boston region and quickly address any problems that may arise. We plan to wait an entire year before implementing this rule in a second region so we can be sure that our improved disability determination process is functioning in the manner that we expect and to be certain that we have resolved any unanticipated issues that arise during the first phase of implementation. As we decide to roll this process out to other geographic areas, we will amend the appendix to subpart A of part 405 by publishing a notice in the “Notices” section of the Federal Register. Because we have solicited and responded to public comment for the new disability process through the proposed rule of July 27, 2005 (70 FR 43590), and through this final rule, the notice(s) amending the appendix to subpart A will serve as a technical amendment(s) and will not undergo a formal rulemaking

process. The new DSI process will not take effect in the region(s) identified in the notice until the date identified in the Federal Register notice.

We expect that the experience and knowledge we gain while implementing this rule in the Boston region will help make implementation in the remaining regions proceed more efficiently. We anticipate that after this first year, we will be able to implement the DSI process at a faster pace.

Under our implementation plan, this final rule will only apply to claims that are filed in a region where the new DSI process has been implemented. If a claim is filed in a region where we have not yet implemented the new process, we will use our current procedural regulations, 20 CFR 404.900-.999d and 416.1400-.1499, to adjudicate that claim. For example, if a disability claim is filed in New Hampshire after we have rolled out the new DSI process in the Boston region, this rule will apply to the adjudication of that claim. Such a claim will be screened for possible adjudication as a QDD claim and could be considered by a Federal reviewing official, an administrative law judge, and possibly the DRB if the claim reached those levels. However, if a claim is filed in a State in a region where we have not yet rolled out the new process, that claim will be adjudicated under the present process. In other words, the State DDS will issue an initial determination on that claim and the claimant will be able to seek DDS reconsideration and subsequent review by an administrative law judge and the Appeals Council, if necessary.

If a claimant moves from one State to another after he/she files a claim, adjudicators at subsequent levels of review will apply the regulations that were applicable to the claim initially.

For example, if a claimant files a claim in the Boston region after we have rolled out the new DSI process there, part 405 will apply to the claim at subsequent levels of review, even if the claimant moves to a State in a region where we have not yet rolled out the new process.

Conversely, if a claimant files a claim in a region where we have not yet rolled out the new process, the pre-existing procedural regulations in parts 404 and 416 will apply, even if the claimant subsequently moves to a State where we have rolled out the new process.

As noted above, many of the comments we received regarding our proposed rule expressed concern about the possible effects of the elimination of the Appeals Council and the right of claimants to appeal administrative law judge decisions. We believe that our plan to gradually roll out the new DSI process in a careful and measured manner will allow us to closely monitor any effects that our changes may have on the disability determination process or on the Federal courts, and will allow us to quickly address any unintended consequences.

Under our implementation plan, a claimant will not be able to seek Appeals Council review if his/her claim was initially filed in a region where our new rule has been implemented and the claim was reviewed by a Federal reviewing official and an administrative law judge. In other words, the elimination of the right to Appeals Council review will only apply in regions where we have rolled out the new DSI process and to claims that have been processed from the start under this rule. The Appeals Council will continue to function and review claims that have been filed in regions where we have not yet rolled out the new DSI process. That means that in those regions where we have not yet rolled out the new DSI process, the Appeals Council will continue to perform all of the functions that they currently perform, including: considering requests to

review administrative law judge decisions; considering requests to review hearing request dismissals; considering cases referred from other components; preparing court transcripts; and handling court remand cases.

In addition, the Appeals Council will continue to perform its responsibilities pertaining to review of administrative law judge decisions that involve claims not covered by this rule (such as retirement and survivors insurance claims) or claims involving issues other than whether a claimant is disabled (such as whether a disability claimant has received an overpayment and whether that overpayment should be waived). Our new rule addresses the administrative review process for adjudicating disability claims; claimants will continue to have the right under our pre-existing regulations to seek Appeals Council review of administrative law judge decisions regarding issues that do not pertain to the administrative adjudication of whether a claimant is disabled. The Appeals Council will continue to perform these non-disability functions throughout the entire implementation process. However, once the new process has been rolled out in every region, we plan to transfer these remaining Appeals Council functions to the DRB.

We will be fine-tuning the screening tools we will use in the future to select cases for DRB review in those regions where we cannot review every single decision. As implementation begins and the DRB is reviewing all or most of the decisions issued in the Boston region, we will evaluate our screening tools to ensure that they will capture the appropriate cases for review. In addition, the DRB will monitor administrative law judge decisions in order to identify trends or developments that we need to address. If we determine that this rule adversely affects the

disability determination process or the Federal courts over time, we will make changes to the process as necessary.

Throughout the implementation process, we will meet regularly with individuals representing organizations with various perspectives with respect to the disability process, including claimant representatives and advocates, State agency directors and employees, administrative law judges, and members of the judiciary. Through these discussions, we will continue, and further expand, the dialogue that began when our new approach was first proposed. The meetings will ensure that both we and these interested parties have an opportunity to discuss and better understand the impact of these changes as they are rolled out and to make any needed modifications to achieve the goal of making the right decision as early in the process as possible.

## REGULATORY PROCEDURES

### Executive Order 12866

We have consulted with the Office of Management and Budget and have determined that this rule meets the criteria for an economically significant regulatory action under Executive Order 12866. Thus, it was reviewed by OMB.

The Office of the Chief Actuary (OCACT) estimates that this rule will result in increased program outlays resulting in the following costs (in millions of dollars) over the next 10 years:

	Title II	Title XVI	Medicare	Medicaid	Total
Fiscal Year					
2006	\$5	\$1	\$0	\$2	\$7
2007	40	7	0	17	63
2008	94	11	-1	31	135
2009	209	43	-2	114	364
2010	307	43	-7	119	461
2011	277	39	-14	106	408
2012	156	8	-24	26	166
2013	31	2	-35	-5	-8
2014	2	2	-46	-21	-63
2015	-9	0	-57	-40	-107
Total:					
2006-2010	654	104	-10	282	1,031
2006-2015	1,110	155	-186	347	1,427

Note: The totals may not equal the sum of the rounded components.

Cost estimates for the new disability determination process were developed by the OCACT under the assumptions of the mid-session review of the Fiscal Year 2006 Budget. For these estimates, the OCACT assumed that a significant number of disability allowances would be determined quickly under the quick determinations made by special units at the State DDS. In addition, the new Federal reviewing official determinations are assumed to provide allowances substantially in excess of the number produced by the reconsideration in the current process. The effects of the allowances and documentation are assumed to diminish the number of

allowances made by administrative law judges. With careful implementation of the new process, the OCACT estimates that about the same total number of disability allowances will be made ultimately for each group of new applicants, but that these allowances will, on average, be made somewhat more quickly. Due to this speeding-up of the determination process program costs are expected to be increased somewhat for about the next 10 years. However, after this transitional period, annual costs for the disability programs are not expected to be substantially different, again assuming that the new process is implemented carefully.

We anticipate no more than negligible increases, if any, in the Agency's administrative costs as a result of the issuance of this rule.

#### Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in the following table (Table 1) below we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the increase in benefit payments as a result of the changes to the administrative review process presented in this final rule. All expenditures are classified as transfers to beneficiaries whose benefits are paid on the basis disability under title II of the Act or under disability or blindness under title XVI of the Act.

Table 1 – Accounting Statement: Classification of Estimated Costs (in millions)	
Category	TRANSFERS
Annualized Monetized Transfers	\$140.6
From Who to Whom?	OASI, DI, HI, and SMI and General Fund of the Treasury

### Benefits of New Procedures

This final rule addresses the challenges and issues in the current disability determination process identified through an extensive outreach effort to all interested parties in the disability determination process including the Congress, advocates, claimant representatives, the Federal Judiciary, and State and Federal adjudicators.

It provides for significant changes in our disability process and administrative procedures to improve service and stewardship. The changes will reduce processing time and increase accuracy to help ensure the right decision is made as early in the process as possible. These changes will ensure that adjudicators are accountable for the quality of disability adjudications at every step of the process by ensuring the development and documentation of a complete record for each claimant.

The new quick disability determination process ensures that beneficiaries who are clearly disabled receive favorable determinations within 20 calendar days or less from the date their completed application for benefits is sent to the State agency for adjudication. The creation of the Federal reviewing official provides for a Federal review earlier in the process. The establishment of a national network of experts will provide additional specialized expertise to assist adjudicators at all levels. The new comprehensive quality system will help ensure program integrity as well as continued improvement in decision-making. The Decision Review Board will provide the final agency opportunity to ensure the accuracy of decisions and reduce remands

from the Federal courts. In addition, new procedures will help ensure that adjudicators receive evidence in a timely manner resulting in a more efficient determination process while protecting the rights of the claimant.

#### Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities as they affect only individuals or States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### Federalism Impact and Unfunded Mandates Impact

We have reviewed this rule under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. This rule does not affect the roles of the State, local, or tribal governments. However, the rule takes administrative notice of existing statutes governing the roles and relationships of the State agencies and SSA with respect to disability determinations under the Act.

#### Paperwork Reduction Act

This final rule contains information collection requirements that require Office of Management and Budget clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, we have submitted a clearance request to OMB for approval. We will publish the OMB number and expiration date upon approval.

As required by the PRA, we have published a notice of proposed rulemaking on July 27, 2005 at 70 FR 43590 and solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. While commenters did not specifically address the issues specified above, a number of comments concerned timeframes for sending information to us. For example, commenters disagreed with our proposed 20-day deadline for submitting evidence for a hearing. As a result, we decided to change the proposed rule and will provide 75 days notice of the hearing date and allow evidence to be submitted up to five business days before the hearing with certain exceptions to that five-day requirement. In addition, we expanded timeframes in other sections of the regulation for submitting documentation/evidence to us.

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

#### List of Subjects

##### 20 CFR Part 404

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

##### 20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs, Reporting and recordkeeping requirements;

Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

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

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Dated:

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Jo Anne B. Barnhart  
Commissioner of Social Security

For the reasons set out in the preamble, subparts J, P, and Q of part 404, subparts I, J, and N of part 416 and subparts B and C of part 422 of chapter III of title 20 of the Code of Federal Regulations are amended and part 405 is added 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 is revised 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).

2. Amend §404.903 by removing “and” at the end of paragraph (v), by removing the “.” at the end of paragraph (w) and replacing it with “;” and by adding paragraphs (x) and (y) to read as follows:

§404.903 Administrative actions that are not initial determinations.

\* \* \* \* \*

(x) Determining whether to select your claim for the quick disability determination process under §405.105 of this chapter; and

(y) The removal of your claim from the quick disability determination process under §405.105 of this chapter.

Subpart P—[Amended]

3. The authority citation for subpart P of part 404 is revised to read as follows:

AUTHORITY: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

4. Amend §404.1502 by revising the definition of “nonexamining source” to read as follows:

§404.1502 General definitions and terms for this subpart.

\* \* \* \* \*

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review

process, and at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See §404.1527.

5. Amend §404.1503 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§404.1503 Who makes disability and blindness determinations.

(a) \* \* \* Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

\* \* \* \* \*

6. Amend §404.1512 by revising paragraph (b)(6) and the second sentence of paragraph (c) to read as follows:

§404.1512 Evidence.

\* \* \* \* \*

(b) \* \* \*

(6) At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions based on their review of the evidence in your case record expressed by medical experts or psychological experts that we consult. See §404.1527(f)(2)-(3).

(c) \* \* \* You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. \* \* \*

\* \* \* \* \*

7. Amend §404.1513 by revising the first sentence of paragraph (c) to read as follows:

§404.1513 Medical and other evidence of your impairment(s).

\* \* \* \* \*

(c) \* \* \* At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants, medical and psychological experts (as defined in §405.5 of this chapter), and other program physicians and psychologists to be “statements about what you can still do” made by nonexamining physicians and psychologists based on their review of the evidence in the case record. \* \* \*

8. Amend §404.1519k by revising paragraph (a) to read as follows:

§404.1519k Purchase of medical examinations, laboratory tests, and other services.

\* \* \* \* \*

(a) Subject to the provisions of §405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§404.1624 and 404.1626 of this part.

\* \* \* \* \*

9. Amend §404.1519m by revising the third sentence to read as follows:

§404.1519m Diagnostic tests or procedures.

\* \* \* A State agency medical consultant, or a medical expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. \* \* \*

10. Amend §404.1519s by revising paragraph (c) to read as follows:

§404.1519s Authorizing and monitoring the consultative examination.

\* \* \* \* \*

(c) Subject to the provisions of §405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

\* \* \* \* \*

11. Amend §404.1520a by revising the third sentence and adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§404.1520a Evaluation of mental impairments.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter. \* \* \*

\* \* \* \* \*

(e) Documenting application of the technique. At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the

procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in §405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental

impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in §404.941 of this part, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in §404.941(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

12. Amend §404.1526 by revising the first sentence of paragraph (c) to read as follows:

§404.1526 Medical equivalence.

\* \* \* \* \*

(c) \* \* \* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the

Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. \* \*

\*

13. Amend §404.1527 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§404.1527 Evaluating opinion evidence.

\* \* \* \* \*

(f) \* \* \*

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

\* \* \* \* \*

(4) In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and the Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

14. Amend §404.1529 by revising the third and fifth sentences of paragraph (b) to read as follows:

§404.1529 How we evaluate symptoms, including pain.

\* \* \* \* \*

(b) \* \* \* In cases decided by a State agency (except in disability hearings under §§404.914 through 404.918 of this chapter), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. \* \* \* At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the Federal reviewing official, administrative law judge, and Decision Review Board levels

in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. \* \* \*

\* \* \* \* \*

15. Amend §404.1546 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§404.1546 Responsibility for assessing your residual functional capacity.

(a) \* \* \* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

\* \* \* \* \*

(d) Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter. In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process, the Federal reviewing official, administrative law judge, or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart Q—[Amended]

16. The authority citation for subpart Q of part 404 continues to read as follows:

AUTHORITY: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

17. Amend §404.1601 by adding a new third sentence to the introductory text to read as follows:

§404.1601 Purpose and scope.

\* \* \* Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

\* \* \* \* \*

18. Amend §404.1616 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§404.1616 Medical or psychological consultants.

\* \* \* \* \*

(b) \* \* \* In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

\* \* \* \* \*

(e) \* \* \*

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

\* \* \* \* \*

19. Amend §404.1624 by revising the first sentence to read as follows:

§404.1624 Medical and other purchased services.

Subject to the provisions of §405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. \* \* \*

20. A new part 405 is added to read as follows:

Part 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL  
DISABILITY CLAIMS

Subpart A--Introduction, General Description, and Definitions

405.1 Introduction.

405.5 Definitions.

405.10 Medical and Vocational Expert System.

405.20 Good cause for extending deadlines.

405.25 Disqualification of disability adjudicators.

405.30 Discrimination complaints.

APPENDIX TO SUBPART A OF PART 405—CLAIMS THAT WILL BE HANDLED  
UNDER THE PROCEDURES IN THIS PART

Subpart B--Initial Determinations

405.101 Disability determinations.

405.105 Quick disability determination process.

405.110 Standards for making quick disability determinations.

405.115 Notice of the initial determination.

405.120 Effect of an initial determination.

#### Subpart C--Review of Initial Determinations by a Federal Reviewing Official

405.201 Reviewing an initial determination—general.

405.210 How to request review of an initial determination.

405.215 Procedures before a Federal reviewing official.

405.217 Subpoenas.

405.220 Decision by the Federal reviewing official.

405.225 Notice of the Federal reviewing official's decision.

405.230 Effect of the Federal reviewing official's decision.

#### Subpart D--Administrative Law Judge Hearing

405.301 Hearing before an administrative law judge—general.

405.305 Availability of a hearing before an administrative law judge.

405.310 How to request a hearing before an administrative law judge.

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

405.316 Notice of a hearing before an administrative law judge.

405.317 Objections.

405.320 Administrative law judge hearing procedures—general.

405.325 Issues before an administrative law judge.

405.330 Prehearing conferences.

405.331 Submitting evidence to an administrative law judge.

- 405.332 Subpoenas.
- 405.333 Submitting documents.
- 405.334 Prehearing statements.
- 405.340 Deciding a claim without a hearing before an administrative law judge.
- 405.350 Presenting evidence at a hearing before an administrative law judge.
- 405.351 Closing statements.
- 405.360 Official record.
- 405.365 Consolidated hearing before an administrative law judge.
- 405.366 Posthearing conferences.
- 405.370 Decision by the administrative law judge.
- 405.371 Notice of the decision of an administrative law judge.
- 405.372 Finality of an administrative law judge's decision.
- 405.373 Requesting consideration of new evidence.
- 405.380 Dismissal of a request for a hearing before an administrative law judge.
- 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.
- 405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.
- 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

#### Subpart E--Decision Review Board

- 405.401 Procedures before the Decision Review Board—general.
- 405.405 Decision Review Board.
- 405.410 Selecting claims for Decision Review Board review.
- 405.415 Notification by the Decision Review Board.

405.420 Effect of Decision Review Board action on the right to seek judicial review.

405.425 Procedures before the Decision Review Board.

405.427 Procedures before the Decision Review Board in claims dismissed by an administrative law judge.

405.430 Record before the Decision Review Board.

405.440 Actions that the Decision Review Board may take.

405.445 Notification of the Decision Review Board's action.

405.450 Effect of the Decision Review Board's action.

#### Subpart F--Judicial Review

405.501 Judicial review.

405.505 Extension of time to file a civil action.

405.510 Claims remanded by a Federal court.

405.515 Application of circuit court law.

#### Subpart G--Reopening and Revising Determinations and Decisions

405.601 Reopening and revising determinations and decisions.

#### Subpart H--Expedited Appeals Process for Constitutional Issues

405.701 Expedited appeals process—general.

405.705 When the expedited appeals process may be used.

405.710 How to request an expedited appeal.

405.715 Agreement in expedited appeals process.

405.720 Notice of agreement to expedite appeal.

405.725 Effect of expedited appeals process agreement.

#### Subpart I--Quick Disability Determination Unit and Other State Agency Responsibilities

405.801 Purpose and scope.

405.805 Basic responsibilities for us and the State.

405.810 Deemed notice that the State wishes to perform the quick disability determination function.

405.815 Making quick disability determinations.

405.820 Notifying claimants of the quick disability determination.

405.825 Processing standard.

405.830 How and when we determine whether the processing standard is met.

405.835 Action we will take if a State agency does not meet the quick disability determination processing time standard.

405.840 Good cause for not following the Act, our regulations, or other written guidelines.

405.845 Hearings and appeals.

405.850 Assumption of the quick disability determination function when we make a finding of substantial failure.

#### Subpart J--Payment of Certain Travel Expenses

405.901 Reimbursement of certain travel expenses.

AUTHORITY: Secs. 201(j), 205(a)-(b), (d)-(h), and (s), 221, 223(a)-(b), 702(a)(5), 1601,

1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)-(b), (d)-(h), and (s), 421, 423(a)-(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

## Subpart A--Introduction, General Description, and Definitions

### §405.1 Introduction.

(a) General. This part explains our procedures for adjudicating the disability portion of initial claims for entitlement to benefits based on disability under title II of the Social Security Act or for eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. All adjudicators derive their authority from the Commissioner and have the authority to find facts and, if appropriate, to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

(b) Explanation of the administrative review process. Generally, the administrative review process consists of several steps, which must be requested within certain time periods. The administrative review process steps are:

(1) Initial determination. When you claim disability benefits and a period of disability under title II of the Act or eligibility for disability or blindness payments under title XVI of the Act, we will make an initial determination on your claim. See §§404.902-.903 and 416.1402-.1403 of this chapter for a description of what is and what is not an initial determination.

(2) Review of initial determination. If you are dissatisfied with our initial determination, you may request review by a Federal reviewing official.

(3) Hearing before an administrative law judge. If you are dissatisfied with a decision made by the Federal reviewing official, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless your claim is referred to the Decision Review Board.

(4) Decision Review Board. When the Decision Review Board reviews your claim and issues a decision, that decision is our final decision.

(5) Federal court review. If you are dissatisfied with our final decision as described in paragraphs (b)(3) and (4) of this section, you may request judicial review by filing an action in Federal district court.

(c) Nature of the administrative review process.

(1) Non-adversarial proceeding. In making a determination or decision on your claim, we conduct the administrative review process in a non-adversarial manner.

(2) Evidence considered and right to representation. Subject to the provisions of §§405.331 and 405.430, you may present and we will consider information in support of your claim. We also will consider any relevant information that we have in our records. To help you present

your claim to us, you may have someone represent you, including an attorney.

(3) Evidentiary standards applied. When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence standard, except that the Decision Review Board will review findings of fact under the substantial evidence standard.

(4) Clarity of determination or decision. When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language the specific reasons for allowing or denying your claim.

(5) Consequences of failing to timely follow this administrative appeals process. If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under §405.20 for your failure to request timely review.

(d) Expedited appeals process. You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

§405.5 Definitions.

As used in this part:

Act means the Social Security Act, as amended.

Administrative appeals judge means an official, other than an administrative law judge, appointed by the Commissioner to serve on the Decision Review Board.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

Board means Decision Review Board.

Commissioner means the Commissioner of Social Security, or his or her designee.

Date you receive notice means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

Day means calendar day, unless otherwise indicated.

Decision means the decision made by a Federal reviewing official, an administrative law judge, or the Decision Review Board.

Decision Review Board means the body comprised of administrative law judges and administrative appeals judges that reviews decisions and dismissal orders by administrative law judges.

Disability claim or claim means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms “disability claim” or “claim” do not include a continuing disability review or age-18 redetermination.

Document includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

Evidence means evidence as defined under §§404.1512 and 416.912 of this chapter.

Initial determination means the determination by the State agency.

Medical expert means a medical professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

Medical and Vocational Expert System means the body comprised of medical, psychological, and vocational experts, who have qualifications required by the Commissioner. It provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

Medical and Vocational Expert Unit means the body within the Medical and Vocational Expert System that is responsible, in part, for overseeing the national network of medical, psychological, and vocational experts.

National network means those medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, who have the qualifications required by the Commissioner and who, under agreement with the Medical and Vocational Expert Unit, may provide advice within their areas of expertise to adjudicators at all levels of the administrative review process.

Preponderance of the evidence means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

Psychological expert means a psychological professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal

reviewing official, and administrative law judge levels of the administrative review process.

Quick disability determination means an initial determination on a claim that we have identified as one that reflects a high degree of probability that you will be found disabled and where we expect that your allegations will be easily and quickly verified.

Quick Disability Determination Unit means the component of the State agency that is authorized to make quick disability determinations.

Federal reviewing official means a Federal official who reviews the initial determination.

State agency means the agency of a State that has been designated by the State to carry out the disability determination function. It also means the Federal disability determination services and agencies that carry out the disability determination function in Puerto Rico, Guam, and the District of Columbia.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Vacate means to set aside a previous action.

Vocational expert means a vocational professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

Waive means to give up a right knowingly and voluntarily.

We, us, or our refers to the Social Security Administration.

You or your refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

§405.10 Medical and Vocational Expert System.

(a) General. The Medical and Vocational Expert System is comprised of the Medical and Vocational Expert Unit and a national network of qualified medical, psychological, and vocational experts, which is overseen by the Medical and Vocational Expert Unit. These experts from the national network will assist Federal reviewing officials and administrative law judges in deciding claims. Medical and psychological experts from the national network may assist a State agency in determining disability when the State agency does not have the necessary expertise available to it. The Medical and Vocational Expert Unit also will maintain a national registry of vocational experts having qualifications required by the Commissioner who could provide vocational evidence at the initial level.

(b) Network of medical, psychological, and vocational experts. From time to time, the Commissioner may establish qualifications that medical, psychological, and vocational experts must meet in order to join the network. Any medical, psychological, or vocational experts meeting those qualifications, including State agency medical or psychological consultants, may become part of the network.

(1) Use of medical and psychological experts at the State level. (i) If a State agency requests assistance from us, the Medical and Vocational Expert Unit may assign, to the extent practicable, a network expert to a claim.

(ii) If a State agency is unable to obtain expertise that the Commissioner requires to adjudicate claims involving particular impairments, the Medical and Vocational Expert Unit will

assign a network expert to a claim.

(iii) The medical or psychological expert so assigned will serve on the State agency's adjudication team as a medical or psychological consultant and will be deemed qualified as such under §§404.1616 and 416.1016 of this chapter.

(2) Use of network experts at Federal level. Both Federal reviewing officials and administrative law judges may request evidence from a claimant's treating source, including requesting a treating physician to conduct a consultative examination. However, if they need additional medical, psychological, or vocational documentary or testimonial evidence to adjudicate a claim, they must use the Medical and Vocational Expert System.

(3) Experts who provide evidence at your request. Experts whom you ask to provide evidence on your claim are not required to be affiliated with the network or meet the qualifications that we establish.

(c) National registry of vocational experts. Vocational experts having the qualifications established by the Commissioner may be included in a registry that we will maintain. The registry will be maintained for and made available to State agencies.

§405.20 Good cause for extending deadlines.

(a) If you wish us to extend the deadline to request a review under §405.210, a hearing under

§405.310, action by the Decision Review Board under §405.427(a), or judicial review under §§405.501-.505, you must establish that there is good cause for missing the deadline. To establish good cause, you must show us that—

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from filing a timely request; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from filing a timely request.

(b) Examples of circumstances that, if documented, may establish good cause include, but are not limited to, the following:

(1) You were seriously ill, and your illness prevented you from contacting us in person, in writing, or through a friend, relative, or other person;

(2) There was a death or serious illness in your immediate family;

(3) Important records were destroyed or damaged by fire or other accidental cause;

(4) You were trying very hard to find necessary information to support your claim but did not

find the information within the stated time period;

(5) Within the time limit for requesting further review, you asked us for additional information explaining our action, and within 60 days of receiving the explanation, you requested a review;

(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;

(7) You did not receive notice of the determination or decision; or

(8) You sent the request to another Government agency in good faith within the time limit, and the request did not reach us until after the time period had expired.

#### §405.25 Disqualification of disability adjudicators.

Adjudicators at all levels of the administrative review process recognize the need for fair and impartial consideration of the merits of your claim. Any adjudicator who has any personal or financial interest in the matter pending for determination or decision will withdraw from conducting any proceeding with respect to your disability claim. If the adjudicator so withdraws, we will assign your claim to another adjudicator for a determination or decision.

#### §405.30 Discrimination complaints.

At all levels of the administrative review process, we do not give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of your impairment(s). If you believe that an adjudicator has improperly discriminated against you, you may file a discrimination complaint with us. You must file any such complaint within 180 days of the date upon which you became aware that you may have been discriminated against.

APPENDIX TO SUBPART A OF PART 405—CLAIMS THAT WILL BE HANDLED  
UNDER THE PROCEDURES IN THIS PART

(a) What is this Appendix for? This appendix lists the type of claims that will be handled under the procedures in this part, and in which States we will apply these procedures. If you meet the criteria in paragraphs (b) and (c) of this appendix, we will apply the procedures in this part when we decide your disability claim.

(b) What claims will be handled under the procedures in this part? (1) We will apply the procedures in this part if you file a disability claim (as defined in §405.5) in one of the States listed in paragraph (c) of this appendix.

(2) If you move from one State to another after your disability claim has been filed, adjudicators at subsequent levels of review will apply the regulations that initially applied to the disability claim. For example, if you file a claim in a State in a region in which we have implemented the procedures in this part, the procedures in this part will apply to the disability

claim at subsequent levels of review, even if you move to a State in a region where we have not yet implemented these procedures. Conversely, if you file a claim in a State in a region where we have not yet implemented the procedures in this part, we will adjudicate the claim using the procedures in part 404 or 416 of this chapter, as appropriate, even if you subsequently move to a State where we have implemented the procedures in this part.

(c) Which States are using the procedures in this part? The procedures in this part apply in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

(d) Section 405.835 will be effective one year from the effective date of this rule.

#### Subpart B--Initial Determinations

##### §405.101 Disability determinations.

The State agency, unless it makes a quick disability determination under §§405.105-.110, will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both. The disability examiner will make a determination based on all of the evidence. The written determination will explain in clear and understandable language the specific reasons for and the effect of the initial determination. It will also inform you of your right to review by a Federal reviewing official and your right to representation.

§405.105 Quick disability determination process.

(a) If we identify your claim as one involving a high degree of probability that you are disabled, and we expect that your allegations will be easily and quickly verified, we will refer your claim to a Quick Disability Determination Unit, comprised of experienced State agency disability examiners.

(b) If we send your claim to a Quick Disability Determination Unit, within 20 days of the date your claim is received by the unit, that unit must:

(1) Have a medical or psychological expert (as defined in §405.5 of this part) verify that the medical evidence in the file is sufficient to determine that, as of your alleged onset date, your physical or mental impairment(s) meets the standards we establish for making quick disability determinations, and

(2) Subject to the provisions of paragraph (c) of this section, make the quick disability determination as described in §405.110.

(c) If the Quick Disability Determination Unit cannot make a determination that is fully favorable to you within 20 days of receiving it or if there is an unresolved disagreement between the disability examiner and the medical or psychological expert, the State agency will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of

this chapter or both, and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§405.110 Standards for making quick disability determinations.

Subject to §405.105, when making a quick disability determination, the State agency will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§405.115 Notice of the initial determination.

We will mail a written notice of the initial determination to you at your last known address. The written notice will explain in clear and understandable language the specific reasons for and the effect of the initial determination. The notice also will inform you of the right to review by a Federal reviewing official and explain your right to representation.

§405.120 Effect of an initial determination.

An initial determination is binding unless--

(a) You request review by a Federal reviewing official within the 60-day time period stated in §405.210 of this part, or

(b) We revise the initial determination under subpart G of this part.

## Subpart C--Review of Initial Determinations by a Federal Reviewing Official

### §405.201 Reviewing an initial determination—general.

If you are dissatisfied with the initial determination on your disability claim, you may request review by a Federal reviewing official.

### §405.210 How to request review of an initial determination.

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

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act under an account other than your own, the name and social security number of the wage earner under whose account you are filing,

(3) The reasons you disagree with the initial determination on your disability claim,

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

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

(b) Time limit for filing request. We will review an initial determination if you request review in writing no later than 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (d) of this section).

(c) Place for filing request. You should submit a written request for review at one of our offices. If your disability claim is under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) Extension of time to request review. If you want us to review the initial determination on your disability claim, but you do not request review timely, you may ask us for more time to request review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we will use the standards explained in §405.20 of this part.

§405.215 Procedures before a Federal reviewing official.

(a) General. The Federal reviewing official will review existing evidence and accept and

obtain new evidence in order to make a decision on your claim. The decision will be based on all evidence in the record.

(b) Developing the record. If you have additional evidence that you did not submit with your request for review, you should submit that evidence to the Federal reviewing official as soon as possible. If there is additional evidence that you wish to submit and you are having difficulty obtaining it, the Federal reviewing official may issue a subpoena for the evidence using the process and standards described in §405.217. If the Federal reviewing official determines that additional evidence is necessary, we may obtain such evidence from other sources, including the State agency.

(c) Seeking State agency clarification. In reviewing your claim, if the Federal reviewing official determines that additional information, beyond that provided by the claimant, is necessary, the Federal reviewing official may obtain it from other sources, including the State agency or a treating source. The State agency will provide such clarification or additional information to the Federal reviewing official on a timely basis. In such circumstances, the Federal reviewing official will retain the authority to make the decision as to whether or not you are disabled.

#### §405.217 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, we may issue subpoenas for the production of any documents that are relevant to an issue before the Federal

reviewing official.

(b) To have documents subpoenaed, you must file a written request for a subpoena with us.

The written request must:

(1) Identify the documents with sufficient detail to find them;

(2) State the important facts that the document is expected to show; and

(3) Indicate why these facts could not be shown without that document.

(c) We will pay the cost of issuing the subpoena.

(d) Within five days of receipt of a subpoena, the person against whom the subpoena is directed may ask us to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

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

§405.220 Decision by the Federal reviewing official.

(a) The Federal reviewing official will make a decision based on all of the evidence. The

written decision will explain in clear and understandable language the specific reasons for the decision, including an explanation as to why the Federal reviewing official agrees or disagrees with the rationale in the initial determination.

(b) Before making his or her decision, the Federal reviewing official may consult with a medical, psychological, or vocational expert through the Medical and Vocational Expert System if the Federal reviewing official determines that such consultation is necessary. If the Federal reviewing official disagrees with the initial determination, or if you submit, or the Federal reviewing official otherwise obtains, new and material medical evidence, the Federal reviewing official will consult with a medical or psychological expert through the Medical and Vocational Expert System before making a decision. At all times, the Federal reviewing official retains the authority to make the decision as to whether you are disabled under our rules.

§405.225 Notice of the Federal reviewing official's decision.

We will mail a written notice of the Federal reviewing official's decision to you at your last known address. We will inform you of your right to a hearing before an administrative law judge.

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

The Federal reviewing official's decision is binding unless—

(a) You request a hearing before an administrative law judge under §405.310 of this part within 60 days of the date you receive notice of the Federal reviewing official's decision and a decision is made by the administrative law judge,

(b) The expedited appeals process is used, or

(c) We revise the Federal reviewing official's decision under subpart G of this part.

#### Subpart D--Administrative Law Judge Hearing

##### §405.301 Hearing before an administrative law judge—general.

(a) This subpart explains what to do if you are dissatisfied with a decision by a Federal reviewing official. In it, we describe how you may ask for a hearing before an administrative law judge, and what procedures we will follow when you ask for a hearing.

(b) The Commissioner will appoint an administrative law judge to conduct the hearing. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), the Commissioner may assign your claim to another administrative law judge.

(c) You may examine the evidence used in making the Federal reviewing official's decision, submit evidence, appear at the hearing, and present and question witnesses. The administrative

law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, any new evidence that is timely submitted, and any evidence that the administrative law judge obtains.

§405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if you are dissatisfied with the Federal reviewing official's decision on your disability claim.

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

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

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act under an account other than your own, the name and social security number of the wage earner under whose account you are filing,

(3) The specific reasons you disagree with the decision made by the Federal reviewing official,

(4) A statement of the medically determinable impairment(s) that you believe prevents you from working,

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

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

(b) Time limit for filing request. An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the Federal reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (d) of this section). The administrative law judge may decide your disability claim without an oral hearing under the circumstances described in §405.340.

(c) Place for filing request. You should submit a written request for a hearing at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) Extension of time to request a hearing. If you want a hearing before an administrative law judge, but you do not request it timely, you may ask us for more time to request a hearing. Your request for an extension of time must be in writing and must give the reasons the request

for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in §405.20 of this part.

(e) Waiver of the right to appear. After you submit your request for a hearing, you may ask the administrative law judge to decide your claim without a hearing, as described in §405.340(b). The administrative law judge may grant the request unless he or she believes that a hearing is necessary. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

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

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

(b) Where we hold hearings. We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(c) Determination regarding in-person or video teleconference appearance of witnesses at the hearing. In setting the time and place of the hearing, the administrative law judge will determine whether you or any other person will appear at the hearing in person or by video teleconferencing. If you object to appearing personally by video teleconferencing, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge. If you object to any other person appearing by video teleconferencing, the administrative law judge will decide whether to have that person appear in person or by video teleconference. Section 405.350 explains how you and witnesses appear and present evidence at hearings. Except when you object to appearing by video teleconferencing as described below, the administrative law judge will direct that a person's appearance will be conducted by video teleconferencing when:

(1) Video teleconferencing technology is available,

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

(3) The administrative law judge does not determine that there is another reason why video teleconferencing should not be used.

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

(a) Issuing the notice. After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service. We will mail or serve the notice at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

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

(1) The specific issues to be decided,

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

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

(4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under §405.20,

(5) Whether your or a witness's appearance will be by video conferencing, and

(6) That you must submit all evidence that you wish to have considered at the hearing no later than five business days before the date of the scheduled hearing, unless you show that your circumstances meet the conditions described in §405.331 for missing the deadline.

(c) Acknowledging the notice of hearing. In the notice of hearing, we will ask you to return a

form to let us know that you received the notice. If you or your representative do(es) not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you let us know that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

§405.317 Objections.

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

(2) The administrative law judge will consider your reason(s) for requesting the change and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether we previously granted to you any changes in the time or place of your hearing.

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

§405.320 Administrative law judge hearing procedures—general.

(a) General. A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. The administrative law judge will conduct the proceedings in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into all of the issues raised by your claim, will question you and the other witnesses, and will accept any evidence relating to your claim that you submit in accordance with §405.331.

(b) Conduct of the hearing. The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the notice of the decision is sent to you, the administrative law judge may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described below. If an administrative law judge requires testimony or other evidence from a medical, psychological, or vocational expert in your claim, the Medical and Vocational Expert Unit (see §405.10 of this part) will provide an appropriate expert who has not had any prior involvement in your claim.

§405.325 Issues before an administrative law judge.

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

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

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

§405.330 Prehearing conferences.

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

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

(b) The administrative law judge will have a record of the prehearing conference made.

(c) We will summarize in writing the actions taken as a result of the conference, unless the administrative law judge makes a statement on the record at the hearing summarizing them.

(d) If neither you nor the person you designate to act as your representative appears at the prehearing conference, and under §405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

§405.331 Submitting evidence to an administrative law judge.

(a) You should submit with your request for hearing any evidence that you have available to you. Any written evidence that you wish to be considered at the hearing must be submitted no later than five business days before the date of the scheduled hearing. If you do not comply with this requirement, the administrative law judge may decline to consider the evidence unless the circumstances described in paragraphs (b) or (c) of this section apply.

(b) If you miss the deadline described in paragraph (a) and you wish to submit evidence

during the five business days before the hearing or at the hearing, the administrative law judge will accept the evidence if you show that:

(1) Our action misled you;

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

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

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

(1) Our action misled you;

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

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

§405.332 Subpoenas.

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

(b) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 10 days before the hearing date. The written request must:

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

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

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

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

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

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

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

§405.333 Submitting documents.

All documents prepared and submitted by you, i.e., not including medical or other evidence that is prepared by persons other than the claimant or his or her representative, should clearly designate the name of the claimant and the last four digits of the claimant's social security number. All such documents must be clear and legible to the fullest extent practicable and delivered or mailed to the administrative law judge within the time frames that he or she prescribes. Documents that are typewritten or produced with word processing software must use type face no smaller than 12 point font.

§405.334 Prehearing statements.

(a) At any time before the hearing begins, you may submit, or the administrative law judge may request that you submit, a prehearing statement as to why you are disabled.

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

(1) Issues involved in the proceeding,

(2) Facts,

(3) Witnesses,

(4) The evidentiary and legal basis upon which your disability claim can be approved, and

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

§405.340 Deciding a claim without a hearing before an administrative law judge.

(a) Decision wholly favorable. If the evidence in the record supports a decision wholly in your favor, the administrative law judge may issue a decision without holding a hearing.

However, the notice of the decision will inform you that you have the right to a hearing and that you have a right to examine the evidence on which the decision is based.

(b) You do not wish to appear. The administrative law judge may decide a claim on the

record and not conduct a hearing if—

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

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

(c) When a hearing is not held, the administrative law judge will make a record of the evidence, which, except for the transcript of the hearing, will contain the material described in §405.360. The decision of the administrative law judge must be based on this record.

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

(a) The right to appear and present evidence. You have a right to appear before the administrative law judge, either in person or, when the administrative law judge determines that the conditions in §405.315(c) exist, by video teleconferencing, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) Admissible evidence. The administrative law judge may receive any evidence at the hearing that he or she believes relates to your claim.

(c) Witnesses at a hearing. Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your

representative may ask the witnesses any questions relating to your claim.

§405.351 Closing statements.

You or your representative may present a closing statement to the administrative law judge--

(a) Orally at the end of the hearing,

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

(c) By using both methods under paragraphs (a) and (b).

§405.360 Official record.

All hearings will be recorded. All evidence upon which the administrative law judge relies for the decision must be contained in the record, either directly or by appropriate reference. The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were used in making the decision under review and any additional evidence or written statements that the administrative law judge admits into the record under §§405.320(a) and 405.331. All exhibits introduced as evidence must be marked for identification and incorporated into the record. The official record of your claim will contain all of the marked exhibits and a verbatim recording of all testimony offered at the hearing; it also

will include any prior initial determinations or decisions on your claim. Subject to §405.373, the official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

§405.365 Consolidated hearing before an administrative law judge.

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

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

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

(2) If the administrative law judge consolidates the claims, he or she will decide both claims, even if we have not yet made an initial determination or a Federal reviewing official decision on the other claim.

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

§405.366 Posthearing conferences.

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

(b) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under §405.380(b), you do not have a good reason for failing to appear, we will issue a decision based on the information available in your claim.

§405.370 Decision by the administrative law judge.

(a) The administrative law judge will make a decision based on all of the evidence, including the testimony adduced at the hearing. The administrative law judge will prepare a written decision that explains in clear and understandable language the specific reasons for the decision. While the administrative law judge will not consider the Federal reviewing official's decision to be evidence, the written decision will explain in detail why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the decision.

(b) During the hearing, in certain categories of claims that we identify in advance, the administrative law judge may orally explain in clear and understandable language the specific

reasons for, and enter into the record, a wholly favorable decision. The administrative law judge will include in the record a document that sets forth the key data, findings of fact, and narrative rationale for the decision. Within five days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference and that explains why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the Federal reviewing official's decision. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a record of the oral decision.

§405.371 Notice of the decision of an administrative law judge.

We will send a notice and the administrative law judge's decision to you at your last known address. The notice accompanying the decision will inform you whether or not the decision is our final decision, and will explain your right to representation. If it is not our final decision, the notice will explain that the Decision Review Board has taken review of your claim.

§405.372 Finality of an administrative law judge's decision.

The decision of the administrative law judge becomes our final decision and is binding on you unless—

- (a) The Decision Review Board reviews your claim,

(b) An administrative law judge or the Decision Review Board revises the decision under subpart G of this part,

(c) A Federal court reverses the decision or remands it for further administrative action, or

(d) The administrative law judge considers new evidence under §405.373.

§405.373 Requesting consideration of new evidence.

(a) If the administrative law judge's decision is our final decision, the administrative law judge will consider new evidence submitted after the issuance of the decision if your claim has not been referred to the Decision Review Board. To obtain such consideration, you must request consideration by the administrative law judge at the earliest possible opportunity, but no later than 30 days after the date you receive notice of the decision.

(b) The administrative law judge will accept the evidence if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you

from submitting the evidence earlier; or

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

(c)(1) The administrative law judge will notify you within 10 days whether or not he or she will reconsider the final decision.

(2) If the administrative law judge declines to reconsider his or her decision, the decision remains final. If you choose to seek judicial review, you must file in Federal court within the 60-day period beginning with the date you originally received the final decision.

(3) If the administrative law judge agrees to reconsider his or her decision based on the new evidence, the final decision is vacated and not subject to judicial review. After considering the new evidence, the administrative law judge will take appropriate action, including rendering a decision under §405.370, and we will send you notice of the decision under §405.371.

(d) If the administrative law judge's decision is not our final decision, you must submit your evidence to the Decision Review Board, and the Board will consider it if you make the showings required in paragraph (b) of this section.

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

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

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

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

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

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in §405.20(a) of this part;

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

(d) If you have no right to a hearing under §405.305;

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

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

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

We will mail a written notice of the dismissal of the hearing request to you at your last known address. The notice will tell you that you may ask the administrative law judge to vacate the dismissal (see §405.382), and will explain your right to representation. The notice will also tell you that you may ask the Decision Review Board to review the dismissal if the administrative law judge does not vacate it.

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

If you ask in writing within 30 days after the date you receive the notice of dismissal, an administrative law judge may vacate a dismissal of a hearing request. The administrative law judge will vacate the dismissal if he or she finds that it was erroneous. We will notify you of whether the administrative law judge granted or denied your request.

§405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

The administrative law judge's dismissal of a request for a hearing is binding and not subject to further review, unless it is vacated by the administrative law judge under §405.382 or by the Decision Review Board under §405.427 of this part.

#### Subpart E--Decision Review Board

##### §405.401 Procedures before the Decision Review Board--general.

(a) This subpart describes the Decision Review Board and explains the Board's procedures for reviewing administrative law judge decisions. It explains which claims the Board will review and the effects of that review on your claim.

(b) This subpart also describes how the Board may review the administrative law judge's dismissal of your hearing request and sets out the procedures that we use when you request that the Board vacate the administrative law judge's dismissal order.

##### §405.405 Decision Review Board.

(a) The Board is comprised of administrative law judges and administrative appeals judges, who are appointed to the Board by the Commissioner. It is responsible for evaluating and reviewing certain decisions made by administrative law judges under this part before the decisions are effectuated.

(b) As described in §405.410, the Board will review administrative law judge decisions. You may not appeal an administrative law judge's decision to the Board. The Board may affirm, modify, or reverse the administrative law judge's decision. It also may remand your claim to the administrative law judge for further action and decision.

(c) The Board is also the final step in the administrative review process if the administrative law judge dismissed your request for a hearing under §405.380 of this part. As explained in §405.382 of this part, you must ask the administrative law judge to vacate his or her dismissal order before you may ask the Board to vacate the order.

(d) In addition, the Board may review your claim after the administrative law judge's decision has been effectuated to study our disability determination process. If the Board reviews your claim under this paragraph, it will not change the administrative law judge's decision in your claim, unless the Board determines that the rules in subpart G of this part apply. If the Board determines that subpart G applies, it may reopen and revise the administrative law judge's decision.

(e) The Board also may identify issues that impede consistent adjudication at all levels of the disability determination process and may recommend improvements to that process.

§405.410 Selecting claims for Decision Review Board review.

(a)(1) The Board may review your claim if the administrative law judge made a decision under §§405.340 or 405.370 of this part, regardless of whether the administrative law judge's decision was unfavorable, partially favorable, or wholly favorable to you.

(2) Claims the Board will review may include those where there is an increased likelihood of error or that involve the application of new policies, rules, or procedures. The Board will review both allowances and denials of benefits. It will not review claims based on the identity of the administrative law judge who decided the claim.

(b)(1) The Board may reopen claims under subpart G of this part without regard to the time limits therein, if, in the view of our effectuating component, the administrative law judge's decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim, the decision is clearly inconsistent with the Act or our regulations, or the decision is unclear regarding a matter that affects the outcome of the claim.

(2) If the Board reopens your claim, it will do so no later than 60 days from the date of the administrative law judge's decision.

#### §405.415 Notification by the Decision Review Board.

When the Board reviews your claim, we will notify you. The notice will explain that the Board will review the decision and will complete its action on your claim within 90 days of the date you receive notice. The notice also will explain that if the Board does not complete its

action on your claim within 90 days, the administrative law judge's decision will become our final decision.

§405.420 Effect of Decision Review Board action on the right to seek judicial review.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, if the Board reviews your claim, the administrative law judge's decision will not be our final decision.

(2) If the Board does not complete its review within 90 days of the date you receive notice that the Board will review your claim, the administrative law judge's decision will become our final decision. If you are dissatisfied with this final decision, you may seek judicial review of the decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period. The Board will take no further action with respect to your claim, unless it determines that it can make a decision that is fully favorable to you under the provisions of paragraph (a)(3) of this section.

(3) If the administrative law judge's decision becomes our final decision under the provisions of paragraph (a)(2) of this section, but the Board determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision in accordance with subpart G of this part without regard to the time limits therein, and revise it as appropriate. If you have already sought judicial review of the final decision under section 205(g) of the Act, the Board will notify the Office of the General Counsel, which will then take appropriate action to request that the court remand the claim for the purpose of issuing the Board's decision.

(4) Paragraphs (a)(2) and (3) of this section do not apply to dismissals that you have asked the Board to review. You must wait for the Board to take action. The appeal rights, if any, that will be available at that time depend on the nature of the Board's action and will be explained in the Board's notice.

(b)(1) When the Board reviews your claim, it will either make our final decision or remand the claim to an administrative law judge for further proceedings consistent with the Board's remand order.

(2) If the Board makes our final decision in your claim, it will send you notice of the decision, as explained in §405.445. If you are dissatisfied with the final decision, you may seek judicial review of the decision under section 205(g) of the Act.

(3) If the Board remands your claim to an administrative law judge, the Board's remand order is not our final decision and you may not seek judicial review of the remand order under section 205(g) of the Act. The administrative law judge's decision after remand will become our final decision, unless the Board reviews the decision under §405.410.

(c) The Board's action under §405.427 on your request to vacate the administrative law judge's dismissal of your request for review is not subject to further review.

§405.425 Procedures before the Decision Review Board.

(a) The Board may limit the issues that it considers and when it does, will notify you of those issues.

(b) You may submit a written statement within 10 days of the date you receive notice of the Board's review or the Board may ask you to submit a written statement within a certain time period. The written statement may be no longer than 2,000 words, and if typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite applicable law and specific facts in the record.

§405.427 Procedures before the Decision Review Board in claims dismissed by an administrative law judge.

(a) If you are dissatisfied with the administrative law judge's action on your request to vacate a dismissal under §405.382 of this part, you may request that the Board vacate it. The Board will not consider your request to vacate a dismissal until the administrative law judge has ruled on your request. Your request to the Decision Review Board must be in writing and must be filed within 60 days after the date you receive the notice of the administrative law judge's action under §405.382 of this part.

(b) When you request the Board to review the administrative law judge's dismissal of your claim, you may submit additional evidence, but the Board will accept only evidence that is

relevant to the dismissal issue. All other evidence will be returned to you.

(c)(1) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, you may submit a written statement with the Board at the time that you ask the Board to vacate the dismissal order. The written statement may be no more than 2,000 words, and, if it is typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite to the relevant facts in the record and applicable law.

(2) If you file a written statement with the Board after you request it to vacate the dismissal, the Board will not consider your written statement and will return it to you without placing it in the record.

(d) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, the Board will take one of the following actions:

(1) Vacate the administrative law judge's dismissal order. If the Board issues an order vacating the administrative law judge's dismissal order, it will remand the claim to the administrative law judge for further proceedings consistent with the Board's order, or

(2) Decline to vacate the dismissal order.

§405.430 Record before the Decision Review Board.

Subject to §405.373(b) of this part, in claims reviewed by the Board, the record is closed as of the date of the administrative law judge's decision, and the Board will base its action on the same evidence that was before the administrative law judge. When it reviews a claim, the Board will consider only that evidence that was in the record before the administrative law judge.

§405.440 Actions that the Decision Review Board may take.

(a) General. The Board may review the administrative law judge's findings of fact and application of the law. It will apply the substantial evidence standard in reviewing the findings of fact, but review de novo the application of the law.

(b) Subject to the provision of §405.420(a)(2), when it reviews a claim that has been referred to it, the Board may take one of the following actions:

(1) If the administrative law judge's decision is supported by substantial evidence and there is no significant error of law, affirm the decision;

(2) Where there is an error of law, issue its own decision which affirms, reverses, or modifies the administrative law judge's decision;

(3) Where there are factual findings that are unsupported by substantial evidence and further development is necessary to reach a decision, remand your claim to the administrative law judge

for further proceedings consistent with the Board's order. If the Board remands your claim to the administrative law judge for further proceedings, the administrative law judge must take any action that is specified by the Board in its remand order and may take any additional action that is not inconsistent with the Board's remand order.

§405.445 Notification of the Decision Review Board's action.

We will send notice of the Board's action to you at your last known address. The notice will explain in clear and understandable language the specific reasons for the Board's action. If the Board issues a decision, it will explain in clear and understandable language the specific reasons for its decision and the notice will also explain how to seek judicial review, and explain your right to representation. If the Board issues a remand order, the notice will explain that the remand order is not our final decision.

§405.450 Effect of the Decision Review Board's action.

(a) The Board's decision is binding unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(b) The administrative law judge's decision is binding if the Board does not complete its action within 90 days of the date you receive notice that the Board will review your claim, unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(c) The Board's action to remand your claim to an administrative law judge is binding and not subject to judicial review.

(d) The Board's action under §405.427 on a request to vacate an administrative law judge's dismissal order is binding and not subject to further review.

#### Subpart F--Judicial Review

##### §405.501 Judicial review.

You may file an action in a Federal district court within 60 days of the date our decision becomes final and judicially reviewable.

##### §405.505 Extension of time to file a civil action.

If you have received our final decision, you may request that we extend the time for seeking judicial review in a Federal district court. Your request must be in writing and explain why the action was not filed, or cannot be filed, on time. The request must be filed with the Board. If you show that you have good cause for missing the deadline, we will extend the time period. We will use the standards in §405.20 of this part to determine if you have good cause for an extension of time.

##### §405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part to us for further consideration, the Board may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Board remands a claim to an administrative law judge, it will send you a notice.

§405.515 Application of circuit court law.

We will follow the procedures in §§404.985 and 416.1485 of this chapter for claims decided under this part.

Subpart G--Reopening and Revising Determinations and Decisions

§405.601 Reopening and revising determinations and decisions.

(a) Subject to paragraph (b), the reopening procedures of §§404.987 through 404.996 of this chapter apply to title II claims and the procedures of §§416.1487 through 416.1494 of this chapter apply to title XVI claims.

(b) When we have issued a final decision after a hearing on a claim that you seek to have reopened, for purposes of this part, the time frames for good cause under §§404.988(b) and 416.1488(b) of this chapter are six months from the date of the final decision and we will not find that “new and material evidence” under §§404.989(a)(1) and 416.989(a)(1) of this chapter is

a basis for good cause.

## Subpart H--Expedited Appeals Process for Constitutional Issues

### §405.701 Expedited appeals process—general.

You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. By using the expedited appeals process you may go directly to a Federal district court without first completing the administrative review process that is generally required before the court will hear your claim.

### §405.705 When the expedited appeals process may be used.

If you have filed a disability claim, you may use the expedited appeals process if all of the following requirements are met:

(a) You have received an initial determination and a decision by a Federal reviewing official, but an administrative law judge has not made a decision;

(b) You have submitted a written request for the expedited appeals process, and

(c) You have our written agreement to use the expedited appeals process as required in

§405.715.

§405.710 How to request an expedited appeal.

(a) Time limit for filing request. If you wish to use the expedited appeals process, you must request it—

(1) No later than 60 days after the date you receive notice of the Federal reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (c) of this section), or

(2) At any time after you have filed a timely request for a hearing but before you receive notice of the administrative law judge's decision.

(b) Place for filing request. You should file a written request for an expedited appeal at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(c) Extension of time to request expedited appeals process. If you want to use the expedited appeals process but do not request it in time, you may ask for more time to submit your request. Your request for an extension of time must be in writing and must give the reasons why the

request for the expedited appeals process was not filed in time. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in §405.20 of this part.

§405.715 Agreement in expedited appeals process.

If you meet all the requirements necessary for using the expedited appeals process, our authorized representative shall prepare an agreement. The agreement must be signed by you and by our authorized representative. The agreement must provide that—

- (a) The facts in your claim are not in dispute;
- (b) The sole issue in dispute is whether a provision of the Act that applies to your claim is unconstitutional;
- (c) Except for your belief that a provision of the Act is unconstitutional, you agree with our interpretation of the law;
- (d) If the provision of the Act that you believe is unconstitutional were not applied to your claim, your claim would be allowed; and
- (e) Our decision is final for the purpose of seeking judicial review.

§405.720 Notice of agreement to expedite appeal.

If we agree that you can use the expedited appeals process, a signed copy of the agreement will be mailed to you and will constitute notice. If you do not meet all of the requirements necessary to use the expedited appeals process, we will advise you that your request to use this process is denied and that your request will be considered as a request for a hearing, if you have not already requested a hearing.

§405.725 Effect of expedited appeals process agreement.

After an expedited appeals process agreement is signed, you will not need to complete the remaining steps of the administrative review process. Instead, you may file an action in the Federal district court in the district where you reside. You must file within 60 days after the date you receive notice that the agreement has been signed by our authorized representative.

Subpart I--Quick Disability Determination Unit and Other State Agency Responsibilities

§405.801 Purpose and scope.

This subpart describes the standards of performance and administrative requirements and procedures for States making quick disability determinations for the Commissioner under titles II and XVI of the Act. It also establishes the Commissioner's responsibilities in carrying out the disability determination function and what action we will take if the State agency does not meet

the quick disability determination processing standard. It supplements, and does not replace, the standards of subpart Q of part 404 or subpart J of part 416 of this chapter.

§405.805 Basic responsibilities for us and the State.

(a) General. We will work with the State to provide and maintain an effective system for processing quick disability determinations. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of Quick Disability Determination Units, except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) Our responsibilities. In addition to the responsibilities we have under §§404.1603 and 416.1003 of this chapter, we will:

(1) As described in §405.10 of this part, to the extent practicable, provide medical, psychological, and vocational expertise needed for adjudication of a claim if such expertise is not otherwise available to the State, and

(2) Pay the established Federal rate for the State agency's use of any medical or psychological expert affiliated with the national network and arranged by the Medical and Vocational Expert System.

(c) Responsibilities of the State. (1) In addition to the responsibilities the State has under subpart Q of part 404 or subpart J of part 416 of this chapter, any State that performs the quick disability determination function will organize a separate Quick Disability Determination Unit that will comply with the requirements set out in this subpart. The unit will use experienced disability examiners in making quick disability determinations.

(2) In all States to which this part applies, the medical, psychological, and vocational experts employed by or under contract with the State agency must meet the Commissioner's qualification standards prescribed under §405.10 of this part in order for the State agency to receive reimbursement for the experts' salaries or the cost of their services.

§405.810 Deemed notice that the State wishes to perform the quick disability determination function.

Any State that currently performs the disability determination function under subpart Q of part 404 or subpart J of part 416 of this chapter will be deemed to have given us notice that it wishes to perform the quick disability determination function, in lieu of or in addition to the disability determination function.

§405.815 Making quick disability determinations.

(a) When making a quick disability determination, the State agency will apply subpart B, part 405, of our regulations.

(b) The State agency will make quick disability determinations based only on the medical and nonmedical evidence in its files.

(c) Quick disability determinations will be made by the Quick Disability Determination Unit and a medical or psychological expert, as defined in §405.5 of this part.

(d) The State agency will certify each determination of disability to us in the manner that we prescribe.

(e) The State agency will furnish us with all the evidence it considered in making its determination.

(f) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

§405.820 Notifying claimants of the quick disability determination.

The State agency will prepare notices in accordance with §405.115 of this part whenever it makes a quick disability determination.

§405.825 Processing standard.

The processing standard for quick disability determinations is processing 98 percent of all of the claims that we refer to the Quick Disability Determination Unit within 20 days from the day each claim is received by the State agency, including Saturdays, Sundays, and holidays.

§405.830 How and when we determine whether the processing standard is met.

(a) How we determine processing time. For all quick disability determinations, we calculate the number of days, including Saturdays, Sundays, and holidays, from the day the claim is received by the State agency until the day the State agency releases the claim to us or until the day the State agency places the claim into its regular disability claims adjudication process.

(b) Frequency of review. We will monitor the processing time for quick disability determinations on a quarterly basis separately from the other State disability determinations. We will determine whether or not the processing standard has been met at the end of each quarter.

(c) Provision of performance support for the processing standard. (1) Optional support. We may offer, or a State agency may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. The State agency does not have to be below the processing standard described §405.825. Support will be offered, or granted upon request, based on available resources.

(2) Mandatory support. We will provide a State agency with mandatory performance support if regular monitoring and review reveal that the processing standard described in §405.825 is not met for one calendar quarter.

(3) Support we may provide. In determining what support we may provide, we will apply §§404.1662 and 416.1062 of this chapter.

§405.835 Action we will take if a State agency does not meet the quick disability determination processing time standard.

If a State agency does not meet the established processing standard described in §405.825 for two or more consecutive calendar quarters and does not have good cause under §405.840 for failing to meet the processing standard, we will notify the State agency in writing that we propose to find it has substantially failed to comply with our standards regarding quick disability determinations and that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make quick disability determinations consistent with the Act, our regulations, or other written guidelines, we will assume responsibility for performing the quick disability determination function.

§405.840 Good cause for not following the Act, our regulations, or other written guidelines.

We will follow the procedures in §§404.1671 and 416.1071 of this chapter to determine if the State has good cause for not following the Act, our regulations, or other written guidelines.

§405.845 Hearings and appeals.

We will follow the provisions of §§404.1675 through 404.1683 and §§416.1075 through 416.1083 of this chapter when we propose to find that the State agency has substantially failed to comply with our standards regarding quick disability determinations.

§405.850 Assumption of the quick disability determination function when we make a finding of substantial failure.

(a) Notice to State. When we find that substantial failure exists, we will notify the State in writing that we will assume responsibility for performing the quick disability determination function from the State agency and the date on which the assumption will be effective.

(b) Effective date of assumption. The date of assumption of the quick disability determination function from a State agency may not be earlier than 180 days after our finding of substantial failure, and not before compliance with the requirements of §§404.1692 and 416.1092 of this chapter.

(c) Other regulations. The provisions of §§404.1691, 404.1693, 404.1694, 416.1091, 416.1093 and 416.1094 of this chapter apply under this subpart to the same extent that they apply under subpart Q of part 404 and subpart J of part 416 of this chapter.

#### Subpart J--Payment of Certain Travel Expenses

##### §405.901 Reimbursement of certain travel expenses.

When you file a disability claim, you may incur certain travel expenses that may be reimbursable. We use §§404.999a through 404.999d of this chapter for title II claims and §§416.1495 through 416.1499 of this chapter for title XVI claims in determining reimbursable expenses and for explaining how and where you may request reimbursement.

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

#### Subpart I—[Amended]

21. The authority citation for subpart I of part 416 is revised to read as follows:

AUTHORITY: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802,

and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

Subpart I—[Amended]

22. Amend §416.902 by revising the definition of “nonexamining source” to read as follows:

§416.902 General definitions and terms for this subpart.

\* \* \* \* \*

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, and at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See §416.927.

\* \* \* \* \*

23. Amend §416.903 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§416.903 Who makes disability and blindness determinations.

(a) \* \* \* Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

\* \* \* \* \*

24. Amend §416.912 by revising paragraph (b)(6) and the second sentence of paragraph (c) to read as follows:

§416.912 Evidence.

\* \* \* \* \*

(b) \* \* \*

(6) At the administrative law judge and Appeals Council levels, and at the Federal reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions based on their review of the evidence in your

case record expressed by medical experts or psychological experts that we consult. See §§416.927(f)(2) and (f)(3).

(c) \* \* \* You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. \* \* \*

\* \* \* \* \*

25. Amend §416.913 by revising the first sentence of paragraph (c) to read as follows:

§416.913 Medical and other evidence of your impairment(s).

\* \* \* \* \*

(c) \* \* \* At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants, medical and psychological experts (as defined in §405.5 of this chapter), and other program physicians and psychologists to be “statements about what you can still do” made by nonexamining physicians and psychologists based on their review of the evidence in the case record. \* \* \*

\* \* \* \* \*

26. Amend §416.919k by revising paragraph (a) to read as follows:

§416.919k Purchase of medical examinations, laboratory tests, and other services.

\* \* \* \* \*

(a) Subject to the provisions of §405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§416.1024 and 416.1026 of this part.

\* \* \* \* \*

27. Amend §416.919m by revising the third sentence to read as follows:

§416.919m Diagnostic tests or procedures.

\* \* \* A State agency medical consultant, or a medical expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant

risk. \* \* \*

28. Amend §416.919s by revising paragraph (c) to read as follows:

§416.919s Authorizing and monitoring the consultative examination.

\* \* \* \* \*

(c) Subject to the provisions of §405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

\* \* \* \* \*

29. Amend §416.920a by revising the third sentence and adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§416.920a Evaluation of mental impairments.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter. \* \* \*

\* \* \* \* \*

(e) Documenting application of the technique. At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the Federal reviewing official, administrative law judge, and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in

§405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the Federal reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in §416.1441 of this part,

for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in §416.1441(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

30. Amend §416.924 by revising the text of paragraph (g) to read as follows:

§416.924 How we determine disability for children.

\* \* \* \* \*

(g) \* \* \* When we make an initial or reconsidered determination whether you are disabled under this section or whether your disability continues under §416.994a (except when a disability hearing officer makes the reconsideration determination), we will complete a standard form, Form SSA-538, Childhood Disability Evaluation Form. We will also complete the standard form when we make an initial determination in claims adjudicated under the procedures in part 405 of this chapter. The form outlines the steps of the sequential evaluation process for individuals who have not attained age 18. The State agency medical or psychological consultant (see §416.1016 of this part) or other designee of the Commissioner, or the medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the

procedures in part 405 of this chapter, has overall responsibility for the content of the form and must sign the form to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges, and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step of the sequential evaluation process in their determinations or decisions. In addition, in claims adjudicated under the procedures in part 405 of this chapter, Federal reviewing officials, administrative law judges, and the Decision Review Board will not complete the form but will indicate their findings at each step of the sequential evaluation process in their decisions.

31. Amend §416.926 by revising the first sentence of paragraph (d) and by revising paragraph (e) to read as follows:

§416.926 Medical equivalence for adults and children.

\* \* \* \* \*

(d) \* \* \* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. \* \*

\*

(e) Responsibility for determining medical equivalence. In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see §416.1016 of this part) has the overall responsibility for determining medical equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in §405.5 of this chapter) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under §416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council. In claims adjudicated at the Federal reviewing official, administrative law judge, and the Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding medical equivalence rests with the Federal reviewing official, administrative law judge, or Decision Review Board.

32. Amend §416.926a by revising paragraph (n) to read as follows:

§416.926a Functional equivalence for children.

\* \* \* \* \*

(n) Responsibility for determining functional equivalence. In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see §416.1016 of this part) has the overall responsibility for determining functional equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in §405.5 of this chapter) has the overall responsibility for determining functional equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining functional equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under §416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding functional equivalence rests with the administrative law judge or Appeals Council. In claims adjudicated at the Federal reviewing official, administrative law judge, and Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding functional equivalence rests with the Federal reviewing official, administrative law judge, or Decision Review Board.

33. Amend §416.927 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§416.927 Evaluating opinion evidence.

\* \* \* \* \*

(f) \* \* \*

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404 of this chapter, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

\* \* \* \* \*

(4) In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

34. Amend §416.929 by revising the third and fifth sentences of paragraph (b) to read as follows:

§416.929 How we evaluate symptoms, including pain.

\* \* \* \* \*

(b) \* \* \* In cases decided by a State agency (except in disability hearings under §§416.1414 through 416.1418 of this part), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. \* \* \* At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the Federal reviewing official, administrative law judge, and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. \* \* \*

\* \* \* \* \*

35. Amend §416.946 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§416.946 Responsibility for assessing your residual functional capacity.

(a) \* \* \* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in §405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

\* \* \* \* \*

(d) Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter. In claims adjudicated under the procedures in part 405 of this chapter at the Federal reviewing official, administrative law judge, and Decision Review Board levels of the administrative review process, the Federal reviewing official, administrative law judge, or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart J—[Amended]

36. The authority citation for subpart J of part 416 continues to read as follows:

AUTHORITY: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

37. Amend §416.1001 by adding a new third sentence to the introductory text to read as follows:

§416.1001 Purpose and scope.

\* \* \* Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

\* \* \* \* \*

38. Amend §416.1016 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§416.1016 Medical or psychological consultants.

\* \* \* \* \*

(b) \* \* \* In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

\* \* \* \* \*

(e) \* \* \*

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

\* \* \* \* \*

39. Amend §416.1024 by revising the first sentence to read as follows:

§416.1024 Medical and other purchased services.

Subject to the provisions of §405.805(b)(2) of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. \* \* \*

Subpart N—[Amended]

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

AUTHORITY: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

41. Amend §416.1403 by removing “and” at the end of paragraph (a)(20), by removing the “.” at the end of paragraph (a)(21) and replacing it with “;” and by adding paragraphs (a)(22) and (23) to read as follows:

§416.1403 Administrative actions that are not initial determinations.

(a) \* \* \*

(22) Determining whether to select your claim for the quick disability determination process under §405.101 of this chapter; and

(23) The removal of your claim from the quick disability determination process under §405.101 of this chapter.

## PART 422—ORGANIZATION AND PROCEDURES

### Subpart B—[Amended]

42. The authority citation for subpart B of part 422 is revised to read as follows:

AUTHORITY: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b-1, and 1320b-13), and sec. 7213(a)(1)(A) of Pub. L. 108-458.

43. Amend §422.130 by revising the first sentence of paragraph (b) and the first and second sentences of paragraph (c) to read as follows:

§422.130 Claim procedure.

\* \* \* \* \*

(b) \* \* \* An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration's records (see subpart H of part 404 of this chapter for evidence requirements in nondisability cases and subpart P of part 404 of this chapter and part 405 of this chapter for evidence requirements in disability cases). \* \* \*

(c) \* \* \* In the case of an application for benefits, the establishment of a period of disability, a lump-sum death payment, a recomputation of a primary insurance amount, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, the Social Security Administration, after obtaining the necessary evidence, will make a determination as to the entitlement of the individual claiming or for whom is claimed such benefits, and will notify the applicant of the determination and of his right to appeal. Section 404.1520 and subpart I of part 405 of this chapter have discussions of the respective roles of State agencies and the

Administration in the making of disability determinations and §404.1521 and subparts B and I of part 405 of this chapter have information regarding initial determinations as to entitlement or termination of entitlement in disability claims. \* \* \*

\* \* \* \* \*

44. Revise §422.140 to read as follows:

§422.140 Reconsideration or review of initial determination.

Subject to the provisions of subpart C of part 405, if you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. In claims adjudicated under the procedures in part 405 of this chapter, if you are dissatisfied with an initial determination, you may request review by a Federal reviewing official. The information in §404.1503 and part 405 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration (or review by Federal reviewing officials) of initial determinations involving disability. However, in cases in which a disability hearing as described in §§404.914 through 404.918 and 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate

Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered (or reviewed by a Federal reviewing official in claims adjudicated under the procedures in part 405 of this chapter), we will mail you written notice and inform you of your right to a hearing before an administrative law judge (see §422.201 and subpart D of part 405, and 42 CFR 405.904(a)).

Subpart C—[Amended]

45. The authority citation for subpart C of part 422 continues to read as follows:

AUTHORITY: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

46. Amend §422.201 by revising the first and second sentences in the introductory text and by adding a new third sentence to the introductory text and by revising paragraphs (b) and (c) to read as follows:

§422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Hearings and Appeals, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 408, 410 and 416 of this chapter. It also describes the procedures for requesting such hearing or

Appeals Council review, and for instituting a civil action for court review for cases decided under these parts. Procedures related to hearings before an administrative law judge, review by the Decision Review Board, or court review in claims adjudicated under the procedures in part 405 of this chapter are explained in subparts D, E, and F of part 405 of this chapter. \* \* \*

\* \* \* \* \*

(b) Title VIII of the Act, §§408.1040 through 408.1060 of this chapter;

(c) Title XVI of the Act, §§416.1429 through 416.1483 of this chapter;

\* \* \* \* \*