

“date” in the bracketed language of the second sentence.

Dated: December 11, 2008.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

[FR Doc. E8-30021 Filed 12-17-08; 8:45 am]

BILLING CODE 6720-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2008-1018; Airspace  
Docket No. 08-AAL-31]

#### Revocation of Class E Airspace; Metlakatla, AK

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revokes Class E airspace at Metlakatla, AK. The privately funded special instrument approaches serving Metlakatla Airport have been removed. There is no longer a requirement for the controlled airspace. This action revokes existing Class E airspace surrounding the Metlakatla Airport, Metlakatla, AK.

**DATES:** *Effective Date:* 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, AAL-538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5898; fax: (907) 271-2850; e-mail: [gary.ctr.rolf@faa.gov](mailto:gary.ctr.rolf@faa.gov). Internet address: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ato/service\\_units/systemops/fs/alaskan/rulemaking/](http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/).

#### SUPPLEMENTARY INFORMATION:

##### History

On Friday, October 17, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Class E airspace at Metlakatla, AK (73 FR 61752). The action was proposed in order to remove controlled airspace no longer necessary, due to the removal of the existing instrument approach procedure previously serving the Metlakatla Airport. Class E controlled airspace associated with the Metlakatla Airport area is revoked by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### The Rule

This amendment to 14 CFR part 71 revokes Class E airspace at the Metlakatla Airport, Alaska. This Class E airspace is revoked because there are no longer any instrument procedures at the Metlakatla Airport, and the airspace depiction will be removed from aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority

because it revokes Class E airspace no longer necessary for the Metlakatla Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

AAL AK E5 Metlakatla, AK [Revoked]

\* \* \* \* \*

Issued in Anchorage, AK, on December 4, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8-30013 Filed 12-17-08; 8:45 am]

BILLING CODE 4910-13-P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 408, 416, and 422

[Docket No. SSA-2008-0005]

RIN 0960-AG75

#### Clarification of Evidentiary Standard for Determinations and Decisions

**AGENCY:** Social Security Administration.

**ACTION:** Final Rules.

**SUMMARY:** We are amending our rules to clarify that we apply the preponderance of the evidence standard when we make determinations and decisions at all levels of our administrative review

process. These rules do not change our policy that the Appeals Council applies the substantial evidence standard when it reviews a decision by an administrative law judge (ALJ) to determine whether to grant a request for review. We are also adding definitions of the terms “substantial evidence” and “preponderance of the evidence” for use in applying these rules.

**DATES:** These final rules are effective on January 20, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 594-2128, for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

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

**Explanation of Changes**

**Our Administrative Review Process**

We currently decide claims for benefits using an administrative review process that consists of four levels: Initial determination, reconsideration, hearing before an ALJ, and Appeals Council review. See 20 CFR 404.900, 408.1000, and 416.1400. We make an initial determination at the first level. If a person is dissatisfied with the initial determination, he may request reconsideration.<sup>1</sup> If a person is dissatisfied with the reconsidered determination, he may request a hearing before an ALJ.<sup>2</sup> Finally, if a person is dissatisfied with the ALJ's decision,<sup>3</sup> he may request that the Appeals Council

<sup>1</sup> For disability claims, there are ten States that are participating in a “prototype” test under 20 CFR 404.906 and 416.1406. In these States, the second step for people who are dissatisfied with their initial determinations in disability cases is a hearing before an ALJ. The ten States are: Alabama, Alaska, California (Los Angeles North and West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania.

<sup>2</sup> In some cases, attorney advisors in our Office of Disability Adjudication and Review make wholly favorable decisions before an ALJ hearing is conducted. 20 CFR 404.942 and 416.1442.

<sup>3</sup> The words “determination” and “decision” are defined in 20 CFR 404.900 and 416.1400. At the initial and reconsideration levels of the administrative review process, we issue “determinations.” At the ALJ hearing and Appeals Council levels, we issue “decisions.”

review that decision. Once a person has completed these administrative steps and received our final decision, the person may request judicial review of the final decision in Federal district court.

Each adjudicator reviewing a claim in the administrative process makes an independent (or de novo) determination or decision based on the evidence in the record.<sup>4</sup> For example, an ALJ would not simply review a State agency's initial and reconsideration disability determinations to determine whether they were correct. Rather, the ALJ would review the evidence in the record and make an independent decision.

In contrast, in deciding whether to grant a person's request for Appeals Council review of an ALJ's decision, the Appeals Council first considers the ALJ's decision and the evidence before the ALJ using the substantial evidence standard of review, which we discuss below. If the Appeals Council does not grant a request for review, the ALJ's decision becomes our final decision.<sup>5</sup> If the Appeals Council grants the request for review, it will usually either remand the case to an ALJ for additional proceedings and a new decision or issue its own decision.

**Our Standard of Proof**

A claimant has the burden of proving his claim with us. Adjudicators at each level of the administrative review process, including the Appeals Council, consider whether a claimant has proven his claim using an evidentiary standard called the “preponderance of the evidence” when they make a determination or decision. We define preponderance of the evidence as “such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.” 20 CFR 405.5.

<sup>4</sup> In some States, adjudicators must consider, and sometimes adopt, certain findings made in prior disability adjudications under acquiescence rulings (ARs) that we have issued to address circuit court holdings. See AR 97-4(9), 62 FR 64038, available at: [http://www.socialsecurity.gov/OP\\_Home/rulings/ar/09/AR97-04-ar-09.html](http://www.socialsecurity.gov/OP_Home/rulings/ar/09/AR97-04-ar-09.html); AR 98-3(6), 63 FR 29770, available at: [http://www.socialsecurity.gov/OP\\_Home/rulings/ar/06/AR98-03-ar-06.html](http://www.socialsecurity.gov/OP_Home/rulings/ar/06/AR98-03-ar-06.html); AR 98-4(6), 63 FR 29771, corrected at 63 FR 31266, available at: [http://www.socialsecurity.gov/OP\\_Home/rulings/ar/06/AR98-04-ar-06.html](http://www.socialsecurity.gov/OP_Home/rulings/ar/06/AR98-04-ar-06.html); and AR 00-1(4), 65 FR 1936, available at: [http://www.socialsecurity.gov/OP\\_Home/rulings/ar/04/AR2000-01-ar-04.html](http://www.socialsecurity.gov/OP_Home/rulings/ar/04/AR2000-01-ar-04.html).

<sup>5</sup> The Appeals Council may also dismiss the request for review either with or without first granting the request. Additionally, the Appeals Council may review a case on its own motion without an individual asking it to do so. See 20 CFR 404.967, 404.969, 404.984, 416.1467, 416.1469, and 416.1484. See also 20 CFR 408.1050, which incorporates the relevant provisions of 20 CFR 416.1467-416.1482 by reference.

The Social Security Act does not specify the standard of proof to use when we make a determination or decision. Courts and scholars have long recognized that the preponderance of the evidence standard is the traditional standard of proof in a civil or an administrative adjudicatory proceeding.<sup>6</sup> Our longstanding policy has been that the preponderance of the evidence standard applies to determinations or decisions on claims under parts 404, 408, and 416.<sup>7</sup> Prior to these final rules, we did not have regulations in parts 404, 408, and 416 that clearly stated that we use the preponderance of the evidence standard when we make a determination or decision. The absence of explicit language in these parts explaining the standards we use at each level of the administrative process caused some confusion about the applicable standard. By issuing these final rules, we intend to resolve any confusion about the applicable standard.

**Our Standard of Review at the Appeals Council**

When the Appeals Council considers whether to grant a request for review of an ALJ's decision, it does not use a preponderance of the evidence standard. Instead, it considers, among other things, whether the action, findings, or conclusions of the ALJ are supported by substantial evidence.<sup>8</sup> 20 CFR 404.970(a) and 416.1470(a). The definition of substantial evidence in these final rules is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The substantial evidence standard of review gives deference to the findings of the ALJ rather than requiring a decision based on a new evaluation of the evidence.<sup>9</sup>

<sup>6</sup> Federal courts apply a substantial evidence standard when they review our final decisions. 42 U.S.C. 405(g), 1009(b), and 1383(c)(3).

<sup>7</sup> A claimant must give us “convincing” evidence to prove that he meets certain requirements for eligibility, as described in subpart H of parts 404 and 416. Because these final rules address the appropriate standard of proof to be applied in making determinations or decisions rather than the burden of proving eligibility for benefits, these final rules are not applicable to subpart H of parts 404 and 416.

<sup>8</sup> The Appeals Council also reviews any new and material evidence under 20 CFR 404.970(b) and 416.1470(b).

<sup>9</sup> Our regulations also provide that the Associate Commissioner for Disability Determinations or his delegate may use the substantial evidence standard of review when reviewing a sample of disability hearing officers' reconsideration determinations. 20 CFR 404.918 and 416.1418. In general, disability hearing officers make reconsideration determinations in cases of beneficiaries who we have determined are no longer disabled. See 20 CFR 404.914-404.918 and 416.1414-416.1418.

As stated earlier, the Appeals Council uses the substantial evidence standard to decide whether to review an ALJ's decision. If it grants review and then issues its own decision, the Appeals Council uses the preponderance of the evidence standard when it issues its decision.

### Explanation of Changes

We are revising several regulation sections in parts 404, 408, 416, and 422 to clarify that we use the preponderance of the evidence standard of proof to adjudicate claims at all levels of the administrative review process. We also are adding a definition of the term "preponderance of the evidence" in 20 CFR 404.901, 408.1001, and 416.1401, and a definition of the term "substantial evidence" in 20 CFR 404.901 and 416.1401. These are the same definitions we currently use in 20 CFR 405.5.

We are also making additional changes from the language proposed in the NPRM. None of these changes alter the meaning of these sections. First, we are revising several of the affected regulatory sections in these final rules to put them in active voice and to use consistent language. Second, we are making two changes to 20 CFR 422.203(c). We are adding a reference to attorney advisor decisions under 20 CFR 404.942 and 416.1142 and deleting the phrase "under applicable provisions of the law and regulations and appropriate precedents." These changes make the language in section 20 CFR 422.203(c) consistent with the language in final 20 CFR 404.953(a) and 416.1453(a), and they acknowledge that, under certain circumstances, attorney advisors can make decisions instead of an ALJ under 20 CFR 404.942 and 416.1442.

We believe these clarifications will improve the accuracy and consistency of the decision-making process.

We have the authority to make these changes under 42 U.S.C. 405(a), 902(a)(5), 1010(a), and 1383(d)(1).

### Public Comments

In the notice of proposed rulemaking published at 73 FR 33745 (June 13, 2008), we provided the public with a 60-day period in which to comment on the proposed changes. That comment period ended on August 12, 2008. We received comments from four people. We carefully considered each comment. Because some of the comments were long and quite detailed, we have condensed, summarized, and paraphrased them in the following discussions. However, we have tried to present all views adequately and to address carefully all of the significant

issues raised by the commenters that are within the scope of the proposed rules. We generally have not addressed comments that are outside the scope of the rulemaking proceeding.

*Comment:* One commenter generally supported the proposed rules and said that there should be only one evidentiary standard used by our adjudicators at all levels of the adjudication process.

*Response:* We agree with the commenter that adjudicators at each level of the administrative review process, including the Appeals Council, should use the same evidentiary standard. These rules provide that they will all use the preponderance of the evidence standard of proof when they make determinations or decisions. As stated above, the Appeals Council only uses the substantial evidence standard of review when it considers whether to grant a request for review of an ALJ's decision. Although it is unclear from the commenter's letter, to the extent that the commenter suggested that the Appeals Council should apply the preponderance of the evidence standard of proof when it reviews an ALJ's decision, we are not adopting the comment. Our rules governing the Appeals Council's use of the substantial evidence standard to review ALJ decisions have worked well, and we do not believe that there is any reason to change them.

*Comment:* Two commenters were concerned that the proposed changes could create an ambiguity about who has the burden of proof. One of these commenters also said that our determinations and decisions should be made based on substantial evidence and that the burden of a party is to provide proof by a preponderance of the evidence. Both commenters expressed concern that the proposed changes could appear to shift the burden of proof in disability cases to us by requiring that we base our determinations and decisions on a preponderance of the evidence. One of these commenters suggested that we add regulatory text to explain who has the burden of proof at each of the five steps of the sequential evaluation process that we use to decide whether a person is disabled. See 20 CFR 404.1520 and 416.920.

*Response:* We are not adopting this comment. These final rules concern the appropriate standard of proof, not who has the burden of proof at any stage of our sequential evaluation process. Our current regulations explain the burden of proof in disability claims.<sup>10</sup> We

<sup>10</sup> See 20 CFR 404.1512, 404.1560(c)(2), 404.1566(c), 416.912, 416.960(c)(2), and 416.966(c).

previously explained the concept of how the burden of proof, a term traditionally associated with adversarial litigation, applies in the context of our nonadversarial system. 68 FR 51153, 51154–51155 (Aug. 26, 2003). We do not believe that it is appropriate to make the changes suggested by the commenters because these final rules do not change the allocation of the burden of proof in our adjudications.

*Comment:* One commenter said that our use of the word "review" in several of the proposed sections was ambiguous. The commenter thought that it was unclear whether we meant a review of the evidence or a review of the determination or decision. The commenter suggested that we use a phrase such as "again look" instead of "review" when we refer to reviewing evidence.

*Response:* We are not adopting this comment. In many sections of our rules, we use the word "review" to refer generally to a consideration of evidence. With regard to the Appeals Council's review of a decision or a dismissal, we use the word "review" as a term of art.<sup>11</sup> We believe that the plain meaning of the word is readily apparent in the context of the sections of the regulations in which we use it, and we are not aware that these longstanding usages have confused either adjudicators or the public.

*Comment:* One commenter suggested changes to our proposed language for 20 CFR 404.979, 404.984, 416.1479, and 416.1484. Specifically, the commenter suggested amending those sections to state that the Appeals Council uses the substantial evidence standard when it remands a case to an ALJ, and that the Appeals Council will remand a case it reviewed to an ALJ for further proceedings unless the decision being appealed is supported by substantial evidence.

*Response:* We are not adopting this comment because it is inconsistent with our existing regulations, which provide that the Appeals Council may grant a request for review and remand a case for reasons other than a lack of substantial evidence to support a decision. See 20

A claimant has the burden of providing proof of his disability under each of the first four steps in the sequential evaluation process. In the fifth and final step of the sequential evaluation process, we become responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can perform after considering the claimant's residual functional capacity, age, education, and work experience. However, a claimant must persuade us that he is disabled at each step of the sequential evaluation process. See *Bowen v. Yuckert*, 482 U.S. 137, 146 (1987).

<sup>11</sup> See, e.g., 20 CFR 404.967 and 416.1467.

CFR 404.970 and 416.1470. The Appeals Council may also remand a case to an ALJ pursuant to a Federal court's instructions without conducting its own review. See 20 CFR 404.983 and 416.1483.

*Comment:* One commenter suggested that we change both of our proposed definitions. He also suggested that we adopt a new term—“substantial evidence standard of review”—that would address when a reviewing body may remand a decision based on an adjudicator's failure to discuss evidence and that we amend 20 CFR 404.902 and 416.1492 accordingly.

*Response:* We are not adopting this comment. As we noted above, our definitions of the terms “preponderance of the evidence” and “substantial evidence” are taken directly from our existing rule in 20 CFR 405.5. The definitions in that rule are based on accepted definitions and are consistent with our longstanding usage. The commenter's proposed additions to these definitions would not appreciably clarify our rules, and some of the language the commenter proposed could raise questions among the public and our adjudicators. We also believe that our adjudicators and the public are familiar with the concept of substantial evidence because our subregulatory instructions have included a definition of “substantial evidence” for approximately 37 years. See SSR 71–53c.

The commenter's other proposals are beyond the scope of this rulemaking because they focus on how the Appeals Council or a Federal court can determine whether a decision is supported by substantial evidence. If we decide that it would be appropriate to adopt rules along the lines proposed by the commenter, we would first follow the Administrative Procedure Act's rulemaking procedures.

**Regulatory Procedures**

**Executive Order 12866, as Amended**

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they were not subject to OMB review.

**Regulatory Flexibility Act**

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

**Paperwork Reduction Act**

These rules will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

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

**List of Subjects**

*20 CFR Part 404*

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

*20 CFR Part 408*

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income (SSI), Veterans.

*20 CFR Part 416*

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

*20 CFR Part 422*

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

Dated: December 12, 2008.

**Michael J. Astrue,**  
*Commissioner of Social Security.*

■ For the reasons set forth in the preamble, we are amending subpart J of part 404, subpart J of part 408, subpart N of part 416, and subparts B and C of part 422 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

**Subpart J—[Amended]**

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

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

■ 2. Amend § 404.901 by adding the definitions for “*Preponderance of the evidence*” and “*Substantial evidence*” in alphabetical order to read as follows:

**§ 404.901 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

■ 3. Amend § 404.902 by revising the second sentence and adding a new sentence before the existing third sentence in the introductory text to read as follows:

**§ 404.902 Administrative actions that are initial determinations.**

\* \* \* We will base our initial determination on the preponderance of the evidence. We will state the important facts and give the reasons for our conclusions in the initial determination. \* \* \*

\* \* \* \* \*

■ 4. Amend § 404.917 by revising the second sentence of paragraph (b) to read as follows:

**§ 404.917 Disability hearing—disability hearing officer's reconsidered determination.**

\* \* \* \* \*

(b) \* \* \* The disability hearing officer must base the reconsidered determination on the preponderance of the evidence offered at the disability hearing or otherwise included in your case file.

\* \* \* \* \*

■ 5. Revise § 404.920 to read as follows:

**§ 404.920 Reconsidered determination.**

After you or another person requests a reconsideration, we will review the evidence we considered in making the initial determination and any other evidence we receive. We will make our determination based on the preponderance of the evidence.

■ 6. Amend § 404.941 by revising the second sentence of paragraph (a) to read as follows:

**§ 404.941 Prehearing case review.**

(a) \* \* \* That component will decide whether it should revise the determination based on the preponderance of the evidence. \* \* \*

\* \* \* \* \*

■ 7. Amend § 404.942 by revising the second sentence of paragraph (a) to read as follows:

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

(a) \* \* \* If after the completion of these proceedings we can make a decision that is wholly favorable to you and all other parties based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue the decision. \* \* \*

■ 8. Amend § 404.948 by revising the first sentence of paragraph (a) to read as follows:

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

(a) \* \* \* If the evidence in the hearing record supports a finding in favor of you and all the parties on every issue, the administrative law judge may issue a hearing decision based on a preponderance of the evidence without holding an oral hearing. \* \* \*

■ 9. Amend § 404.953 by revising the second sentence of paragraph (a), the first sentence of paragraph (b), and the first sentence of paragraph (c) to read as follows:

**§ 404.953 The decision of an administrative law judge.**

(a) \* \* \* The administrative law judge must base the decision on the preponderance of the evidence offered at the hearing or otherwise included in the record. \* \* \*

(b) \* \* \* The administrative law judge may enter a wholly favorable oral decision based on the preponderance of the evidence into the record of the hearing proceedings. \* \* \*

(c) \* \* \* Although an administrative law judge will usually make a decision, the administrative law judge may send the case to the Appeals Council with a recommended decision based on a preponderance of the evidence when appropriate. \* \* \*

■ 10. Amend § 404.979 by adding a new third sentence to read as follows:

**§ 404.979 Decision of Appeals Council.**

\* \* \* If the Appeals Council issues its own decision, it will base its decision on the preponderance of the evidence. \* \* \*

■ 11. Amend § 404.984 by revising the last sentence of paragraph (a), the second sentence of paragraph (b)(3), and the last sentence of paragraph (c) to read as follows:

**§ 404.984 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.**

(a) \* \* \* The Appeals Council will either make a new, independent decision based on the preponderance of the evidence in the record that will be the final decision of the Commissioner after remand, or it will remand the case to an administrative law judge for further proceedings.

(b) \* \* \*

(3) \* \* \* If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on the preponderance of the evidence in the entire record affirming, modifying, or reversing the decision of the administrative law judge, or it will remand the case to an administrative law judge for further proceedings, including a new decision. \* \* \*

(c) \* \* \* After the Appeals Council receives the briefs or other written statements, or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Commissioner based on the preponderance of the evidence affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision. \* \* \*

**PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

**Subpart J—[Amended]**

■ 12. The authority citation for subpart J of part 408 continues to read as follows:

**Authority:** Secs. 702(a)(5) and 809 of the Social Security Act (42 U.S.C. 902(a)(5) and 1009).

■ 13. Amend § 408.1001 by adding the definition for “Preponderance of the evidence” in alphabetical order to read as follows:

**§ 408.1001 Definitions.**

\* \* \* \* \*

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

■ 14. Amend § 408.1002 by adding a new third sentence to read as follows:

**§ 408.1002 What is an initial determination?**

\* \* \* We will base our initial determination on the preponderance of the evidence.

■ 15. Amend § 408.1020 by revising the second sentence to read as follows:

**§ 408.1020 How do we make our reconsidered determination?**

\* \* \* We will make our determination based on the preponderance of the evidence in the record. \* \* \*

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

**Subpart N—[Amended]**

■ 16. 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).

■ 17. Amend § 416.1401 by adding the definitions for “Preponderance of the evidence” and “Substantial evidence” in alphabetical order to read as follows:

**§ 416.1401 Definitions.**

\* \* \* \* \*

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

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

■ 18. Amend § 416.1402 by revising the second sentence and adding a new sentence before the existing third sentence in the introductory text to read as follows:

**§ 416.1402 Administrative actions that are initial determinations.**

\* \* \* We will base our initial determination on the preponderance of the evidence. We will state the important facts and give the reasons for our conclusions in the initial determination. \* \* \*

■ 19. Amend § 416.1417 by revising the second sentence of paragraph (b) to read as follows:

**§ 416.1417 Disability hearing—disability hearing officer’s reconsidered determination.**

\* \* \* \* \*

(b) \* \* \* The disability hearing officer must base the reconsidered determination on the preponderance of the evidence offered at the disability

hearing or otherwise included in your case file.

\* \* \* \* \*

■ 20. Revise § 416.1420 to read as follows:

**§ 416.1420 Reconsidered determination.**

After you or another person requests a reconsideration, we will review the evidence we considered in making the initial determination and any other evidence we receive. We will make our determination based on the preponderance of the evidence. The person who makes the reconsidered determination will have had no prior involvement with the initial determination.

■ 21. Amend § 416.1441 by revising the second sentence of paragraph (a) to read as follows:

**§ 416.1441 Prehearing case review.**

(a) \* \* \* That component will decide whether it should revise the determination based on the preponderance of the evidence. \* \* \*

\* \* \* \* \*

■ 22. Amend § 416.1442 by revising the second sentence of paragraph (a) to read as follows:

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

(a) \* \* \* If after the completion of these proceedings we can make a decision that is wholly favorable to you and all other parties based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue the decision. \* \* \*

\* \* \* \* \*

■ 23. Amend § 416.1448 by revising the first sentence of paragraph (a) to read as follows:

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

(a) \* \* \* If the evidence in the hearing record supports a finding in favor of you and all the parties on every issue, the administrative law judge may issue a hearing decision based on a preponderance of the evidence without holding an oral hearing. \* \* \*

\* \* \* \* \*

■ 24. Amend § 416.1453 by revising the second sentence of paragraph (a), the first sentence of paragraph (b), and the first sentence of paragraph (d) to read as follows:

**§ 416.1453 The decision of an administrative law judge.**

(a) \* \* \* The administrative law judge must base the decision on the preponderance of the evidence offered

at the hearing or otherwise included in the record. \* \* \*

(b) \* \* \* The administrative law judge may enter a wholly favorable oral decision based on the preponderance of the evidence into the record of the hearing proceedings. \* \* \*

\* \* \* \* \*

(d) \* \* \* Although an administrative law judge will usually make a decision, the administrative law judge may send the case to the Appeals Council with a recommended decision based on a preponderance of the evidence when appropriate. \* \* \*

■ 25. Amend § 416.1479 by adding a new third sentence to read as follows:

**§ 416.1479 Decision of Appeals Council.**

\* \* \* If the Appeals Council issues its own decision, it will base its decision on the preponderance of the evidence. \* \* \*

■ 26. Amend § 416.1484 by revising the last sentence of paragraph (a), the second sentence of paragraph (b)(3), and the last sentence of paragraph (c) to read as follows:

**§ 416.1484 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.**

(a) \* \* \* The Appeals Council will either make a new, independent decision based on the preponderance of the evidence in the record that will be the final decision of the Commissioner after remand, or it will remand the case to an administrative law judge for further proceedings.

(b) \* \* \*

(3) \* \* \* If the Appeals Council assumes jurisdiction, it will make a new, independent decision based on the preponderance of the evidence in the entire record affirming, modifying, or reversing the decision of the administrative law judge, or it will remand the case to an administrative law judge for further proceedings, including a new decision. \* \* \*

(c) \* \* \* After the Appeals Council receives the briefs or other written statements, or the time allowed (usually 30 days) for submitting them has expired, the Appeals Council will either issue a final decision of the Commissioner based on the preponderance of the evidence affirming, modifying, or reversing the decision of the administrative law judge, or remand the case to an administrative law judge for further proceedings, including a new decision.

\* \* \* \* \*

**PART 422—ORGANIZATION AND PROCEDURES**

**Subpart B—[Amended]**

■ 27. The authority citation for subpart B of part 422 continues to read as follows:

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

■ 28. Amend § 422.130 by revising the first sentence of paragraph (c) to read as follows:

**§ 422.130 Claim procedure.**

\* \* \* \* \*

(c) \* \* \* In the case of an application for benefits, the establishment of a period of disability, a lump-sum death payment, a recomputation of a primary insurance amount, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, after obtaining the necessary evidence, we will determine, based on the preponderance of the evidence (see §§ 404.901 and 416.1401 of this chapter) as to the entitlement of the individual claiming or for whom is claimed such benefits, and will notify the applicant of the determination and of his right to appeal. \* \* \*

**Subpart C—[Amended]**

■ 29. The authority citation for subpart C of part 422 continues to read as follows:

**Authority:** Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

■ 30. Revise the last sentence of § 422.203(c) to read as follows:

**§ 422.203 Hearings.**

\* \* \* \* \*

(c) \* \* \* The administrative law judge, or an attorney advisor under §§ 404.942 or 416.1442 of this chapter, must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.

[FR Doc. E8–30056 Filed 12–17–08; 8:45 am]

BILLING CODE 4191-02-P