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NELLO, GA	FIX	(Lat. 34°29'58.43" N, long. 084°25'00.24" W)
TALLE, GA	FIX	(Lat. 34°37'48.05" N, long. 083°40'48.64" W)
MILBY, SC	WP	(Lat. 34°41'02.23" N, long. 083°18'42.53" W)
BURGG, SC	WP	(Lat. 35°02'00.55" N, long. 081°55'36.86" W)

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Issued in Washington, DC, on August 19, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2022–0013]

RIN 0960–A171

Setting the Manner of Appearance of Parties and Witnesses at Hearings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our hearing regulations to provide that claimants may appear at hearings in one of four ways: by agency video, by online video, by audio, or in person. Those four manners will all be standard manners of appearance in our hearing process. For online video and audio appearances, claimants may appear for hearings remotely, using private electronic devices that we do not own, operate, or approve. For online video appearances, a claimant may appear for a hearing using approved online video conferencing applications, rather than conferencing options using equipment that we own or approve. Additionally, while our current regulations permit us to schedule claimants to appear by telephone in limited circumstances only, this final rule will allow us to schedule claimants to appear by audio without similar restrictions, if the claimant does not object to appearing in that manner. We expect that this final rule will provide us and claimants with additional flexibility, allowing us to manage our hearing process more efficiently.

DATES: This final rule is effective November 23, 2024.

FOR FURTHER INFORMATION CONTACT: Susan Swansiger, Office of Hearings Operations, Social Security Administration, 250 E Street SW, Washington DC 20024, (703) 605–8500. 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 <https://www.ssa.gov/>.

SUPPLEMENTARY INFORMATION: On May 19, 2023, we published a notice of proposed rulemaking (NPRM), *Setting the Manner of Appearance of Parties and Witnesses at Hearings*,¹ which proposed to update our hearing regulations by changing the term “video teleconference” to “video”; changing “telephone” to “audio”; and permitting “video” and “audio” to be used as standard manners of appearance. We proposed these changes to clarify that claimants may appear for hearings remotely using private electronic devices that we do not own, operate, or approve, and to make clear that a claimant may appear for a hearing using approved online video conferencing applications, rather than only conferencing options using equipment that we own or approve. We are making final the changes that we proposed in the NPRM, with certain modifications. The preamble to the NPRM provides the background for these changes, and we explain our reasons for modifications to the original proposal below.²

Background

When we determine your rights under title II or title XVI of the Social Security Act, we generally follow an administrative review process that consists of the following steps: an initial determination, and, as necessary, a reconsideration, a hearing with an administrative law judge (ALJ), and review by the Appeals Council.³ After completing these steps, a claimant may request judicial review of our final decision by filing a civil action in Federal district court.

As noted above, the third step in the administrative review process is a hearing held by an ALJ.⁴ Before the Coronavirus Disease 2019 (COVID–19)

national public health emergency, we generally scheduled a claimant to appear at a hearing in one of three ways: by video teleconferencing (VTC),⁵ in person, or by telephone. Further, we scheduled claimants to appear by telephone in certain limited circumstances only, such as when we found an appearance by VTC or in person was not possible, or if other extraordinary circumstances prevented the claimant from appearing by VTC or in person.⁶

As explained in the NPRM in more detail, in March 2020, we began offering claimants the option to appear at hearings by telephone and later offered claimants the additional option to appear by online video in response to the COVID–19 national public health emergency.⁷ Based on our positive experience with these manners of appearance during the COVID–19 national health emergency and beyond,⁸ and in an effort to incorporate greater flexibility into our rules for claimants, we are adopting audio and online video as standard manners of appearance in our hearing process.⁹

Under this final rule, there will be four standard manners of appearance: agency video (*i.e.*, what we previously had defined as VTC), online video, audio, and in person. In the NPRM, we proposed to use the broader term “video” to capture appearances by agency video (where a person attends a hearing at one of our offices using our video equipment) as well as by online video (where a person attends a hearing from a private location using private equipment). As we explain in greater

⁵ We have traditionally used the term VTC to refer to an appearance by video using our equipment or equipment that we approve in a Field Office or other pre-approved site.

⁶ 20 CFR 404.936(c)(2)–(3); 404.937(b)(2), (c); 416.1436(c)(2)–(3); and 416.1437(b)(2), (c).

⁷ We began offering appearances at hearings by telephone in March 2020 and by online video in December 2020. Currently, we conduct online video appearances using a software application called “Microsoft Teams.” For more information, see https://www.ssa.gov/appeals/hearing_video.html.

⁸ 88 FR at 32146.

⁹ We will generally direct anyone we call as a witness to appear by audio, agency video, or online video. A witness called by the claimant, like our previous policy, will generally appear in the same manner as the claimant, unless the witness is unable to do so. If the witness is unable to appear in the same manner as the claimant, we will generally direct the witness to appear by audio or agency video.

¹ 88 FR 32145.

² The preamble to the NPRM is available for public viewing at <https://www.regulations.gov> and searching for document “SSA–2022–0013” or <https://www.federalregister.gov/documents/2023/05/19/2023-10564/setting-the-manner-of-appearance-of-parties-and-witnesses-at-hearings>.

³ 20 CFR 404.900(a) and 416.1400(a).

⁴ Under 20 CFR 404.956(a) and 416.1456(a), the Appeals Council may assume responsibility for a hearing request(s) pending at the hearing level of our administrative review process.

detail below, this final rule distinguishes between agency video and online video appearances.

We are also revising our regulations regarding scheduling the manner of appearance for individuals who appear before the Appeals Council for oral argument to keep them aligned with the ALJ hearing process. Similar to the changes above, we are making agency video, online video, audio, and in person standard manners of appearance for oral arguments before the Appeals Council.

In addition, as proposed in the NPRM, we added language to 20 CFR 404.944 and 416.1444 to clarify that an ALJ may stop a hearing temporarily and continue it at a later date if the ALJ finds that one or more variables outside of our control materially affected a hearing.

Claimants may object to appearing by audio or agency video, and a claimant must agree to appear by online video before we will schedule that manner of appearance. If a claimant objects to audio and agency video and does not agree to online video, we will schedule that claimant to appear at a hearing in person. However, in certain limited circumstances, we will mandate an audio appearance notwithstanding a claimant's objection to appearing in that manner.¹⁰ If a claimant submits an untimely objection to appearing by audio or agency video, or if the claimant submits an untimely agreement to appear by online video, we will evaluate whether good cause exists for the late submission under the standards in sections 404.911 and 416.1411.¹¹

How This Final Rule Differs From the NPRM

In a number of places, this final rule differs from our proposed rule. We list the changes below and further explain the substantive changes in the section titled "Comments and Responses."

- We modified §§ 404.929 and 416.1429 to make clear that there are two ways to appear by "video": "agency video" and "online video." In the NPRM, we used the term "video" to refer to both types of video appearances. Commenters, however, expressed concerns about potential confusion

stemming from the general term "video." By identifying and defining these two types of video in the regulations, we anticipate alleviating these concerns and confusion. We defined "agency video" as "video, with audio functionality, using our equipment in one of our offices."¹² We defined "online video" as "video, with audio functionality, using a personal electronic device in a private location the claimant chooses."

- We made several revisions to §§ 404.936 and 416.1436. First, in paragraph (a), we clarified that we set the manner(s) of appearance for all hearings, and we set the place of a hearing only when we schedule a claimant to appear in person or by agency video. Thus, we do not set the place of the hearing when we schedule the claimant to appear by online video or audio. Second, in paragraphs (b), (c), and (d), we removed the general term "video" and instead used the more specific terms "online video" and "agency video," as appropriate. Third, in paragraph (c), we explained that we will only schedule a claimant to appear by online video if they agree to appear in that manner. This agreement requirement is a change from the NPRM, where we proposed to give claimants an opportunity to object to appearing by online video. Fourth, we relocated some information from paragraph (c) to paragraph (d) to clarify that in limited circumstances only, we will schedule an audio appearance notwithstanding a claimant's objection to an audio appearance. Fifth, we explained that for audio appearances under paragraph (d), we will call the individual using the individual's telephone number(s). Sixth, in paragraph (e), we explained that prior to scheduling a claimant's hearing, we will notify them that we may schedule them to appear by online video if they agree to appear in that manner. To agree to appear by online video, a claimant must notify us of their agreement in writing within 30 days of the date they receive that notice. If a claimant notifies us after the 30-day deadline, we will

¹² Agency video includes agency-approved sites and video equipment under the Representative Video Project (RVP). For more information on the Representative Video Project, see Chief Judge Bulletin (CJB) 11-04 and https://www.ssa.gov/appeals/documents/Representative_Video_Project_RVP-508.pdf.

¹⁰ See 20 CFR 404.936(d)(2) through (5); 404.937(b)(2), (c); 416.1436(d)(2) through (5); 416.1437(b)(2), (c).

¹¹ See 404.936(d)(1), (e) and 416.1436(d)(1), (e).

extend the time period if they show good cause for missing the deadline. Paragraph (e) also explains that a claimant may withdraw their agreement to appear by online video at any time before the start of the hearing, which should provide additional flexibility for claimants.

- In §§ 404.937 and 416.1437, we added the option for claimants to agree to appear by online video (instead of allowing audio as the only option) when the Hearing Office Chief ALJ determines that the claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing, or we have banned the claimant from any of our facilities.

- In §§ 404.938 and 416.1438, we explained in paragraph (b)(5) that the notice of hearing will tell the claimant the time and manner of appearance and, for in person and agency video appearances, the place of the hearing.

- In §§ 404.944 and 416.1444, we defined the term "materially affects" to mean prevents the hearing from proceeding.

- In §§ 404.950 and 416.1450, we made two revisions. First, in paragraph (a), we explained that a party to the hearing or their designated representative may appear before an ALJ in the manner described in §§ 404.936 and 416.1436. Second, in paragraph (e), we corrected cross references by replacing §§ 404.936(c)(4) and 416.1436(c)(4) with §§ 404.936(c)(2) and 416.1436(c)(2).

- In §§ 404.976 and 416.1476, we distinguished between "agency video" and "online video."

- We made other minor conforming changes throughout the final rule.

Comparison of Manners of Appearance Available at Different Times

Table 1 below compares the manner of appearance options that were available before the COVID-19 national public health emergency, those that were available during the COVID-19 national public health emergency to the effective date of this final rule, and those that will be available under this final rule when it becomes effective. It also notes whether a claimant may object to a manner of appearance or must consent to a manner of appearance.

TABLE 1—COMPARISON OF MANNERS OF APPEARANCE AVAILABLE AT DIFFERENT TIMES

Manner of appearance	Available before the COVID-19 national public health emergency	Available during the COVID-19 national public health emergency to the effective date of the final rule	Available when our final rule becomes effective
In-person	Yes (claimant cannot object)	Postponed from March 2020 through March 2022, when we began incrementally reopening our hearing offices to the public. (claimant cannot object).	Yes (claimant cannot object).
Agency Video (formerly "VTC").	Yes (claimant can object)	Postponed from March 2020 through March 2022, when we began incrementally reopening our hearing offices to the public. (claimant can object).	Yes (claimant can object).
Online video	No	Available as of December 2020 (claimant must agree before we schedule that manner of appearance).	Yes (claimant must agree before we will schedule).
Audio (formerly "telephone").	Yes, but only in very limited circumstances. (claimant cannot object when required).	Available as of March 2020 (claimant must agree before we schedule that manner of appearance, but we can require a claimant to appear by telephone in very limited circumstances).	Yes (claimant can object, unless we require the claimant to appear by audio, (called via telephone number) in very limited circumstances).

TABLE 2—SUMMARY OF MANNERS OF APPEARANCE AND POTENTIAL CLAIMANT ACTIONS UNDER THIS FINAL RULE

Manner of appearance	Can a claimant object to this manner of appearance?	Does a claimant need to agree to this manner before we schedule it?
Audio	Yes, though we may still require the claimant to appear by audio in very limited circumstances.	No, but claimants may object to this manner of appearance.
Online Video	Not Applicable. We will not schedule an online video appearance unless a claimant tells us they agree to appear in that manner.	Yes.
Agency Video	Yes	No, but claimants may object to this manner of appearance.
In-Person	No	No.

Comments Summary

We received 44 public comments on our NPRM during the comment period. Of the total comments, 42 are available for public viewing at <https://www.regulations.gov/docket/SSA-2022-0013>. We excluded a comment that was an exact duplicate submitted by the same commenter, and we excluded a comment submitted by one of our employees posted in an official capacity. The publicly available comments were from:

- Individual citizens;
- Advocacy groups comprising claimant representatives;
- Other advocacy groups;
- Organizations and firms that represent claimants; and
- Other organizations with an interest in our proceedings.

We carefully considered the public comments we received, and we responded to them below.

Comments and Responses

Support for Proposal

Comment: A majority of commenters supported our proposal to update our hearing regulations to permit "video" and "audio" as standard manners of appearance. Commenters said permanently adopting remote appearances as standard manners of appearance will result in greater flexibility for claimants and witnesses. They stated that both video and audio appearances can be advantageous for claimants who have limited

transportation options, live far from hearing offices, or have circumstances like limited mobility or severe anxiety. One commenter expressed that our proposal may reduce cost, stress, and scheduling conflicts experienced by claimants and representatives.

In addition, many commenters supported multiple manners of appearance being available to claimants, and supported the NPRM because it maintains the option of in-person appearances and permits objection to appearing by other means. Other commenters expressed that preserving the option of in-person appearances will continue to serve those who are most comfortable with this method, for reasons like unreliable access to technology or private, quiet spaces.

Several commenters also agreed that audio and video appearances will allow us to balance hearings across offices to help reduce administrative delays. Commenters said that the ability to schedule hearings remotely by audio or online video without requiring "extreme circumstances" will reduce delays and allow for more hearings to be held in a timely manner. One commenter stated they have experienced numerous occasions where claimants failed to make an in-person appearance due to unexpected traffic, having their transportation canceled at the last minute and being unable to find alternate transportation, having the physical inability to sit in the car long enough to travel to the hearing office, having a panic attack from being around

others due to a mental impairment, or being unable to be around others due to a compromised immune system.

Response: We acknowledge the general support received from many commenters.

Recommendations for Amendments to the Proposal

Expanding Audio and Video Appearances Further

Comment: Several commenters expressed that we should expand the use of video and audio beyond what we proposed. A commenter stated that "unrestricted use" of video and audio should be allowed during any Social Security proceeding. Commenters provided examples of when expanded use of video should be allowed, including all stages of the disability determination process in which claimants have the opportunity to appear (e.g., age 18 redeterminations and benefits termination following a continuing disability review). Other commenters expressed that we need to "eliminate barriers to the public" and always make remote hearings available, and that "safety and convenience mandate" the option of a video appearance for any official Social Security matter requiring face to face communication, including communication with any Social Security field office or Disability Determination Services (DDS) office.

Response: We acknowledge and appreciate the desire for greater

flexibility in all communications with us. While we may consider additional options in the future, for this final rule, we continue to focus on manners of appearance at ALJ hearings and before the Appeals Council.

Comment: One commenter suggested eliminating in-person appearances to mitigate climate change and practice fiscal responsibility. The commenter said that a cost-benefit analysis would show the costs of in-person appearances are “enormous,” and the benefits are minimal. The commenter also expressed that offering in-person appearances requires the agency to buy and maintain office space throughout the country and requires ALJs, hearing office staff, claimants, representatives, and hearing reporters to travel to hearing offices. According to the commenter, maintaining a large office presence and requiring hearing participants to travel generates carbon emissions and other pollution, and costs taxpayer money. In addition, the commenter said that eliminating in-person appearances would provide the agency with an advantage in recruiting and retaining personnel, and balancing workloads, by removing the need for personnel to be tied to a particular geographic location. Further, the commenter expressed that the agency’s experience over the past three years shows the number of claimants who want to appear in-person is “vanishingly small.” According to the commenter, in the relatively rare instances in which claimants have objected to telephone and video appearances, most of these objections have been “raised at the eleventh hour for the apparent strategic advantage of postponing hearings without showing good cause.” The commenter expressed that for the small number of claimants who want to be seen as well as heard, the availability of video appearances satisfies that need.

Response: We appreciate the commenter’s preference for audio and video appearances. This final rule, however, does not eliminate in-person appearances because some claimants value appearing in person for various reasons. For example, some commenters expressed that in-person appearances allow claimants to have meaningful interaction with decision-makers and allow decision-makers to fully observe a claimant’s condition. While our experiences demonstrate that audio and video appearances also allow meaningful interaction and provide a sufficient basis for an ALJ to reach a policy compliant decision, it is important to retain in-person appearances at this time to accommodate those claimants who

would object to or would have difficulty appearing by the other manners of appearance this final rule makes available. We also understand that some claimants feel more comfortable appearing in person. Depending on the facts of the case, we may find it necessary to schedule an appearance in person.¹³

Comment: A commenter said if the agency is to retain in-person appearances and provide an order of preference, audio appearances should be first, video appearances should be second, and in-person appearances should be last. The commenter expressed that the current phrasing of §§ 404.936(c)(2) and 416.1436(c)(2) appears to place video and in-person appearances in the highest order of preference, with audio appearances as a last resort. According to the commenter, this seems contrary to our explanation at the beginning of the NPRM, which suggests we wish to eliminate a showing of extraordinary circumstances as a requirement for audio hearings. The commenter said experiences during the COVID-19 pandemic have shown that the vast majority of claimants want to appear by audio, and audio appearances are also the simplest type to schedule, coordinate, and conduct. In addition, the commenter said that video appearances have been reasonably successful, but they involve greater technological complexity than audio appearances and require high internet bandwidth, and interruptions to hearings occur because deficiencies in these areas remain common. According to the commenter, if our rule specifies an order of preference, it should state that we will schedule a video appearance only if a claimant timely objects to an audio appearance, and an in-person appearance (if offered at all) will be scheduled only if the claimant timely objects to both audio and video. The commenter suggested that, alternatively, the rule could be written permissively to provide broad flexibility to hearing offices, without any particular hierarchy specified or implied among the options for manner of appearance. That is, the rule could simply state that the agency may schedule an audio or video appearance in any case in which the claimant does not timely opt out, without specifying an order of preference or requiring

extraordinary circumstances for any manner of appearance.

Response: We did not propose to establish any hierarchy for setting the manner of appearance, and we have made revisions to this final rule to clarify that. This final rule neither prioritizes a certain manner of appearance nor provides a hierarchy of scheduling preference. As the comments show, there is support for all manners of appearance: audio, both versions of video, and in person. When two or more manners are available to schedule,¹⁴ we will consider efficiency and the facts of a particular case when determining a claimant’s manner of appearance. In order to prevent any implication of an order of preference, under this final rule, we reorganized some of the regulatory text mentioned by the commenter to clarify that we may schedule an audio appearance in certain limited circumstances notwithstanding a claimant’s objection to an audio appearance, and that our regulations do not otherwise set a priority of scheduling.¹⁵ This flexibility will allow us to schedule more timely hearings for claimants.

Additionally, some commenters appear to have used the terms “opt out” and “object to” interchangeably in discussing our proposed rule. However, both our proposed rule and this final rule give claimants an opportunity to object to certain manners of appearance, not opt out of them. Furthermore, our current rules allow claimants to object to appearing by VTC, not opt out. An opt out process would allow a claimant to unilaterally eliminate a manner of appearance, whereas an objection process allows a claimant to tell us that they do not want to appear in a certain manner. Under this final rule, when a claimant objects to appearing by audio or agency video, there are limited circumstances when, despite the objection, we may still schedule that manner of appearance, such as when we have banned a claimant from our facilities to ensure the safety of the public and our employees, or when we cannot schedule a claimant to appear by agency video or by online video and extraordinary circumstances prevent them from appearing in person.¹⁶

¹⁴ If a claimant objects to an appearance by audio or agency video and does not agree to appear by online video, we will generally schedule the claimant to appear in person. Otherwise, we will determine the manner of appearance from among in person and the options to which the claimant agreed and/or did not object.

¹⁵ See 20 CFR 404.936(d)(2)–(5) and 416.1436(d)(2)–(5).

¹⁶ See 20 CFR 404.936(d)(2) through (5), 404.937(b)(2), 404.937(c), 416.1436(d)(2) through (5), 416.1437(b)(2), and 416.1437(c).

¹³ Under 20 CFR 404.936(c)(1)(ii) and 416.1436(c)(1)(ii) of this final rule, we consider two factors in deciding which manner of appearance to schedule: (1) which manner would be most efficient for conducting the hearing, and (2) any facts in the particular case that provide a good reason to schedule a certain manner of appearance.

Comment: One commenter suggested that we should automatically schedule hearings with audio as the default method, and if there is a “legitimate and valid reason” why we should conduct a hearing in another manner (video or in person), the claimant should specifically request it, and all parties should consent. Similarly, a commenter recommended that we confirm directly with the claimant in writing their wish for an in-person appearance rather than make an in-person appearance the default format. The commenter asserted that this approach would “further support efficiency and overall fairness of the hearing process.” A commenter expressed that representatives should not be required to “submit so much supplemental documentation the minute a claim is at the hearing level or even before that” to ensure the hearing gets scheduled by audio. The commenter stated hearing offices currently create unnecessary barriers for claimants and their representatives to ensure a hearing is scheduled by phone. The commenter expressed there are substantial delays and hurdles to overcome to correct an inadvertently scheduled in-person appearance.

Response: We understand the commenters’ preference for audio appearances. However, we did not adopt the recommendation to make audio the default manner of appearance, nor did we adopt the recommendation to require claimants to confirm a preference for an in-person appearance. The comments we received in response to our proposed rule show that different claimants benefit from and prefer different manners of appearance for different reasons. Thus, to account for those different needs and preferences, we did not select any particular manner of appearance to be the default manner. The scheduling provisions in this final rule provide flexibility for claimants and us.

We will, however, (1) implement a new publication and notice explaining the manners of appearance: Notice of Ways to Attend a Hearing (Form HA–L54); (2) revise an existing form for objecting to appearing by agency video or by audio: Objection to Appearing by Video Teleconferencing (Form HA–55); and (3) implement a new form providing the ability to agree to appear by online video: Agreement to Appearing by Online Video (Form HA–56).

The new notice, Notice of Ways to Attend a Hearing (Form HA–L54), will explain in detail how an appearance by audio, by agency video, by online video, and in person would work. It will also explain how and when to object to an

appearance by audio or agency video and agree to an appearance by online video. We are making this notice separate from our Request for Hearing Acknowledgement Letter (Form HA–L2) to ensure that the manner of appearance information stands out to claimants and does not get lost among the other information in the HA–L2.

The revised objection form, Objection to Appearing by Video Teleconferencing (Form HA–55), will allow claimants to object to appearing by audio, by agency video, or both. We explain on the form that claimants only need to complete the form if they object to appearing by audio or agency video. The objection form also summarizes the appearance options again so that claimants can make an informed decision even if they do not read the new notice.

The new online video agreement form, Agreement to Appearing by Online Video, (Form HA–56) will allow claimants to agree to appearing by online video. It will explain that claimants only need to complete the form if they agree to appearing in that manner. We made Form HA–56 separate from Form HA–55 to clearly distinguish an agreement to appear by online video from an objection to appear by audio or agency video. We anticipate that these new communications and information collection requests will enhance claimant modality options, streamline the scheduling process, and minimize scheduling errors.

Additionally, this final rule does not require a claimant, or representative, to submit any supplemental documentation before, or as soon as, a claim reaches the hearing level. Rather, a claimant, or representative, has a 30-day period to object or agree to a manner of appearance.

VTC

Comment: Some commenters expressed concerns that we proposed to use the broader term “video” to reference two different manners of appearance: 1. online video through an application like Microsoft Teams (Teams) and 2. more traditional VTC. Commenters said that our regulations should use different terminology to distinguish between the two because they have meaningful differences.

One commenter stated that providing the option of accepting or rejecting a “video” appearance without specifying whether it is by VTC or online video is misleading to the claimant. The commenter noted that there are distinctions between the two types. For example, an online video appearance does not necessarily require any travel by the claimant, whereas a VTC

appearance does require some travel. Another commenter said that VTC appearances are “in person” from the perspective of the claimant because the claimant must usually travel to one of our offices along with a representative, when applicable, and the judge participates by “video.” The commenter also said that too often the VTC locations are more difficult in terms of travel, expense, and the stress of security or long lines for entrance. According to the commenter, a video appearance using an online video “app” such as Teams is “entirely different” for both the claimant and representative because online video appearances allow participants to avoid travel—reducing cost, stress, and conflicts. One commenter stated they routinely object to VTC appearances but have “no problem” with online video appearances. The commenter said claimants usually prefer video to in-person appearances because they can appear from home, yet still see the ALJ and be seen clearly, with very few technological problems.

Another commenter expressed not being comfortable advising claimants to accept a video option if that option includes VTC. The commenter recommended more precise wording so claimants can make informed decisions about their manner of appearance for a hearing. One commenter recommended making it clear and easy for claimants to object separately to audio, video, and VTC appearances because limiting an objection to video appearances alone would be insufficient.

Response: We generally agree with these recommendations. As we explained in the NPRM, we originally intended to use the general term “video” because it allowed for greater flexibility. We planned to further explain the two video manners of appearance in our subregulatory policies. However, because there are significant differences between the two, we will distinguish them in the regulatory text. Therefore, this final rule distinguishes agency video from online video. “Agency video” means video, with audio functionality, using our equipment in one of our offices. In other words, agency video means a claimant travels to one of our offices for a hearing and attends the hearing using our video equipment. “Online video” means video, with audio functionality, using a personal electronic device in a private location the claimant chooses. In other words, online video means a claimant attends a hearing from a private location of the claimant’s choice using the claimant’s own smartphone, tablet, or computer and internet connection. We

will also highlight this distinction in our subregulatory policies; new notice, new publication, and new agreement form; and revised objection form related to this final rule.

Comment: One commenter expressed the opinion that VTC appearances are “inferior” to both in-person and online video appearances, and with the addition of online video appearances, they should be obsolete. The commenter said that VTC appearances are often held in a “small, cramped conference room” at a hearing or field office, which is often not sound-proofed. According to the commenter, in some hearing offices, the video equipment is located on the wall behind the desks where the representative and claimant sit, making it difficult for both the claimant and representative to be seen, to see the ALJ, and to review the file and notes at the same time. The commenter also stated that VTC appearances require additional SSA staff, as they require a hearing monitor with the ALJ, as well as a monitor or other staff member with the claimant to ensure the equipment is working. The commenter noted that VTC appearances require travel to the hearing office and do not have the same effect as in-person appearances because the video is often of lower quality and does not allow the ALJ to see the claimant in detail. They also expressed that VTC appearances are inferior to online video appearances because with online video, each party can be in a position most comfortable to them and adjust the viewing angle of the camera so that they can be seen well. For VTC appearances, the representative and claimant are limited to the design of the room in which the hearing is held and cannot adjust the camera.

The commenter noted that we previously introduced VTC appearances to allow us to schedule hearings quicker and to transfer workloads among offices to lighten the load at certain hearing offices. According to the commenter, because the same can be provided by both telephone (audio) and online video appearances, the need for VTC appearances becomes obsolete. The commenter said the proposed regulations did not provide any explanation as to why VTC appearances would remain necessary once audio and online video are offered as standard manners of appearance.

Response: This final rule provides for an appearance by agency video to enhance the overall flexibility in our hearing process. We agree that many claimants are likely to prefer to appear by online video instead of by agency video. Nonetheless, we expect there will be some claimants who cannot appear

by online video or do not want to appear by online video, but who do not object to appearing by agency video.¹⁷ Agency video helps ensure that all claimants are afforded the same options for virtual hearings, regardless of their ability to pay for or otherwise obtain a suitable device or internet connection on their own. It also allows us to retain the ability to transfer workloads to facilitate earlier scheduling when possible. Our new notice, new publication, new agreement form, and revised objection form related to this final rule will clearly explain the differences between the two video manners of appearance. Finally, we disagree that VTC appearances have inferior audio and video quality.¹⁸

Administrative Conference of the United States (ACUS) Recommendations

Comment: The Office of the Chair of ACUS repeated in their comments recommendations they previously issued related to audio and online hearings at Federal agencies. They said they have long encouraged agencies, particularly those with high-volume caseloads, to consider “whether the use of VTC [hearings] would be beneficial as a way to improve efficiency and/or reduce costs while also preserving the fairness and participant satisfaction of proceedings.” They noted that they have set forth best practices and practical guidelines for conducting traditional VTC hearings and, more recently, “virtual hearings” in which participants appear remotely from a location of their choosing using internet-based videoconferencing software.

According to ACUS, our proposed rules addressed several of their recommended guidelines for conducting virtual hearings, such as the circumstances in which an individual’s virtual participation may be inappropriate; the process by which claimants can object to participating virtually; and the technological requirements for virtual hearings. They also said that our plan to permit

¹⁷ While a small percentage, we have continued to schedule claimants to appear by VTC even after the implementation of online video appearances. Since we began reopening our offices to the public in March 2022 following an initial closure during the COVID-19 national public health emergency, we have held approximately 1.5 percent of our hearings by VTC. See the *Setting the Manner of Appearance of Parties and Witnesses at Hearings*, Final Rule, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

¹⁸ VTC appearances allow the claimant to see and hear the ALJ on a television screen over our secure network. For example, with our current systems, we transmit in Standard Definition on 50 to 65 inch monitors in hearing rooms or 27 inch monitors in VTC locations using desktop video units.

claimants to appear virtually by online video in a hearing office with agency-supplied electronic devices and internet connection (instead of only allowing this option for claimants using personal or borrowed devices in private locations) helps ensure that all claimants are afforded the same options for virtual hearings, regardless of their ability to pay for or otherwise obtain a suitable device or internet connection on their own.

In addition, ACUS recommended that we consider addressing whether to make available or require attendance at “a general training session or pre-hearing conference to discuss technological requirements, procedural rules, and standards of conduct for virtual hearings.” According to ACUS, such proactive measures may help to reduce or eliminate delays before or during hearings caused by participants’ unfamiliarity with the technology or videoconferencing software and prevent disruptions caused by a lack of understanding of applicable procedural rules or behavioral standards for virtual hearings.

Further, ACUS referred to our proposed revisions to 20 CFR 404.944 and 416.1444, which clarified that an ALJ could stop a hearing temporarily and continue it at a later date if they found that one or more variables outside of the agency’s control materially affected a hearing. They expressed that we may want to explain when a hearing is “materially affected” and provide examples. ACUS recommended that we clarify the actions that the ALJ or hearing office staff will take to attempt to remedy any technical problems before or after stopping the hearing when variables outside the agency’s control materially affect the hearing.

ACUS also suggested that, in our pre-hearing notices, we include information about the possible manners of appearance; explain the claimant’s ability to object to virtual hearings; and explain what the claimant would need to appear in each manner. They advised we should include any other information that would help claimants make informed decisions about their preferred manner of appearance, and that we should ensure this information stays up to date.

In addition, ACUS recommended that we continue to survey claimants who appear at virtual hearings to gauge their satisfaction with the process, and that we should “maintain open lines of communication with representatives in order to receive [their] feedback about the use of virtual hearing.” They suggested tracking and publishing disposition data for different hearing

modalities to measure how virtual hearings compare to in-person hearings in terms of procedural fairness and substantive outcomes.

Finally, ACUS stated that virtual hearings should be utilized and conducted in a manner that promotes the principles of fairness, efficiency, and participant satisfaction, which form the cornerstones of adjudicative legitimacy. Accordingly, when revising regulations and issuing subregulatory guidance, ACUS said we should ensure that virtual hearings provide a claimant experience that meets or exceeds the in-person hearing experience.

Response: Consistent with ACUS's recommendation, this final rule recognizes that it may not be appropriate in every circumstance for an individual to appear at a hearing virtually. Thus, claimants will have an opportunity to object to appearing by agency video or audio, and we will not schedule an online video appearance unless the claimant agrees to appear in that manner. Additionally, consistent with ACUS's recommendation, this final rule sets forth the process by which claimants can object to appearing by agency video or audio, and it explains how a claimant can tell us that they agree to appear by online video. Further, our new publication, which will explain the possible manners of appearance, will reflect ACUS's recommendation to explain the technological requirements for virtual hearings.

We also adopted ACUS's suggestion that we explain when audio quality or video quality "materially affects" a hearing under 20 CFR 404.944 and 416.1444. Under this final rule, "materially affects" means it prevents the hearing from proceeding. Examples include termination of the audio or video connection or poor audio or video quality that prevents the efficient administration of the hearing. If an ALJ determines that audio or video quality "materially affects" the hearing, the ALJ will stop the hearing and continue it at a later date. We will schedule the continued hearing no earlier than 20 days after the stoppage unless the claimant waives in writing the advanced hearing notice requirement.¹⁹ While we will try to reschedule the hearing as quickly as possible, the time to reschedule will depend on multiple factors, including representative, expert witness and ALJ availability, as well as available hearing slots. If necessary, we may schedule the claimant to appear by another available manner of appearance.

We also plan to post a publicly available video explaining the technical

requirements of online video and audio appearances. However, we did not adopt the recommendation to have a prehearing conference for the purpose of discussing technological requirements, procedural rules, and standards of conduct for online video and audio hearings, because doing so would be overly burdensome, given the hundreds of thousands of hearings we schedule per year. The public informational video, along with our new notice, new publication, new agreement form, and revised objection form, will appropriately explain the manners of appearance and their requirements. The notice of hearing will include contact information for use if technical difficulties arise during an audio or online video hearing. In terms of feedback from participants, we conducted feedback surveys for our online video appearances during the COVID-19 national public health emergency. Our survey data at that time showed that 83 percent of claimants were satisfied with their online video hearing.²⁰ When implementing this final rule, we plan to investigate further opportunities to gather feedback from claimants on their experience with the various manners of appearance.

Regarding communications with representatives, we regularly meet with representative organizations, including the National Organization of Social Security Claimants' Representatives (NOSSCR) and the National Association of Disability Representatives (NADR). We also have quarterly roundtable discussions with the advocacy community. During our meetings with these organizations, we solicit and receive feedback from representatives about our use of remote appearances.

As for the recommendation for a quality assurance system that tracks and publishes disposition data for each manner of appearance, we are working to develop this type of data, though it is not available at this time due to systems reporting limitations. We do, however, have a number of quality assurance measures, including routine quality reviews of decisions, in place.

Considerations of Equity and Supporting Underserved Communities

Comment: Some commenters asked us to consider how the proposed rule will impact underserved communities. Commenters cited E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through*

the Federal Government, which prioritizes advancing equity throughout the Federal Government. The E.O. addresses removing barriers and increasing access to Federal programs by pursuing a comprehensive approach to advancing equity for people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. A commenter suggested that we implement changes to the rules regarding manners of appearance "through the lens of advancing equity and removing barriers to access."

Another commenter said "the harm [of defaulting to audio or video] that could come to claimants is not merely conjectural. Many lower income claimants do not have sufficiently regular access to technology to make audio and video hearings convenient." Several commenters cited research about limited broadband internet access in the United States and stated that people most impacted by the technological divide are those who have "less education and lower incomes; communities of color, such as Black and Latino; older adults; rural residents (and most acutely in Native communities); the physically disabled; the LGBTQ community; and those falling in the intersections of these groups."

Response: As our equity plan indicates,²¹ equity is a highly important priority for SSA. We strive to support underserved communities, including those identified by the commenters. To that end, we anticipate that appearances by audio and video will actually help underserved communities because those manners of appearance will often allow claimants the flexibility to attend their hearings more easily. For example, as other commenters have pointed out, both online video and audio appearances can be advantageous for claimants who have limited transportation options, who live far from hearing offices, or who have circumstances like limited mobility or severe anxiety. Additionally, as noted above, this final rule does not eliminate in-person appearances or agency video (for those who do not have equipment necessary for online video) or prioritize audio or video appearances. It merely provides a variety of ways for claimants to appear at their hearings. Moreover, under this final rule, we will not schedule a claimant to appear by online video unless the claimant agrees to appear in that manner.

²⁰ See *Setting the Manner of Appearance of Parties and Witnesses at Hearings*, NPRM, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

²¹ Our Equity Plan is available at: <https://www.ssa.gov/open/materials/SSA-E.O.-13985-Equity-Action-Plan.pdf>.

¹⁹ 20 CFR 404.938 and 416.1438.

Reasonable Accommodations, Consideration of Functional Disability-Related Limitations, and Claimant Preferences

Comment: One commenter said claimants should always determine the manner of appearance for their hearing. According to the commenter, some claimants are “terrified” to appear in the “court-like atmosphere” of an in-person hearing, and others have physical, transportation, or financial difficulties associated with traveling to the hearing sites. Other commenters said we should provide a form that allows claimants to select their preferred manner of appearance.

Response: We did not adopt these recommendations because doing so would impede our ability to schedule timely hearings. First, we anticipate that some claimants would not provide us their preferred manner of appearance in a timely manner. Our experience over many years has been that it is often difficult to receive responses from some claimants when we ask them to contact us. Second, allowing claimants to select their preferred manner of appearance is not administratively feasible because it would significantly impede our ability to timely process the hundreds of thousands of hearings we schedule per year. When developing this final rule, we carefully balanced the two guiding principles that undergird our hearing process: that it be fair and that it works efficiently.²² This final rule is fair because it allows claimants to have input on their manner of appearance. At the same time, this final rule helps our hearing process to work efficiently by giving us additional scheduling flexibility, which will allow us to use our available resources to schedule more timely hearings.

Comment: Several commenters said we should ask claimants to identify their hearing format preferences at the earliest stage possible and suggested this could be done on the hearing request form (e.g., SSA HA-501). The commenters suggested this may help claimants who have difficulty corresponding by mail and may also allow people to provide feedback when they are in our field offices, where they may have assistance of field office staff who can answer questions, or when they may have help from community assisters (e.g., social workers) who may be assisting them with an appeal but may not be present when they receive the hearing election notice. Further, some commenters said we should

provide more than one opportunity to select the preferred hearing format.

Response: We did not adopt these recommendations because they would require an overhaul of our existing operational processes and systems of such magnitude that it would delay our ability to implement the flexibilities in this final rule for several years. For example, adopting these recommendations would require us to overhaul our iAppeals online internet service, which allows claimants to electronically file a reconsideration or hearing request.²³ In addition, we anticipate that the process set forth in this final rule will allow claimants sufficient opportunity to indicate whether they agree to appear by online video and whether they object to appearing by audio or agency video. We will provide a separate notice explaining the manners of appearance; a revised form for claimants to let us know whether they object to appearing by audio, agency video, or both; and a new form for claimants to let us know whether they agree to appear by online video. If a claimant misses the 30-day deadline to agree to appear by online video or to object to appearing by audio, agency video, or both, they have the opportunity to show us that they had good cause for missing the deadline.²⁴ In summary, our new notice, new agreement form, revised objection form, and the good cause provisions in this final rule will provide claimants with a reasonable opportunity to share their manner of appearance preferences with us.

Comment: One commenter said that some claimants will not be able to meaningfully participate when they appear at a hearing by video or audio, which will impede our ability to make accurate disability determinations and violate section 504 of the Rehabilitation Act (section 504). The commenter noted that Federal agencies have an affirmative duty to make “reasonable modifications for qualified individuals.” According to the commenter, some individuals require an in-person appearance to meaningfully participate. Several other commenters provided examples of individuals who may require an in-person appearance to meaningfully participate. Examples provided include claimants: with hearing or visual impairments; requiring an interpreter; who need to frequently shift between sitting and standing due

to pain; who speak softly or have speech impairments; with auditory or visual hallucinations; with seizure disorders; who distrust technology or fear being recorded; with intellectual disabilities; with developmental disorders; and who may be less familiar with VTC.

In addition, commenters said the difficulties faced by persons with disabilities may be exacerbated if they have limited English proficiency. They expressed that interpreter services do not adequately address the challenges faced by individuals with limited English proficiency who are deaf or hard of hearing. The commenters indicated that such individuals must be allowed to appear in a manner that accommodates their disabilities and that keeping the right to appear in person is required for procedural fairness.

Response: We are not eliminating the in-person manner of appearance. Under this final rule, a claimant may object to appearing by agency video and audio and may decide not to agree to appear by online video. In that circumstance, barring an exceptional circumstance, we would schedule the claimant to appear in person.²⁵ Additionally, this final rule does not preclude an individual from requesting an accommodation. Instead, this final rule adds flexibility to our hearing process, and we expect that it will make it easier for many claimants to appear at their hearings. Even when a claimant does not object to appearing by agency video or audio, we will not default to scheduling one of those manners of appearance. Rather, under 20 CFR 404.936(c)(1)(ii) and 416.1436(c)(1)(ii) of this final rule, we will consider which manner would be the most efficient and any facts that provide good reason for a specific manner of appearance.

Furthermore, this final rule does not affect or modify our existing responsibilities under section 504 of the Rehabilitation Act of 1973, or the procedures we follow in considering requests for reasonable accommodations under that statute. Separate and distinct from this final rule, we will continue to use our established procedures for handling section 504 accommodation requests.²⁶ We are not revising our obligations under section 504 or our

²⁵ We may schedule a claimant to appear in another manner when the claimant changes their residence, extraordinary circumstances prevent the claimant from appearing in person, the claimant is incarcerated, or it is necessary to ensure the safety of the public and our employees in our hearing process. See 20 CFR 404.936(d)(2) through (5); 404.937(b)(2), (c), 416.1436(d)(2) through (5); and 416.1437(b)(2), (c).

²⁶ HALLEX I-2-0-8 available at https://www.ssa.gov/OP/OP_Home/hallex/I-02/I-2-0-8.html.

²³ For more information on iAppeals, see our Program Operations Manual System (POMS) GN 03101.125 available at <https://secure.ssa.gov/poms.nsf/lnx/0203101125>.

²⁴ See 404.936(d)(1) and 416.1436(d)(1).

²² See *Richardson v. Perales*, 402 U.S. 389, 399 (1971).

reasonable accommodation process as part of this final rule.

Comment: One commenter said that the proposed regulatory language does not provide guidance on what may be considered a “good reason” for scheduling a hearing in person, by video, or by audio. The commenter recommended that we incorporate into our regulations the language referencing, at a minimum, the standards in 20 CFR 404.911 and 416.1411 to ensure that an individual’s physical, mental, educational, or linguistic limitations (including lack of facility with the English language) are considered when we choose the appropriate manner for an ALJ hearing. The commenter referred to section 504 of the Rehabilitation Act of 1973 and noted that section 504 requires Federal agencies to ensure that qualified individuals with disabilities are not, solely by reason of their disabilities, excluded from participation in, denied the benefits of, or subjected to discrimination under the programs and activities they conduct. The commenter said there is a “pronounced lack of emphasis on [our] legal obligation to ensure equal access to a transparent and fair adjudicative process for all individuals with disabilities, including those who may require access to in-person hearings for disability related reasons.” According to the commenter, clear regulatory instructions obligating our staff and ALJs to consider claimants’ functional limitations as they pertain to the claimants’ ability to effectively communicate and participate in the hearing process should be part of the evaluation of “good reasons” for scheduling a hearing in any manner. The commenter expressed that individuals with a wide range of disabilities, and those in the deaf and hard of hearing community specifically, face “failed communication” when dealing with our field offices and hearing offices, which may not provide methods of effective communication to deaf and hard of hearing individuals. The commenter states that such individuals will be adversely affected if they are unable to access onsite American Sign Language (ASL) interpretation when presenting testimony and interacting with adjudicators or witnesses.

Further, the commenter expressed that our staff must be able to recognize the need for an effective communication assessment. The commenter said that, if any technology is used for interpreting during video or audio hearings, staff must be able to use the required equipment and have sufficient understanding of different modes of

communication to recognize and remedy communication failures. The commenter expressed that, without these items addressed, a video or audio hearing will not provide effective communication and equal access to the administrative process.

Another commenter said hearing notices should include clear guidelines on the use of effective assistive technology during video or audio hearings, beyond the explanation that one needs “a desktop computer, laptop computer, tablet or phone with a camera, microphone, and speakers.” The commenter said, to ensure effective communication for deaf and hard of hearing claimants, remote technology should offer real-time, full motion synchronized video and audio. The commenter further stated that the technology should operate over dedicated lines or wireless networks offering high-speed, wide-bandwidth video connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication, and a clear, audible transmission of voices to support listening to and lipreading the hearing participants by the deaf or hard of hearing claimant.

Response: We understand the commenters’ concerns, and we expect that, overall, the audio and video manners of appearance will make it easier for claimants, especially those with functional limitations, to appear at their hearings. We did not adopt the recommendation to provide guidance on what constitutes a “good reason” for scheduling a certain manner of appearance because the broad “good reason” language in this final rule accounts for a wide latitude of possible considerations. These considerations may include, for example, the physical, mental, educational, or linguistic limitations contemplated in 20 CFR 404.911 and 416.1411. As other commenters suggested, we will provide more details on the requirements for each manner of appearance in our subregulatory policies, new notice and publication, and new and revised forms related to this final rule. Claimants may state their reasons for objecting or agreeing to a manner of appearance in the comment sections of our forms or in separate communications, including by telephone or writing. Additionally, if there are technical difficulties during a hearing, the ALJ may stop the hearing and continue it at a later date.²⁷ When rescheduling the continued hearing, we will reconsider which manner of

appearance to schedule using the factors in 20 CFR 404.936(c)(1) and 416.1436(c)(1).

Furthermore, as discussed above, this final rule does not affect or modify our existing responsibilities under section 504 of the Rehabilitation Act of 1973 or the procedures we follow in considering requests for reasonable accommodations. Separate and distinct from this final rule, we will continue to follow our long-standing procedures for handling section 504 accommodation requests when an individual requests an accommodation under this law. We are not revising our obligations under section 504 or our reasonable accommodation process as part of this final rule.

Comment: One commenter stated that the provision of full and fair hearings for persons with disabilities requires that we have a public-facing process for determining the need for reasonable accommodations and providing them at hearings. According to the commenter, it may be impossible to provide disability access effectively, including ASL and other language access, in many of the current VTC hearing sites, and for that reason, possible reasonable accommodations must include providing an in-person hearing, and this reasonable accommodation must be available even where the claimant has not timely opted out of a video or audio hearing.

The commenter cited the Hearings, Appeals, and Litigation Law Manual (HALLEX) I-2-0-8 and asserted that it does not describe who is responsible for receiving and processing accommodation requests for hearings or who is responsible for making sure accommodations are provided at the various types of hearing sites and how long that process would take. The commenter stated that the reasonable accommodation information is “buried among the hundreds of web pages on the SSA’s website” and is not connected to the Hearings and Appeals portal. The commenter also stated that the SSA Hearing Agreement Form and other written information related to our hearing and appeals process do not provide information on how to request a reasonable accommodation. The commenter asserted that it is not clear how an individual pursuing an administrative appeal would be aware of the process to request a reasonable accommodation, or even know whether they would need an accommodation during the hearing process. According to the commenter, individuals needing “nonstandard” accommodations would require a significant amount of lead time to make and document their

²⁷ See 20 CFR 404.944 and 416.1444.

accommodation requests. The commenter expressed that it is important that such individuals are able to change their preferred method of hearing outside the 30-day period.

Response: This final rule does not affect or modify the procedures we follow in considering requests for reasonable accommodations under current law. Rather, it simply provides additional manners of appearance, which will make it easier for claimants to appear at their hearings. While we understand that some commenters have expressed concerns with our existing reasonable accommodation process, including under HALLEX I-2-0-8, these comments are outside the scope of this regulation change because we are not revising our reasonable accommodation procedures. We will, however, take these comments under advisement and review our existing reasonable accommodation process, including how to find information about the process, for possible updates.

Technical, Communication, and Other Considerations

Comment: One commenter cited “poor communication between [Office of Hearings Operations] staff and representatives when a hearing is delayed due to scheduling or technical issues” for telephone and video appearances. The commenter also said judges and hearing reporters are not notified when representatives submit a phone number or email address change in advance, which may cause hearing office staff to dial incorrect phone numbers or use incorrect email addresses, potentially resulting in claimants or representatives being designated as “no-shows” at hearings. The commenter requested that we take additional steps to assist claimants with technical and other same-day problems that arise, and suggested a portal where the representative and claimant could check the real-time status of the hearing and update their contact information. Other commenters reported difficulty reaching a hearing office to address similar same-day problems. For example, one commenter said that when there is a significant delay with the start time of a hearing, it is difficult to reach the hearing office to confirm the hearing is going forward and address any miscommunication. The commenter urged us to make available a telephone contact for claimants and representatives when facing such problems during or prior to the start of a scheduled hearing and to ensure staff is available and responsive by telephone. Another commenter stated it is difficult to communicate specifically

with National Hearing Centers, in particular Baltimore or Chicago, causing unnecessary delays and continuances through no fault of the claimant or their office. They also said it is difficult to have accurate scheduling, causing delays due to conflicts.

Another commenter said it takes “too long to even get a phone hearing.” The commenter asserted that local hearing offices may need assistance from other States because of the “enormous backlog,” especially related to Federal remand hearings. The commenter asked us to “focus on speeding up the process.” Another commenter expressed that many claimants are experiencing long delays in having their hearings scheduled, partly because of the COVID-19 national public health emergency, but also due to employee shortages at their locations.

Response: We acknowledge the concerns raised by the commenters and are working diligently to implement procedural and efficiency improvements in our hearing process. The commenters’ recommendations relate to our internal practices and procedures, not the policy in this final rule. However, we appreciate the comments and plan to consider them as we continue evaluating and updating, as necessary, our internal practices and procedures to ensure appropriate support during audio and video appearances.

Comment: A commenter expressed that, for online video appearances, claimants are “overwhelmingly unable” to operate the Teams application without assistance, and even with assistance, there are often technical difficulties. Additionally, the commenter stated that ALJs “pushed” claimants to appear by telephone if there were technical difficulties during an online video appearance. The commenter asserted that these situations created concern that the “use of the Teams app allowed for inconsistent policies among ALJs.”

Response: The commenter’s reported experience does not match our data. Our survey data showed that 83 percent of claimants were satisfied with their online video hearing.²⁸ However, given the unique factors related to online video appearances, this final rule differs from our proposed rule in that it requires a claimant to agree to appear by online video before we will schedule that manner of appearance. Depending on the logistics of any given case, it

might be possible to schedule a hearing more quickly using one manner of appearance over another, but we will not pressure a claimant regarding their choice to agree to online video or to object to audio or agency video.

Regarding the commenter’s concern about difficulties that arise during online video appearances, this final rule, §§ 404.944 and 416.1444, provide that an ALJ may stop a hearing temporarily and continue it at a later date if one or more variables outside of our control, such as audio quality or video quality, materially affects the hearing. We will then determine the manner of appearance for a continued hearing like we would any other hearing. This determination involves considering which manner would be most efficient and any facts of the case that provide a good reason to schedule the claimant to appear in a certain manner. We plan to provide additional training to our ALJs to ensure consistent application of this rule.

Comment: One commenter said it is crucial to acknowledge explicitly the need for audio in video-based appearances, since otherwise people might think the video option did not include audio. The commenter stated that we must recognize the insufficiency of video alone for effective communication during hearings. According to the commenter, ignoring the audio aspect introduces an incomplete scenario that could lead to potential issues.

Response: We agree with the commenter that some individuals might not understand our presumption that video includes audio. Accordingly, this final rule explains that agency video and online video include the element of audio.

Comment: One commenter suggested that, in the event of an irresolvable technical disruption, an adjourned hearing be rescheduled expeditiously.

Response: We plan to schedule continued hearings following adjournments for technical difficulties as quickly as our available resources will allow. However, our regulations require us to send a notice of continued hearing at least 20 days in advance, unless a claimant waives the 20-day advance notice requirement.²⁹

Objection Period and Good Cause

Comment: Some commenters disagreed with the 30-day timeframe to allow claimants to object to a particular manner of appearance. One commenter said that confining the period to 30 days after the date the claimant receives the

²⁸ See the *Manner of Appearance*, NPRM, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

²⁹ 20 CFR 404.938(d) and 416.1438(d).

notice is more restrictive than current practice and would “fail to recognize the rapidly changing circumstances” of claimants. Another commenter said we should remove any deadline to object to the manner of appearance. Others suggested longer deadlines such as 60 days, five business days before a hearing, and the date the hearing is scheduled. Commenters expressed that additional time is necessary to locate unsheltered or very low-income claimants, especially those who lack consistent access to communication resources like working phones or mailing addresses. Another commenter stated that claimants should be entitled to change the manner of hearing from audio to video, or video to audio, at any point up to five business days before a scheduled hearing because, in the view of the commenter, that could be accomplished without disruption to the hearing schedule.

Response: Although we acknowledge commenters’ concerns about the potential for missed opportunities to object to a particular manner of appearance, we did not change the 30-day time period for objecting to appearances by agency video or by audio. Thirty days offers an appropriate balance between allocating enough time for claimants or their representatives to object, while also allowing us sufficient time to determine the manner of appearance and schedule the hearing. It is critical for us to know the available manners of appearance to schedule timely hearings because we schedule hundreds of thousands of hearings per year.³⁰ A longer or indefinite time period would delay scheduling and, therefore, lead to longer hearing wait times. Some of the longer time periods suggested by the commenters, and certainly those that approach the actual day of the hearing, do not take into account the disruption or delay such last-minute changes would cause. We schedule each hearing based on considerations for that particular case and the overall resources available.

We do not agree that this 30-day period is “more restrictive than current practice.” The 30-day time period to object to an appearance by agency video or by audio is consistent with the current VTC objection policy in our regulations. Even so, some commenters may still perceive this rule as “more restrictive” because under our current business process, we generally require a claimant’s agreement before we

schedule them to appear by telephone, whereas this final rule gives claimants an opportunity to object to appearing by audio. However, we expect that the overall flexibilities provided by this final rule will offset any seemingly greater restriction.

As discussed earlier, it is often difficult to receive responses from some claimants when we ask them to contact us. For example, during the period from December 2020, when we began offering appearances by online video, until the end of the COVID-19 national public health emergency in May 2023, 25 percent of claimants did not respond to our form asking if they would like to appear by telephone or online video.³¹ By not requiring an “opt in” for audio, we will be able to efficiently schedule audio hearings for claimants who do not respond. This efficient scheduling of audio hearings will allow us to provide more timely hearings to all claimants. For appearances by audio, we do not need to coordinate hearing room space because the claimants appear from private locations of their choice, and ALJs generally conduct hearings from a private location other than a hearing room. We can also transfer cases with audio appearances to offices and regions with more capacity, which reduces hearing wait times.

When we implement this final rule, we will create a new notice and publication explaining the different manners of appearance and the various requirements. We will also revise our existing objection form so that claimants can easily object to appearances by agency video or by audio, and we will create a new form on which claimants can agree, if they would like, to appear by online video.

Finally, as in our current rule, we will extend the time period if a claimant shows they had good cause for missing the deadline. We expect that this good cause provision will effectively accommodate those who lack consistent access to communication resources.

Unique Considerations for Online Video Appearances

Comment: Commenters stated that many claimants have limited or unreliable access to electronic devices or high-speed broadband access. One commenter said that many of the same claimants who could successfully use online hearing options are those best positioned to elect an alternative form of appearance.

Response: We understand from these comments that we need to consider appearances by online video differently than other manners of appearance. This difference is needed because appearances by online video require using private electronic devices that we do not own, operate, or specifically approve and also using third-party software. Therefore, in this final rule, we created two categories of video appearances: (1) agency video and (2) online video. Agency video means video, with audio functionality, using our equipment in one of our offices. Online video means video, with audio functionality, using a personal electronic device in a private location the claimant chooses.

Furthermore, because of the unique circumstances involved in appearances by online video, we will only schedule appearances by that manner if the claimant agrees. Thus, there will be no need for claimants to object to appearing by online video. We are not requiring claimants’ agreement for audio or agency video appearances because those manners of appearance do not involve the same unique circumstances as online video. Particularly significant is the fact that audio and agency video appearances do not require using third-party software.

We will send claimants a notice informing them that we may schedule them to appear by online video if they agree to appear in that manner. To agree to appear by online video, claimants must notify us in writing within 30 days of receiving that notice. We are adopting a 30-day deadline because we need to know early in the process whether a claimant agrees to appear by online video in order to help schedule timely hearings for all claimants. Moreover, changing the manner of appearance after we schedule a hearing requires us to send an amended notice of hearing at least 20 days before the hearing, which may require us to reschedule the hearing for a later date unless we are able to obtain a written waiver from the claimant.³² We will extend the 30-day time period for agreeing to online video if the claimant shows that they had good cause for missing the deadline. We will evaluate good cause using the standards in 20 CFR 404.911 and 416.1411. Within our discretion and where possible, even without a showing of good cause, we will still consider a request to change the manner of appearance to online video after the 30-day time period if it would be efficient to conduct the hearing in that manner and the circumstances in the case provide a

³⁰ See the *Setting the Manner of Appearance of Parties and Witnesses at Hearings*, Final Rule, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

³¹ See the *Setting the Manner of Appearance of Parties and Witnesses at Hearings*, Final Rule, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

³² 20 CFR 404.938 and 416.1438.

good reason to schedule the claimant's appearance by online video.

Good Cause for Missing the 30-Day Objection Period

Comment: According to one commenter, the examples of good cause for untimely objections identified in proposed 20 CFR 404.936(d)(2) and 416.1436(d)(2) are problematic, creating a loophole in the rule that would effectively eliminate the deadline for objecting to audio and video appearances. One example of good cause for an untimely objection that we provided in the NPRM was disagreement with the terms of service for a third-party application. The commenter said if that were enough to show good cause for an untimely objection, any claimant would be able to successfully raise an objection at any time simply by claiming to disagree with the terms of service of the third-party application we use. Thus, we would be required to schedule the claimant to appear in another manner whenever a claimant scheduled for an online video appearance stated disagreement with the terms of service, even if that claimant waited until a day before the originally scheduled hearing. The commenter expressed this would be disruptive to hearing operations, requiring last-minute postponement of hearings and loss of productivity, which has been a "major undesirable feature of the current opt-in, object-at-any-time hearing process." The commenter suggested that if we think the rule needs to specify examples of good cause for untimely objections, the examples should involve much more compelling circumstances, such as those currently required for untimely objections to VTC.³³ The commenter expressed it may be better not to provide examples, and rather leave it to ALJs to exercise their judgment in determining whether good cause for untimely objections has been shown.

Another commenter stated that the two examples of good cause from the NPRM (disagreement with the terms of service of the third-party application or lack of resources to appear by video) do not establish good cause because both scenarios can be ascertained within the 30-day timeframe for objection.

Response: We did not adopt the two examples of good cause provided in the NPRM because they pertained to objections to appearing by online video only. Under this final rule, a claimant does not need to object to appearing by online video. Rather, this final rule provides that we will not schedule a

claimant to appear by online video unless the claimant agrees to appear in that manner, and it provides that a claimant may withdraw their agreement to appear by online video at any time before the start of the hearing. If the claimant withdraws their agreement, we will reschedule the claimant to appear by one of the other available manners of appearance. While we will try to reschedule the hearing as quickly as possible, the time to reschedule will depend on multiple factors, including representative, expert witness and ALJ availability, as well as available hearing slots. Additionally, we can reschedule the hearing no earlier than 20 days after the withdrawal unless the claimant waives in writing the advanced written hearing notice requirement.³⁴ Although we did not adopt the two examples of good cause provided in the NPRM, a claimant may still submit a late objection to appearing by audio or agency video. If we receive a late objection, we will use the standards in 20 CFR 404.911 and 416.1411 to evaluate whether good cause exists for missing the deadline.

Comment: According to some commenters, we should expand upon the circumstances in which claimants can opt out of manners of appearance beyond the 30-day objection period. Some commenters said we should do this by adding more examples of what would constitute good cause to change the manner of appearance.³⁵ Other commenters said we should specify circumstances that would not require a good cause determination but would still permit us to change the manner of appearance beyond the objection period. According to one commenter, while retaining "good cause" exceptions for claimants with extenuating circumstances is important, it is not sufficient because good cause exceptions are individualized determinations based on judgment. Instead, according to the commenter, in certain situations, claimants should be able to automatically modify the manner of appearance. Some commenters stated that such requests should be processed by hearings staff, without involvement of the ALJ. Commenters provided

³⁴ 20 CFR 404.938 and 416.1438.

³⁵ Our regulations provide examples of good cause for missing a deadline in 20 CFR 404.911 and 416.1411. Also, in the NPRM, we proposed to include examples of some circumstances that would apply specifically to online video appearances: "Examples of good cause would include circumstances where the claimant disagrees with the terms of service for a third-party application or lacks the resources to appear by video." See 88 FR 32148, 32152, and 32153 (May 19, 2023). We removed the NPRM examples from this final rule.

examples of circumstances they asserted should allow claimants to change their manner of appearance beyond the proposed objection period without requiring a good cause determination. Some of the suggested circumstances include:

- If the claimant obtains counsel for their disability hearing.
- If claimants change or obtain new counsel.
- If there is a change of address.
- If there is a change in medical condition, including hospitalization, because some of these changes may impact accessibility to certain hearing formats.
- If the custody or guardianship of a child changes.
- If the claimant is homeless.
- If the claimant lacks necessary equipment, such as a personal electronic device with internet access.
- If the claimant never received the notice to object due to mailing problems, homelessness, illiteracy, or inability to read English.
- Lack of proper identification (for hearings in government buildings).

One commenter expressed that because claimants may have "long wait times of multiple years before getting to appear at a hearing before an ALJ, this process ought to account for changes in circumstances with flexibility and lenient consideration." Another commenter said that claimants unfamiliar with hearing modalities offered will not likely know whether they need to request an accommodation or may assume that accommodations will be easily provided. Additional commenters said that a claimant who elects or defaults to a video or audio appearance may not understand the nature of the appearance, and allowing changes in manner of appearance until a hearing is scheduled promotes informed decisions.

According to a commenter, the lack of clarity regarding what constitutes good cause to object to appearing by VTC (under current regulations) has resulted in ALJs denying late objections for circumstances that would likely have been granted if detailed with further clarity.

Finally, a commenter expressed that, in addition to the reasons we would allow a change, the rule should clarify whether, how, when, and how often a claimant can change their manner of appearance preference.

Response: We did not adopt these comments. This final rule does not include the two examples of good cause from the NPRM because, as discussed above, those examples are unnecessary based on changes to the final rule.

³³ The commenter cited 20 CFR 404.911.

We retained the policy in our current regulations for evaluating good cause for an untimely objection. Under that policy, we use the standards in 20 CFR 404.911 and 416.1411 to evaluate good cause. We have been using those standards to evaluate good cause for missing the deadline to object to a VTC appearance for nearly a decade.³⁶ Those standards are broad and effective, and they are appropriate for considering a wide range of reasons for missing a deadline, including those identified by the commenters.

Expanding the standards for evaluating good cause too broadly, including by adding more across-the-board examples that would require a change at any time, would disrupt the efficiency of our hearing process. Therefore, it is important to retain our current standards, which have worked well for a long time, and which allow us to make case-specific good cause determinations based on individual circumstances.

Our ALJs are well positioned to evaluate good cause and have extensive experience doing so. While a commenter suggested that ALJs do not evaluate good cause appropriately, the commenter did not provide examples, and the commenter's suggestion does not match our experience.

Comment: Some commenters expressed concerns that the proposal may cause a surge in discretionary good cause determinations. One commenter said many claimants will object after the 30-day period, and that requiring ALJ decisions on an "influx" of requests to change the manner of appearance for good cause will likely weigh the agency down with administrative burdens and erode uniformity and equity of claim outcomes. The commenter said that the addition of a new discretionary procedure will most likely hurt the least-resourced and furthest marginalized claimants.

A different commenter stated that there may be an increase in claimants unable to attend hearings by audio or video because they either did not know of those manners of appearance or are unable to attend in the manner scheduled, which "will further increase the administrative courts issuing Orders to Show Cause (OSC) for failure to appear." The commenter stated that ALJs will be required to rule on OSC responses, requiring subsequent administrative action that would be otherwise unnecessary.

Response: We disagree with these commenters. We do not anticipate an influx of untimely objections, and we do not anticipate delays or lack of uniformity in our good cause determinations. As we noted in our other responses, our ALJs have extensive experience evaluating good cause under the standards in 20 CFR 404.911 and 416.1411. Our ALJs have been doing so regarding VTC objections since 2014³⁷ and regarding other deadlines for nearly three decades.³⁸ There is nothing unique about appearances by agency video or by audio that would necessitate a change.

Moreover, we expect that the manners of appearance in this final rule will make it easier for many claimants, especially those facing barriers to service, to attend their hearings. As such, we anticipate that fewer—not more—claimants will fail to appear at their hearings, which will result in the need to issue fewer Requests to Show Cause for Failure to Appear (Form SSA-HA-L90s).

In-Person Appearances

Comment: Multiple commenters expressed support for retaining in-person hearings as the default manner of appearance. One commenter asserted that changing the default manner of appearance will "adversely affect vulnerable claimants." They expressed that many claimants, particularly those who are unhoused or lack reliable access to mail, are not always able to respond to notices regarding the manner of appearance. Some commenters said that mail service remains "spotty at best" in many low-income neighborhoods and claimants facing the most significant barriers, including homelessness, poverty, and housing instability, move frequently. According to some commenters, our inability to reach approximately 30 percent of claimants (data we reported in the NPRM) should not be "interpreted as endorsement of, or acquiescence to, the change in platforms." The commenter expressed that a change in the default manner of appearance could create a group of claimants who would have elected an in-person hearing, but because of housing insecurity, physical or behavioral deficits in their ability to read and understand, or other reasons, are forced into a manner of appearance which they did not choose.

Another commenter said the "onus should not be on the claimant to

affirmatively pursue and protect their right to appear at their hearing in person." According to the commenter, the proposed regulations "unfairly shift the burden of preserving the right to appear in person on the claimant by requiring them to object, but also require the claimant to navigate a duplicative, cumbersome process to do so." According to a different commenter, audio hearings are a "true disservice to the disabled individuals seeking benefits," and unless claimants specifically request audio, it "deprives them of a full and fair hearing, particularly if they are not represented." Another commenter asserted that telephone hearings do not provide claimants with an opportunity to fully present their case, which causes cases to be "decided unfavorably due to an error by the ALJ that would have been avoided in an in-person hearing." The commenter said that the denial rate for telephone hearings didn't reflect what they expected based on their experience with the ALJs in their region, and they found many decisions were "so deficient as to require appeal." The commenter expressed that in-person, local hearings should be the preferred manner of appearance.

Another commenter said that, unless a particular claimant has indicated a preference for an audio or video appearance, they should be scheduled for an in-person appearance to enable the "fullest evaluation of their claim." According to some commenters, in-person appearances are often necessary for an adjudicator to fully observe the physical manifestations of a claimant's disabilities (such as their physical functioning, scars, mannerisms, and hygiene) and accurately assess a claimant's credibility. A commenter stated that confused or anxious looks can be visual evidence of confusion or anxiety. Another commenter said that claimants often must testify to highly personal, emotional, traumatic symptoms and events, and that requiring them to testify in a manner contrary to their choice may lead to less claimant disclosure and decisions based on incomplete information.

One commenter said that scheduling audio or video appearances without providing a meaningful opportunity to opt out effectively removes a claimant's one chance to engage in an in-person interaction with a decision-maker for the entire disability determination process (since we usually rely on document review for the initial and reconsideration determinations, and the Appeals Council and District Court appellate processes). According to the commenter, allowing in-person

³⁶ In 2014, we added the provision that we would evaluate good cause for untimely VTC objections using the standards in 20 CFR 404.911 and 416.1411. 79 FR 35926.

³⁷ See 79 FR 35926.

³⁸ We set forth good cause provisions in 20 CFR 404.911 and 416.1411 in 1980, and we amended them to their current form in 1994.

appearances for all who choose it “demonstrates respect” and “promotes dignity and transparency in what may appear to be a largely invisible and impersonal process.” Further, the commenter said defaulting to audio or video appearances demotes this process to one that may feel “less legitimate, presenting a significant disruption to the human element of disability adjudication.” Another commenter stated this is the first interaction that some claimants have with the American legal system and the right to be heard in person. They expressed that this is a core value in our justice system and any changes we make should not erode this right.

Response: We are not eliminating in-person appearances, nor are we making in-person appearances the default. Under this final rule, we will generally schedule a claimant to appear in person if the claimant timely objects to appearing by audio and agency video and if the claimant does not timely agree to appear by online video.³⁹ Absent an objection, we will not default to scheduling claimants by agency video or by audio. Rather, under 20 CFR 404.936(c)(1)(ii) and 416.1436(c)(1)(ii) of this final rule, we will consider which manner would be the most efficient and any facts that provide a good reason for a specific manner of appearance. Thus, we may schedule an in-person appearance if we determine it is necessary.

This final rule adds flexibility to our policy on manners of appearance and gives claimants an opportunity to have input on their own manner of appearance. Many other commenters highlighted the benefits of, and indeed a preference for, appearances by audio and video. For example, commenters noted that audio and video appearances will result in greater overall flexibility for claimants. Commenters also stated that both video and audio appearances can be advantageous for claimants who have limited transportation options, who live far from hearing offices, or who have circumstances like limited mobility or severe anxiety. Furthermore, our experience stemming from the COVID-19 national public health emergency shows that many claimants desire to appear by audio or video.⁴⁰ Since we began reopening our offices to

³⁹ In limited circumstances, we may not schedule the claimant to appear in person, see 20 CFR 404.936(d)(2)–(5); 404.937(b)(2), (c); 416.1436(d)(2)–(5); and 416.1437(b)(2), (c).

⁴⁰ See the *Setting the Manner of Appearance of Parties and Witnesses at Hearings*, NPRM, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

the public in March 2022, many claimants continue to choose a telephone or online video appearance. Since March 2022, approximately 70.5 percent of hearing appearances have occurred by telephone, 14.4 percent by online video, 13.6 percent in person, and 1.5 percent by VTC.⁴¹ Our survey data also showed that 83 percent of claimants were satisfied with their online video hearing.⁴² The audio, agency video, and online video manners of appearance in this final rule will help us to balance workloads and reduce wait and processing times, thereby providing more timely hearings for claimants.

We disagree with one commenter’s assertion that audio appearances result in more denials to claimants. The commenter did not provide any data to support the assertion. Furthermore, comments about assessing a claimant’s credibility are an inaccurate description of our rules because our ALJs do not evaluate a claimant’s credibility. Instead, our ALJs evaluate the intensity, persistence, and limiting effects of an individual’s symptoms based on all the evidence of record. We do not assess a claimant’s overall character or truthfulness in the manner typically used during adversarial litigation.⁴³

In conclusion, it would be as inappropriate for us to automatically assume that a claimant prefers to appear at a hearing in-person as it would be for us to assume the claimant wants to appear by online video. Indeed, we designed this final rule to allow claimants to have input into the manner in which they will appear at hearings.

Comment: One commenter said the proposed rule has the potential to improve on our current practice, primarily because it creates an opt-out

⁴¹ See the *Setting the Manner of Appearance of Parties and Witnesses at Hearings*, Final Rule, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

⁴² From July 2021 through July 2022, we sent surveys to claimants who appeared at hearings by online video to gauge their satisfaction with the process. We asked them to rate four statements regarding their online video experience on a scale from 1 to 5, where 1 meant “strongly disagree” and 5 meant “strongly agree.” The four statements were: (1) the instructions sent in advance were helpful; (2) it was easy to connect to my online video hearing; (3) I was satisfied with the audio quality of my online video hearing; and (4) I was satisfied with the video quality of my online video hearing. The overall satisfaction score was 4.2 or higher, and 83 percent or more of respondents in each month reported an overall satisfaction rate of a 4 or 5. See the *Setting the Manner of Appearance of Parties and Witnesses at Hearings*, NPRM, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

⁴³ See 20 CFR 404.1529(c)(3) and 416.929(c)(3) and Social Security Ruling (SSR) 16-3p.

process for audio and video appearances and provides a deadline for opting out. This opt out process is in contrast to the current process, which requires opting in for audio and video appearances and allows claimants and representatives to “disrupt” hearing schedules by raising objections to audio and video appearances at any time. Another commenter stated that “in-person hearings should not be the automatic default for claimants” and that claimants usually prefer video to in-person hearings, as they can appear from home yet “still see the ALJ and be seen clearly, with very few cases of tech problems.”

Response: We agree that appearances by audio, agency video, and online video provide significant benefits to claimants, representatives, and us. However, as discussed above, under this final rule, we will only schedule an online video appearance if the claimant agrees because of the unique circumstances of that manner of appearance.

Comment: One commenter expressed concerns that our proposed regulations would lead to local hearing offices staffed with only a few ALJs willing to hold hearings with in-person appearances, and that there would be pressure on claimants to choose an alternative option to have their case heard “earlier” by a remote ALJ by video or audio. The commenter recommended that we continue to staff local hearing offices with sufficient ALJs to hold hearings with in-person appearances. Another commenter requested that we update our policy to describe the “need to conduct hearings using multiple formats during an [ALJ]’s day.” According to the commenter, too often, the convenience of our employees outweighs the needs of claimants to have their hearings held using first-in first-out scheduling.

Response: We will continue to staff our hearing offices, budgets permitting, with sufficient personnel, including ALJs, to accommodate in-person and agency video appearances. For an in-person appearance, we have a fixed number of hearing rooms, which we must coordinate the scheduling of among our ALJs and claimants. We also do not have the ability to transfer a case with an in-person appearance to a non-local hearing office with more capacity.

For appearances by audio and online video, we do not need to coordinate hearing room space because the claimants appear from private locations of their choice, and ALJs generally conduct hearings from a private location other than a hearing room. We can also transfer cases with audio, agency video,

and online video appearances to offices and regions with more capacity, which reduces hearing wait times. An advantage of this final rule is that it allows us to transfer cases to fill hearing office capacity without the geographic limitations of the current rules.

Although we strive wherever possible to process cases in order, the flexibilities and efficiencies this final rule provides may result in a slight deviation from the first in, first out order to optimize our hearing process overall. Depending on the logistics of a particular case, it might be possible to schedule appearances by audio or video more quickly than in person, but we will not pressure a claimant regarding their choice to agree to online video or to object to audio or agency video. This final rule does not prioritize the convenience of our employees over our claimants. Finally, because we temporarily closed our offices for a period during the COVID-19 national public health emergency and we reopened our offices gradually, we communicated to claimants that scheduling would be delayed for individuals who did not agree to appear by telephone or online video. Now that the emergency has ended, we no longer communicate that scheduling in-person appearances will be delayed.

Due Process

Comment: One commenter said our proposal would limit claimants' rights to request in-person hearings and thereby affect their right to due process. The commenter stated that the Supreme Court has held that, in a case involving welfare, a recipient has a due process right to a hearing before they can be deprived of benefits, and that due process requires the opportunity to be heard "at a meaningful time and in a meaningful manner." The commenter referred to a study that, according to the commenter, found a deprivation of an in-person hearing for people seeking asylum resulted in an increased risk of negative outcomes.⁴⁴ The commenter stated that a court today would find that due process requires the right to an in-person hearing, particularly in claims for Supplemental Security Income (SSI). As such, the commenter asserted that the rule, as proposed, would potentially violate the procedural due process rights of Social Security claimants.

Another commenter expressed that "procedural Due Process serves two basic goals: (1) preventing the wrongful deprivation of interests, and (2)

promoting fairness by providing a meaningful opportunity for individuals to share their side of the story with the government." According to the commenter, "imposed" audio or video appearances that conflict with a claimant's preferred manner of appearance militate against both goals. The commenter said a "sizeable number" of claimants will lack the capacity to respond in 30 days. According to the commenter, if these claimants are scheduled for an audio or video appearance and are unable to appear at the remote hearing because they lack notice and the necessary tools to appear, such as a phone or computer, their claims will likely be dismissed for failure to appear. The commenter stated, for this reason, this change in policy will increase procedural dismissals in substantively valid disability claims, significantly violating claimants' due process rights.

Response: This final rule will help to safeguard a claimant's right to a full and fair hearing. Barring limited circumstances, no provisions in this final rule limit a claimant's ability to appear at a hearing in person, if the claimant wants to appear in that manner. Moreover, the procedures set forth in this final rule are similar to the procedures in our current rules, procedures that have operated well for many years.

Under our current rules, if a claimant wants to appear at a hearing in person, instead of by VTC, the claimant can object to appearing by VTC within a 30-day period. Claimants who have good cause for missing the 30-day deadline can submit a late objection. If the claimant objects timely to appearing by VTC (or objects after the 30-day period and we find good cause for late filing), and the claimant's residence does not change, we will schedule the claimant to appear at a hearing in person. Similarly, under this final rule, if a claimant wants to appear at a hearing in person, instead of by audio, agency video, or online video, the claimant can object to appearing by audio and agency video within the same 30-day period, or can submit a late objection based on a showing of good cause for missing the deadline. We will not schedule an appearance by online video unless the claimant agrees. If the claimant objects timely to appearing by audio and agency video (or objects after the 30-day period and we find good cause for the late filing), the claimant's residence does not change, and the claimant has not agreed to appear by online video, we will schedule the claimant to appear at a hearing in person. Thus, a claimant has the same opportunity to appear at a

hearing in person under this final rule as under our current rules.

Under this final rule as well as under our current rules, there are very limited circumstances where we will schedule a claimant to appear at a hearing by audio despite the claimant's objection to appearing in that manner. For example, under this final rule, we will schedule a claimant to appear by audio when we cannot schedule the claimant to appear by video, e.g., because the claimant objected to appearing by agency video and did not agree to appear by online video, and extraordinary circumstances prevent the claimant from appearing in person.⁴⁵

We take seriously our responsibility to ensure that claimants receive full and fair hearings as well as accurate hearing decisions. Our experience with VTC appearances over the last 20 years, and our more recent experience with online video and telephone appearances during the COVID-19 national public health emergency shows that claimants do not have to appear in person to be heard meaningfully. Our ALJs look fully into the issues and follow the same policies and procedures, regardless of the claimant's manner of appearance. If a variable outside an ALJ's control, such as audio or video quality, were to materially affect a hearing, this final rule, §§ 404.944 and 416.1444, provide that the ALJ may stop the hearing temporarily and continue it at a later date.

While a commenter opined that due process requires an in-person appearance, particularly for claimants seeking SSI, the commenter did not explain why. Instead, the commenter referenced a study that, according to the commenter, concluded that VTC hearings for people seeking asylum resulted in an increased risk of negative outcomes.⁴⁶ Notably though, an asylum removal hearing differs significantly from a Social Security hearing. An asylum removal hearing is an adversarial proceeding, whereas a hearing on a claim for benefits under the Social Security Act is informal and non-adversarial.⁴⁷

⁴⁵ See 20 CFR 404.936(d)(2) and 416.1436(d)(2). Under this final rule, we may also schedule a claimant to appear by audio, despite a timely objection to appearing in that manner, as set forth in 20 CFR 404.936(d)(3)-(d)(5), 404.937(b)(2), 404.937(c), 416.1436(d)(3)-(d)(5), 416.1437(b)(2), and 416.1437(c).

⁴⁶ The article the commenter cited regards the use of video conferencing in asylum removal hearings. See Walsh & Walsh, supra note 43.

⁴⁷ See Johanna Selberg, Truth and Trauma: Exploring the Merits of Non-Adversarial Asylum Hearings, 35 Geo. Immigr. L.J. 929, 932 (2021) (describing defensive, adversarial asylum

⁴⁴ The commenter cited Frank M. Walsh; Edward M. Walsh, Effective Processing or Assembly-Line Justice—The Use of Teleconferencing in Asylum Removal Hearings, 22 Geo. Immigr. L.J. 259, 275 (2008).

Our ALJs are neutral decision-makers who develop all of the facts regarding a benefit claim. An immigration judge does not perform that same fact-finding function. Rather, an immigration judge rules on the evidence presented by the parties, one of whom is the United States, represented by an Immigration and Customs Enforcement attorney. Additionally, the study the commenter referenced notes that the testimony of an asylum applicant at an asylum hearing is especially important because, in order to meet the definition of “refugees,” they must have fled their country and may have little to no documentation to support their allegations of persecution.⁴⁸ Thus, an asylum removal hearing is not comparable to a Social Security hearing. As previously explained, our experience shows that claimants receive full and fair hearings regardless of whether they appear in person or by VTC, online video, or audio.

Furthermore, even in relation to the asylum example cited by the commenter, courts have upheld the use of video conferencing for asylum hearings. Those courts have examined whether the asylum petitioner received a full and fair hearing based on the facts of the individual case, including the use of video conferencing.⁴⁹

As noted elsewhere, this final rule recognizes that some claimants may not want to appear at a hearing by agency video or by audio, but, due to personal circumstances, may be unable to meet the deadline to object to those manners of appearance. In those circumstances, and others, we will extend the deadline for submitting an objection if the claimant shows good cause for missing it. And, again, this final rule specifies that we will only schedule a claimant to appear by online video if they agree to an appearance in that manner.

Ultimately, we expect this final rule will make it easier, not more difficult,

proceedings before an immigration judge); 20 CFR 404.900(b), 416.1400(b) (explaining that we conduct our administrative review process in an informal, non-adversarial manner).

⁴⁸ Walsh & Walsh, *supra* note 43, at 273.

⁴⁹ See, e.g., *Miller v. Att’y Gen. of U.S.*, 397 F. App’x 780, 783 (3d Cir. 2010) (finding that the petitioner did not show that use of video conferencing prevented the immigration judge from properly considering the record or testimony, and noting there was no basis to conclude that the immigration judge’s ruling would have been different if the petitioner had appeared in person); *Rapheal v. Mukasey*, 533 F.3d 521, 531 (7th Cir. 2008) (“No court has ever held that Congress has violated the due process clause by authorizing removal hearings to proceed via video conference.”); *Rusu v. U.S. I.N.S.*, 296 F.3d 316, 322–24 (4th Cir. 2002) (noting the potential negative impacts of video conferencing, but finding that the petitioner appeared to have a meaningful opportunity to be heard).

for claimants to attend hearings. As multiple commenters recognized, making audio and video appearances available helps claimants who, for a variety of reasons, have difficulty traveling to, or participating from, our offices.

Additionally, under our longstanding procedures, if neither the claimant nor the appointed representative, if any, appears for a scheduled hearing, we will not dismiss the request for hearing if the claimant shows good cause for failing to appear.⁵⁰

Comment: Another commenter said the proposed regulation’s shift of burden (modifying the requirement that a claimant “consent to appear at a hearing” to requiring claimants to “object to appearing at a hearing by video, audio, or both”) conflicts with the “individual’s right to appear, in person or through a representative.” According to the commenter, “absent direct expression by U.S. Congress to depart from this enacted right, the Administration cannot implement regulations to change it.” The commenter asserted that pursuant to Social Security Ruling (SSR) 79–19,⁵¹ an individual’s waiver of the right to personal appearance at a hearing needs to be “made voluntarily and knowingly.” The commenter said that a claimant who has not objected to appear remotely has neither “voluntarily nor knowingly” waived the right to appear in person. The commenter asserted that it follows that claimants also have the option to rescind an election for remote appearance at any time.

Response: The commenter has misconstrued SSR 79–19. That SSR provides guidance about waiver of a claimant’s statutory right to appear at a hearing, either personally or through a representative. Under our regulations, an ALJ may decide a case without a hearing if all the parties to the hearing indicate in writing that they do not wish to appear at a hearing.⁵² SSR 79–19 requires the agency to give a claimant who files a request for hearing a thorough explanation of the hearing procedures to help convey the importance of those procedures, and it sets forth the requirements for a valid waiver of the right to appear at a hearing. Contrary to the commenter’s statement, SSR 79–19 does not relate to manners of appearance, and neither SSR 79–19 nor any other authority requires a claimant to voluntarily and knowingly

waive the opportunity to appear in person before we can schedule another manner of appearance. Moreover, under our current rules, we routinely schedule claimants to appear at hearings by VTC, without requiring any waiver of the opportunity to appear in person.⁵³

Other

Comment: Multiple commenters said a claimant should have the right to a hearing before an ALJ who is local to the claimant’s residence. According to commenters, local healthcare options, cultural and other barriers to evidence, language, and other regional differences contribute to a claimant receiving a higher quality hearing before a local ALJ. Some commenters said that the proposed regulations “continue to encourage a problematic slide within our agency toward scheduling hearings with ALJs who lack knowledge of the claimant’s region.” Other commenters expressed that local ALJs are familiar with unique vocational factors and know the specific circuit’s case law. In addition, a commenter said local attorneys have sufficient experience and knowledge of local ALJs’ preferences, ranging from supplying evidence, to brief formatting and content, to how hearings are conducted. The commenter stated that familiarity with an ALJ’s preferences allows the entire hearing process to run more efficiently, and the consequential increased need to appear before non-local ALJs will result in longer hearings and more supplemental hearings, costing more in the end. The commenter said, in some cases, remote ALJs have seemed “disparaging and unreasonably disbelieving” of claimants from the commenter’s region, which has a “distinct cultural identity and racial and ethnic demography.”

Another commenter stated that the proposed notices do not inform claimants that choosing a remote appearance may result in their case being transferred to “any hearing office in the country,” and took issue with the lack of notice regarding the potential for cases to be transferred outside one’s local hearing office.

Response: We did not adopt these recommendations because claimants do not have a statutory right to a hearing in their region or locally. We administer a national program, and, unless a relevant acquiescence ruling applies, our ALJs apply our national policies to

⁵⁰ 20 CFR 404.957(b) and 416.1457(b).

⁵¹ See SSR 79–19, available at https://www.ssa.gov/OP_Home/rulings/oasi/33/SSR79-19-oasi-33.html.

⁵² 20 CFR 404.948(b)(1)(i) and 416.1448(b)(1)(i).

⁵³ Under our current rules, we generally will not schedule a claimant to appear by VTC if the claimant timely objected to appearing in that manner. 20 CFR 404.936(d) and 416.1436(d).

all cases.⁵⁴ We also have extensive experience conducting hearings with ALJs who are in different locations than our claimants. For example, ALJs at our National Hearing Centers conduct hearings with claimants located throughout the nation. In addition, we transfer cases to other offices and regions to help balance our processing times. As we explained in our NPRM, we transferred approximately 17 percent of our cases in fiscal year 2022.⁵⁵

Our policy requires ALJs to conduct fair and impartial hearings⁵⁶ and we have processes and procedures in place to address any issues that arise.⁵⁷ Indeed, as previously explained in this rule, one of the driving factors behind this regulation is the desire to achieve greater equity for all claimants, including those from historically underserved racial or ethnic groups.

Comment: One commenter said claimants and their representatives should be allowed to opt for video appearances in every case, and they should never be required to appear by audio if they seek a video appearance (where the ALJ can observe the claimant).

Response: As we stated in an earlier response, it is not administratively feasible to allow claimants to select their preferred manner of appearance. However, this final rule provides for claimant input by allowing claimants to object to appearing by audio or agency video and by requiring a claimant's agreement to an appearance by online video. We must have flexibility in our scheduling process because we schedule hundreds of thousands of hearings per year, and flexibility enhances our efficiency.

If a claimant does not want to appear by audio, they can object to appearing in that manner. Under this final rule, we will generally not schedule an appearance by audio if the claimant timely objects to appearing in that manner. Generally, we will only schedule an appearance by audio,

notwithstanding an objection to appearing in that manner in very limited circumstances, when an appearance by video or in person is not available.⁵⁸ This is consistent with our current rules, which allow us to require an appearance by telephone in certain limited circumstances. Despite the current provisions, we have historically required a telephone appearance in very few cases. Even during the COVID-19 national public health emergency, we asked claimants if they agreed to appear by telephone before holding a hearing in that manner. Similarly, under this final rule, we expect that we will require a claimant to appear by audio notwithstanding their objection in few cases.

Comment: Multiple commenters indicated that the current election form⁵⁹ should be more user friendly. One commenter said that many claimants are confused by the current form, which has led those who would have preferred an audio or video appearance to wait years for an in-person appearance because they did not understand how to communicate their agreement to audio or video to us. The commenter provided a sample form and suggested we designate it as the "Manner of Appearance Election For Social Security Administrative Law Judge Hearings." They also suggested that we include the form with the letter that informs the claimant of the hearing process. Commenters said the letter should make clear that the claimant has 30 days to respond, or the hearing will be scheduled in person. According to the commenter, the proposed form could also be used to indicate a claimant's request to change the manner of appearance and the reason for the requested change.

Another commenter said the notice should explain how effectively ASL and other language access can be provided with each manner of appearance, including how all participants will be shown on the screen, when applicable, and whether there will be a number to call on the day of the hearing if they run into trouble accessing the hearing. An additional commenter expressed that there should be a more accessible method for claimants and representatives to state a preference for an in-person, audio, or video appearance.

One commenter stated the new form should provide a check box near the top of the proposed form that states, "I wish to have an in-person hearing." According to the commenter, this would make this option a meaningful choice, and it would help claimants understand that in-person appearances are still an option. Multiple commenters advised the new form should remove the language that states, "I understand that by selecting this option my hearing may be delayed."

Finally, commenters expressed that it is important that the rule provides clear instructions for objecting to a remote appearance, opting for an in-person appearance, and for providing good cause for the late submission of an objection.

Response: We will provide a new notice and publication explaining the manners of appearance, a revised form (Form HA-55) allowing claimants to object to appearances by audio and agency video, and a new form allowing claimants to agree to appearances by online video. These documents will clearly explain the various manners of appearance, the requirements for each, and the time period for objecting to appearances by audio and by agency video and for agreeing to appearances by online video.

Our Request for Hearing Acknowledgment Letter (Form HA-L2) explains how claimants with limited English proficiency, or those who are deaf or hard of hearing, may request an interpreter, including for ASL. As we did throughout the COVID-19 national public health emergency, where requested, we will provide interpreters for all our manners of appearance. We also plan to revise our subregulatory policies to explain how we will offer interpreters for audio, agency video, and online video appearances. Based on our experience during the COVID-19 national public health emergency, we find that each manner of appearances is equally effective for all interpretation needs.

We also do not plan to adopt the suggestion to add a special checkbox for in-person appearances, because doing so would make it seem like in-person is the preferred or default manner. We will, though, seek approval from the Office of Management and Budget (OMB) for our revised objection form and new agreement form. As explained earlier, one of the goals of this regulation is to provide claimants with an opportunity to have input about their manner of appearance, based on what is best for them. As some of the public comments cited in this final rule indicate, an in-

⁵⁴ 20 CFR 404.985 and 416.1485 and SSR 96-1p, available at https://www.ssa.gov/OP_Home/rulings/di/10/SSR96-01-di-10.html.

⁵⁵ See the *Manner of Appearance*, NPRM, Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

⁵⁶ See HALLEX I-2-3-10 B.1 available at https://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-10.html ("Regardless of a claimant's manner of appearance at the hearing, the [ALJ] must inquire fully into all matters at issue and conduct the hearing in a fair and impartial manner.")

⁵⁷ See SSR 13-1p available at https://www.ssa.gov/OP_Home/rulings/oasi/33/SSR2013-01-oasi-33.html and HALLEX I-1-8-4 available at https://www.ssa.gov/OP_Home/hallex/I-01/I-1-8-4.html and I-3-3-2 available at https://www.ssa.gov/OP_Home/hallex/I-03/I-3-3-2.html.

⁵⁸ See 20 CFR 404.936(d)(2)-(5); 404.937(b)(2), (c); 416.1436(d)(2)-(5); and 416.1437(b)(2), (c).

⁵⁹ Commenters likely referred to Remote Hearing Agreement Form (OMB control no. 0960-0671), available at: <https://www.ssa.gov/appeals/documents/RemoteHearingAgreementFormRepresentedClaimantandRepresentative.pdf>.

person appearance is not necessarily what is best for every claimant.

Regulatory Procedures

Executive Order (E.O.) 12866, as Supplemented by E.O. 13563 and Amended by E.O. 14094

We have consulted with OMB and determined that this final rule meets the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563 and amended by 14094, and is subject to OMB review.

Anticipated Costs/Transfers to Our Program

The Office of the Chief Actuary estimates that there will be no significant changes in allowance rates for disability cases under the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal SSI programs due to implementation of this final rule. The primary effects from implementing this final rule will be small cash flow effects due to conducting hearings and issuing decisions more timely. These changes are therefore expected to result in small changes of less than \$500,000 in scheduled OASDI benefit payments and Federal SSI payments over the period from fiscal year 2024 through fiscal year 2033.

Anticipated Administrative Cost/Savings

The Office of Budget, Finance, and Management estimates net administrative savings of less than 15 work years and \$2 million annually. We anticipate a small savings from lower ALJ, claimant, and representative travel costs, offset some by slightly higher costs from an increase in forms returned to us by claimants.

Anticipated Qualitative Benefits

As discussed in the NPRM, we expect that the flexibility provided by this rule will benefit claimants and our agency in several ways. First, we will be able to continue scheduling claimants to appear at hearings remotely, by audio (except when claimants object) and by online video (when claimants agree to this manner). Our experience, as well as that of claimants, during the COVID-19 national public health emergency showed that remote appearances are acceptable and beneficial to our hearing process. If claimants agree to appear by online video or do not object to appearing by audio, and we schedule them in one of those manners, they may save on costs associated with transportation (e.g., gas, maintenance of vehicle, bus fare), and they may save time that they would otherwise have

spent traveling. Likewise, they may not need to secure a replacement caregiver if they supervise family members or others, such as children, who cannot be left alone. In addition, if claimants have difficulty leaving the house because of limited mobility or other reasons, an online video or audio appearance will allow them to appear from a private location of their choice, such as their home.

This rule will also allow us to balance our workloads more efficiently among hearing offices because we can more easily transfer cases where the claimant is scheduled to appear by agency video, online video, or audio from one hearing office to another. We expect that this rule will help us to reduce overall wait and processing times across the country and reduce the disparities that exist from region to region and office to office.

Finally, the changes in this rule will allow us to be prepared for future emergency events, including localized events such as natural disasters and national public health emergencies similar to COVID-19 that could require us to temporarily suspend in-person or agency video appearances.

Congressional Review Act

This final rule is not a major rule as defined by the Congressional Review Act.⁶⁰

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

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

Paperwork Reduction Act

SSA already has existing OMB PRA-approved information collection tools relating to this proposed rule under OMB Control No. 0960-0671: Form HA-504, Acknowledgement of Receipt (Notice of Hearing); Form HA-L83,

Acknowledgement of Receipt (Notice of Hearing) Cover Letter; Form HA-55, Objection to Appearing by Video Teleconferencing; Form HA-L2, Objection to Appearing by Video Teleconferencing Cover Letter; and Form HA-510, Waiver of Written Notice of Hearing. This final rule changes the ways in which the Social Security Administration conducts hearings, by expanding and clarifying our manner of appearance options. In addition, this rule clarifies that claimants may appear for hearings remotely using a telephone in the absence of extraordinary circumstances; and that claimants may also appear remotely by video using private electronic devices with approved online video conferencing applications, rather than only using SSA owned video equipment. We will need to revise the associated forms to reflect these changes. Overall, we do not anticipate significant burden changes due to this regulation. The burden chart below reflects our current burden estimates for the associated information collection tools, as well as the projected burden savings for the few Information Collections where we think the burden will change. We will obtain OMB approval for the revisions to the collection instruments concurrently with the effective date of this final rule.

In addition, due to the final rule, we are also creating a new notice, the HA-L54, Notice of Ways to Attend a Hearing, and a new Form, the HA-56, Agreement to Appearing by Online Video. The new notice, HA-L54, will explain in more detail the various ways to attend a hearing, the requirements for each appearance type, the ability to object to attending by audio or agency video, and the ability to agree to attending by online video. The HA-L54 will serve as a cover letter for Form HA-55 and new Form HA-56. The new form, HA-56, will allow claimants to agree to an appearance via online video (using MS Teams). Respondents will only use this form if they agree to an online video appearance. The instructions on both the HA-L54 and Form HA-56 will make this use of the Form HA-56 clear to the respondent. Claimants who wish to object to an appearance by audio or agency video will use the HA-55 to object.

The sections for the HA-56 and HA-L54 below report our anticipated public reporting burdens for these new forms.

Finally, as we created the new notice, HA-L54, we will no longer need to use the Claimant Enhanced Outreach Notices, since the new Notice replaces them. In addition, we also expect to replace the current Claimant Enhanced Outreach calls with one combined call,

⁶⁰ 5 U.S.C. 801 *et seq.*

since we will use the new HA-L54 to collect the necessary information prior to a hearing but may still need an Outreach call to initiate the hearing process. Since we are removing these information collections, we anticipate a

significant overall burden reduction for the public of about 168,366 hours. The chart below shows the overall burden reduction for this final rule.

We will obtain OMB approval both for the modifications to the existing collection instruments and the new

collection instruments discussed above concurrently with the effective date of this final rule.

The following chart shows the time burden information associated with this final rule:

OMB #: form #: CFR citations	Number of respondents	Frequency of response	Average burden per response (minutes)	Current estimated total burden (hours)	Anticipated new number of responses under regulation	Anticipated estimated total burden under regulation (hours)	Estimated burden savings (hours)
HA-504+ HA-504-OP1 HA-504-OP2 404.938(c) 413.1438(c)	700,000	1	30	350,000	700,000	350,000	0
HA-L83-404.936(f); 404.938; 416.1436(f); 416.1438	700,000	1	30	350,000	700,000	350,000	0
HA-L83-Good cause for missing deadline-404.936(f)(2); 416.1436(f)(2)	5,000	1	5	417	5,000	417	0
HA-L83-Objection stating issues in notice are incorrect-sent 5 days prior to hearing 404.939; 416.1439	35,000	1	5	2,917	35,000	2,917	0
HA-L2 Acknowledgement Letter 404.936 416.1436	500,000	1	5	41,667	500,000	41,667	0
HA-L54, HA-56, and HA-55-404.936; 404.938; 416.1436; 416.1438	500,000	1	10	83,333	500,000	83,333	0
HA-L2-Verification of New Residence 404.936(d)(4); 416.1436(d)(1)	35,000	1	5	2,917	35,000	2,917	0
HA-L54-Notification of objection to audio and agency video and agreement to online video more than 30-days after receipt of notice showing good cause 404.936(d)(1) and (e)(1); 416.1436(d)(1) and (e)(1)	13,500	1	10	2,250	13,500	2,250	0
HA-510-404.938(a); 416.1438(a)	4,000	1	2	133	4,000	133	0
Claimant Enhanced Outreach-Initial Call No Representative (Unrepresented Claimant/ProSe)	75,190	1	10	12,532	0	0	12,532
Claimant Enhanced Outreach-Initial Call with Representative	201,400	1	10	33,567	0	0	33,567
Claimant Enhanced Outreach-Follow Up Call-No Representative (Unrepresented Claimant/ProSe)	37,500	1	60	37,500	0	0	37,500
Claimant Enhanced Outreach-Follow Up Call-With Representative	120,800	1	30	60,400	0	0	60,400
Claimant Enhanced Outreach Call	0	1	30	0	75,190	37,500	37,500
Remote Hearing Options Letter and Form Mailed to Representative	280,000	1	10	46,667	0	0	46,667
Microsoft Teams Video Hearing Call Script-Representative Payee Outreach	50	1	20	17	0	0	17
Microsoft Teams Hearing Call Script-Claimant Outreach	50	1	20	17	0	0	17
Totals	3,557,490	1,039,500	2,492,500	833,634	168,366

The following chart shows the theoretical cost burdens associated with this final rule:

OMB #: form #: CFR citations	Anticipated number of respondents	Frequency of response	Average burden per response (minutes)	Anticipated estimated total burden under regulation (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
HA-504+ HA-504-OP1 HA-504-OP2 404.938(c) 413.1438(c)	700,000	1	30	350,000	*\$22.39	** \$7,836,500
HA-L83-404.936(f); 404.938; 416.1436(f); 416.1438	700,000	1	30	350,000	*22.39	** 7,836,500
HA-L83-Good cause for missing deadline-404.936(f)(2); 416.1436(f)(2)	5,000	1	5	417	*22.39	** 9,337
HA-L83-Objection stating issues in notice are incorrect-sent 5 days prior to hearing 404.939; 416.1439	35,000	1	5	2,917	*22.39	** 65,312
HA-L2 Acknowledgement Letter 404.936 416.1436	500,000	1	5	41,667	*22.39	** 932,924
HA-L54, HA-56, and HA-55-404.936; 404.938; 416.1436; 416.1438	500,000	1	10	83,333	*22.39	** 1,865,826
HA-L2-Verification of New Residence 404.936(d)(4); 416.1436(d)(1)	35,000	1	5	2,917	*22.39	** 65,312
HA-L54-Notification of objection to audio and agency video and agreement to online video more than 30-days after receipt of notice showing good cause 404.936(d)(1) and (e)(1); 416.1436(d)(1) and (e)(1)	13,500	1	10	2,250	*22.39	** 50,378
HA-510-404.938(a); 416.1438(a)	4,000	1	2	133	*22.39	** 2,978
Claimant Enhanced Outreach-Initial Call No Representative (Unrepresented Claimant/ProSe)	0	1	10	0	*0	** 0
Claimant Enhanced Outreach-Initial Call with Representative	0	1	10	0	*0	** 0

OMB #; form #; CFR citations	Anticipated number of respondents	Frequency of response	Average burden per response (minutes)	Anticipated estimated total burden under regulation (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
Claimant Enhanced Outreach—Follow Up Call—No Representative (Unrepresented Claimant/ProSe)	0	1	60	0	*0	**0
Claimant Enhanced Outreach—Follow Up Call—With Representative	0	1	30	0	*0	**0
Claimant Enhanced Outreach Call	75,190	1	30	37,500	*22.39	839,625
Remote Hearing Options Letter and Form Mailed to Representative	0	1	10	0	*0	**0
Microsoft Teams Video Hearing Call Script—Representative Payee Outreach	0	1	20	0	*0	**0
Microsoft Teams Hearing Call Script—Claimant Outreach	0	1	20	0	*0	**0
Totals	2,492,500	833,634	** 19,504,692

* We based these figures on average DI hourly wages based on SSA's current FY 2024 SSI data (<https://www.ssa.gov/legislation/2024FactSheet.pdf>); and on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_stru.htm).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

SSA submitted an Information Collection Request under OMB No. 0960-0671 to OMB for the approval of the changes due to the final rule, which encompasses the revisions to these information collections.

As we have revised the associated burdens for the above-mentioned forms, and since we made revisions to the final rule which were not included at the NPRM stage, we are currently soliciting comment on the burden for the forms as shown in the charts above. If you would like to submit comments, please send them to:

Currently under Review—Open for Public Comments (<https://www.reginfo.gov/public/do/PRAMain>)⁶¹ and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA-2022-0013] in your submitted response.

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: OR.Reports.Clearance@ssa.gov.

You can submit comments until September 25, 2024, which is 30 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Individuals with disabilities, and Social Security.

⁶¹ Please note that the link to the specific ICR connected to this regulation will only become active the day after the final rule publishes in the Federal Register.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Social Security, and Supplemental Security Income (SSI).

The Commissioner of Social Security, Martin O'Malley, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we amend 20 CFR chapter III, parts 404 and 416, as set forth below:

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

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

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

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

■ 2. Revise § 404.929 to read as follows:

§ 404.929 Hearing before an administrative law judge—general.

If you are dissatisfied with one of the determinations or decisions listed in § 404.930, you may request a hearing.

Subject to § 404.956, the Deputy Commissioner for Hearings Operations, or their delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Deputy Commissioner for Hearings Operations, or their delegate, may assign your case to another administrative law judge. We will schedule you to appear by audio, agency video, online video, or in person as set forth in § 404.936. Audio means telephone or similar audio-based technology in a private location you choose. Agency video means video, with audio functionality, using our equipment in one of our offices. Online video means video, with audio functionality, using a personal electronic device in a private location you choose. When we determine your manner of appearance, we consider the factors described in § 404.936(c)(1)(i) through (ii). You may submit new evidence (subject to the provisions of § 404.935), examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. The administrative law judge will issue a decision based on the preponderance of the evidence in the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and, subject to the provisions of § 404.935, any new evidence that may have been submitted for consideration.

■ 3. In § 404.936, revise the section heading and paragraphs (a) through (d), redesignate paragraphs (e) and (f) as paragraphs (f) and (g), and add a new paragraph (e).

The revisions and addition read as follows:

§ 404.936 Time, place, and manner of appearance for a hearing before an administrative law judge.

(a) *General.* We set the time and manner(s) of appearance for any hearing. We will set the place of a hearing when we schedule you and any other parties to the hearing to appear in person or by agency video. We may change the time, manner(s) of appearance, or place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before the administrative law judge notifies you of a hearing decision.

(b) *Place of hearing.* If we set the place of the hearing, it can be 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. The “place” of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by agency video or in person. A party to a hearing may only appear from the geographic areas, noted in this subsection, in which we hold hearings.

(c) *Determining manner of appearance to schedule.* We will schedule you or any other party to the hearing to appear by audio, agency video, online video, or in person. We may schedule you to appear by online video only if you agree to appear in that manner.

(1) When we determine your manner of appearance at the hearing, we consider the following factors:

(i) Which manner of appearance would be the most efficient for conducting the hearing; and

(ii) Any facts in your particular case that provide a good reason to schedule your appearance by audio, agency video, online video, or in person.

(2) We will generally direct any person we call as a witness, other than you or any other party to the hearing, to appear by audio, by agency video, or by online video. Witnesses include medical experts and vocational experts. Witnesses you call will appear at the hearing pursuant to § 404.950(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by agency video or by audio. We will consider directing witnesses to appear in person only when:

(i) A witness is unable to appear by other available manners of appearance;

(ii) We determine that an alternate manner of appearance would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual’s appearance in person.

(3) We follow the procedures set forth in § 404.937 to ensure the safety of the public and our employees in our hearing process.

(d) *Objecting to appearing by audio, by agency video, or both.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by audio or by agency video, or, if you agree, by online video. If you object to appearing by audio, by agency video, or both, you must notify us in writing within 30 days after the date you receive the notice. If you only object to appearing by audio, we may schedule you to appear in person, by agency video, or, if you agree, by online video. Similarly, if you only object to appearing by agency video, we may schedule you to appear in person, by audio, or, if you agree, by online video. If you object to appearing by both audio and agency video, and your residence does not change while your request for hearing is pending, we will schedule you to appear before the administrative law judge in person or, if you agree, by online video.

(1) If you notify us that you object to appearing by audio, by agency video, or both, more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 404.911.

(2) Notwithstanding any objections you may have to appearing by audio and subject to paragraph (d)(3) of this section, we will schedule you or any other party to the hearing to appear by audio when we cannot schedule you to appear by agency video or by online video and extraordinary circumstances prevent you from appearing in person. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(3) Notwithstanding any objections you may have to appearing by audio, if you are incarcerated and an appearance by agency video and online video is not available, we will schedule you to appear by audio, unless we find that there are facts in your particular case that provide a good reason to schedule you to appear in person, if allowed by the place of confinement, or by agency video, online video, or in person upon

your release. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(4) Notwithstanding any objections you may have to appearing by audio, by agency video, or both, if you change your residence while your request for hearing is pending, we will determine how you will appear, including by audio or by agency video, as provided in paragraph (c) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(5) Notwithstanding any objection you may have to appearing by audio, we will schedule you or any other party to the hearing to appear by audio in the circumstances provided in § 404.937(b)(2)(ii) and (c). For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(e) *Time period to agree to an appearance by online video.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by online video if you agree to appear in that manner. To agree to appear by online video, you must notify us in writing within 30 days after the date you receive the notice. If you notify us that you agree to appearing by online video more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 404.911. You may withdraw your agreement any time before the start of your hearing.

* * * * *

■ 4. In § 404.937, revise paragraphs (b)(2)(ii) and (c) and add paragraph (e) to read as follows:

§ 404.937 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b) * * *

(2) * * *

(ii) Require that the hearing be conducted by audio, notwithstanding any objection to appearing by audio, or, if the claimant agrees, by online video.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by audio, notwithstanding any objection to

appearing by audio, or, if the claimant agrees, by online video.

* * * * *

(e) For audio appearances under this section, we will call you or any other party to the hearing using your or their telephone number(s).

■ 5. In § 404.938, revise paragraph (b)(5) to read as follows:

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

* * * * *

(b) * * *

(5) The time and manner(s) in which you, or any other party or witness, will appear. If we schedule you to appear in person or by agency video, as set forth in § 404.936, the notice of hearing will tell you the place of the hearing.

* * * * *

■ 6. Revise § 404.944 to read as follows:

§ 404.944 Administrative law judge hearing procedures—general.

A hearing is open to the parties and to other persons the administrative law judge considers necessary and proper. At the hearing, the administrative law judge looks fully into the issues, questions you and the other witnesses, and, subject to the provisions of § 404.935, accepts as evidence any documents that are material to the issues; may stop the hearing temporarily and continue it at a later date if the administrative law judge finds that there is material evidence missing at the hearing or one or more variables outside of our control, such as audio quality or video quality, materially affects the hearing; and may reopen the hearing at any time before the administrative law judge mails a notice of the decision in order to receive new and material evidence. For purposes of this section, materially affects means prevents the hearing from proceeding. The administrative law judge may decide when the evidence will be presented and when the issues will be discussed.

■ 7. In § 404.950, revise paragraph (a) and the second and third sentences in paragraph (e) to read as follows:

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

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, in the manner set forth in § 404.936, to present evidence and to state their position. A party may also make their appearance by means of a designated representative, who may make their appearance in the manner set forth in § 404.936.

* * * * *

(e) * * * If they are unable to appear with you in the same manner as you, they may appear as prescribed in § 404.936(c)(2). Witnesses called by the administrative law judge will appear in the manner prescribed in § 404.936(c)(2). * * *

* * * * *

■ 8. In § 404.976, revise paragraph (c) to read as follows:

§ 404.976 Procedures before the Appeals Council.

* * * * *

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance will be by audio, agency video, online video, or in person as set forth in § 404.936. The Appeals Council will determine whether any other person relevant to the proceeding will appear by audio, agency video, online video, or in person as set forth in § 404.936(c)(2).

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

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

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

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

■ 10. Revise § 416.1429 to read as follows:

§ 416.1429 Hearing before an administrative law judge—general.

If you are dissatisfied with one of the determinations or decisions listed in § 416.1430, you may request a hearing. Subject to § 416.1456, the Deputy Commissioner for Hearings Operations, or their delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Deputy Commissioner for Hearings Operations, or their delegate, may assign your case to another administrative law judge. We will schedule you to appear by audio, agency video, online video, or

in person as set forth in § 416.1436. Audio means telephone or similar audio-based technology in a private location you choose. Agency video means video, with audio functionality, using our equipment in one of our offices. Online video means video, with audio functionality, using a personal electronic device in a private location you choose. When we determine your manner of appearance, we consider the factors described in § 416.1436 (c)(1)(i) through (ii). You may submit new evidence (subject to the provisions of § 416.1435), examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. The administrative law judge will issue a decision based on the preponderance of the evidence in the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and, subject to the provisions of § 416.1435, any new evidence that may have been submitted for consideration.

■ 11. In § 416.1436, revise the section heading and paragraphs (a) through (d), redesignate paragraphs (e) and (f) as paragraphs (f) and (g), and add a new paragraph (e).

The revisions and addition read as follows:

§ 416.1436 Time, place, and manner of appearance for a hearing before an administrative law judge.

(a) *General.* We set the time and manner(s) of appearance for any hearing. We will set the place of a hearing when we schedule you and any other parties to the hearing to appear in person or by agency video. We may change the time, manner(s) of appearance, or place, if it is necessary. After sending you reasonable notice of the proposed action, the administrative law judge may adjourn or postpone the hearing or reopen it to receive additional evidence any time before the administrative law judge notifies you of a hearing decision.

(b) *Place of hearing.* If we set the place of the hearing, it can be 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. The “place” of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by agency video or in person. A party to a hearing

may only appear from the geographic areas, noted in this subsection, in which we hold hearings.

(c) *Determining manner of appearance to schedule.* We will schedule you or any other party to the hearing to appear by audio, agency video, online video, or in person. We may schedule you to appear by online video only if you agree to appear in that manner.

(1) When we determine your manner of appearance at the hearing, we consider the following factors:

(i) Which manner of appearance would be the most efficient for conducting the hearing; and

(ii) Any facts in your particular case that provide a good reason to schedule your appearance by audio, agency video, online video, or in person.

(2) We will generally direct any person we call as a witness, other than you or any other party to the hearing, to appear by audio, by agency video, or by online video. Witnesses include medical experts and vocational experts.

Witnesses you call will appear at the hearing pursuant to § 416.1450(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by agency video or by audio. We will consider directing witnesses to appear in person only when:

(i) A witness is unable to appear by other available manners of appearance;

(ii) We determine that an alternate manner of appearance would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual's appearance in person.

(3) We follow the procedures set forth in § 416.1437 to ensure the safety of the public and our employees in our hearing process.

(d) *Objecting to appearing by audio, by agency video, or both.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by audio or by agency video, or, if you agree, by online video. If you object to appearing by audio, by agency video, or both, you must notify us in writing within 30 days after the date you receive the notice. If you only object to appearing by audio, we may schedule you to appear in person, by agency video, or, if you agree, by online video. Similarly, if you only object to appearing by agency video, we may schedule you to appear in person, by audio, or, if you agree, by online video. If you object to appearing by both audio and agency video, and your residence does not change while your request for

hearing is pending, we will schedule you to appear before the administrative law judge in person or, if you agree, by online video.

(1) If you notify us that you object to appearing by audio, by agency video, or both, more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 416.1411.

(2) Notwithstanding any objections you may have to appearing by audio and subject to paragraph (d)(3) of this section, we will schedule you or any other party to the hearing to appear by audio when we cannot schedule you to appear by agency video or by online video and extraordinary circumstances prevent you from appearing in person. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(3) Notwithstanding any objections you may have to appearing by audio, if you are incarcerated and an appearance by agency video and online video is not available, we will schedule you to appear by audio, unless we find that there are facts in your particular case that provide a good reason to schedule you to appear in person, if allowed by the place of confinement, or by agency video, online video, or in person upon your release. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(4) Notwithstanding any objections you may have to appearing by audio, by agency video, or both, if you change your residence while your request for hearing is pending, we will determine how you will appear, including by audio or by agency video, as provided in paragraph (c) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(5) Notwithstanding any objection you may have to appearing by audio, we will schedule you or any other party to the hearing to appear by audio in the circumstances provided in § 416.1437(b)(2)(ii) and (c). For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(e) *Time period to agree to an appearance by online video.* Prior to scheduling your hearing, we will notify

you that we may schedule you to appear by online video if you agree to appear in that manner. To agree to appear by online video, you must notify us in writing within 30 days after the date you receive the notice. If you notify us that you agree to appearing by online video more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 416.1411. You may withdraw your agreement any time before the start of your hearing.

* * * * *

■ 12. In § 416.1437, revise paragraphs (b)(2)(ii) and (c) and add paragraph (e) to read as follows:

§ 416.1437 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b) * * *

(2) * * *

(ii) Require that the hearing be conducted by audio, notwithstanding any objection to appearing by audio, or, if the claimant agrees, by online video.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by audio, notwithstanding any objection to appearing by audio, or, if the claimant agrees, by online video.

* * * * *

(e) For audio appearances under this section, we will call you or any other party to the hearing using your or their telephone number(s).

■ 13. In § 416.1438, revise paragraph (b)(5) to read as follows:

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

* * * * *

(b) * * *

(5) The time and manner(s) in which you, or any other party or witness, will appear. If we schedule you to appear in person or by agency video, as set forth in § 416.1436, the notice of hearing will tell you the place of the hearing.

* * * * *

■ 14. Revise § 416.1444 to read as follows:

§ 416.1444 Administrative law judge hearing procedures—general.

A hearing is open to the parties and to other persons the administrative law judge considers necessary and proper. At the hearing, the administrative law judge looks fully into the issues, questions you and the other witnesses,

and, subject to the provisions of § 416.1435, accepts as evidence any documents that are material to the issues; may stop the hearing temporarily and continue it at a later date if the administrative law judge finds that there is material evidence missing at the hearing or one or more variables outside of our control, such as audio quality or video quality, materially affects the hearing; and may reopen the hearing at any time before the administrative law judge mails a notice of the decision in order to receive new and material evidence. For purposes of this section, materially affects means prevents the hearing from proceeding. The administrative law judge may decide when the evidence will be presented and when the issues will be discussed.

■ 15. In § 416.1450, revise paragraph (a) and the second and third sentences in paragraph (e) to read as follows:

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

(a) *The right to appear and present evidence.* Any party to a hearing has a right to appear before the administrative law judge, in the manner set forth in § 416.1436, to present evidence and to state their position. A party may also make their appearance by means of a designated representative, who may make their appearance in the manner set forth in § 416.1436.

* * * * *

(e) * * * If they are unable to appear with you in the same manner as you, they may appear as prescribed in § 416.1436(c)(2). Witnesses called by the administrative law judge will appear in the manner prescribed in § 416.1436(c)(2). * * *

* * * * *

■ 16. In § 416.1476, revise paragraph (c) to read as follows:

§ 416.1476 Procedures before the Appeals Council.

* * * * *

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance will be by audio, agency video, online video, or in person as set forth in § 416.1436. The Appeals Council will

determine whether any other person relevant to the proceeding will appear by audio, agency video, online video, or in person as set forth in § 416.1436(c)(2).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. FDA-2013-N-0134]

Mammography Quality Standards Act and Regulation Amendments: Small Entity Compliance Guide; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a guidance for industry entitled “Mammography Quality Standards Act and Regulation Amendments: Small Entity Compliance Guide.” The Mammography Quality Standards Act of 1992 (MQSA) final rule amended FDA’s regulations to address, among other things, standards for accreditation bodies, certifying agencies, mammography equipment, quality assurance testing, and clinical image quality, as well as to require certain breast density information be provided by mammography facilities to patients and their healthcare providers. The small entity compliance guide (SECG) is intended to help small entities comply with the MQSA final rule.

DATES: August 26, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2013-N-0134 for “Mammography Quality Standards Act and Regulation Amendments: Small Entity Compliance Guide.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

• *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not