Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. A prehearing brief shall be filed electronically, and nine (9) true paper copies shall be submitted (on paper measuring 8.5 x 11 inches and single-sided) on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination.

■ 16. Amend § 207.67 by revising paragraph (a) to read as follows:

§ 207.67 Posthearing briefs and statements.

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

* * * * *

■ 17. Amend § 207.68 by revising paragraph (b) to read as follows:

§ 207.68 Final comments on information.

* * * * *

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

By order of the Commission.

Issued: June 19, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–14675 Filed 6–24–14; 8:45 am]

BILLING CODE 7020–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, and 416

[Docket No. 2011–0056]

RIN 0960–AH37

Changes to Scheduling and Appearing at Hearings

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules explain how a claimant may object to appearing at a hearing via video teleconferencing, or to the time and place of a hearing. These final rules adopt, with further clarification regarding our good cause exception, the notice of proposed rulemaking (NPRM) that we published in the **Federal Register** on June 27, 2013. We expect that these final rules will have a minimal impact on the public, help ensure the integrity of our programs, and allow us to administer our programs more efficiently.

DATES: These final rules are effective July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Maren Weight, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, (703) 605–7100 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are making final, with further clarification regarding our good cause exception, the proposed NPRM that we published in the **Federal Register** on June 27, 2013.[1] As we discussed in the preamble to the NPRM, our workloads at the administrative law judge (ALJ) hearing level continue to grow, and we are implementing final rules that will help us provide better service by allowing us to conduct hearings and issue decisions more expeditiously.

Objecting to Appearing by Video Teleconferencing

As we explained in the NPRM, we have conducted hearings by video teleconferencing since 2003. Over the last decade, we found that hearings held by video teleconferencing help reduce our average processing time, reduce travel expenses, and allow us to better serve the public. Therefore, we have continued to improve our video teleconferencing capabilities, added five National Hearing Centers that hold hearings exclusively by video teleconferencing, and increased the number of ALJs in traditional hearing offices who hold hearings by video teleconferencing.

However, we reiterate in these final rules that while we have taken significant strides in increasing our video teleconferencing capacity, we remain concerned that some individuals are manipulating our rules in order to obtain a hearing with an ALJ with a higher allowance rate. As we previously noted, this may be an unintended consequence of our commitment to transparency as we make more information, such as an ALJ's allowance rates, available to claimants and their representatives. Until the effective date of this final rule, these types of efforts to undermine the random assignment of ALJs have generally been successful. Our business process has been to reschedule a hearing if the claimant, or a representative on a claimant's behalf, objected to appearing by video teleconferencing at any time before or at the hearing, or to transfer a case if a claimant indicated he or she moved closer to another hearing office.

Our continued concerns about efforts to undermine our rules are not merely anecdotal. At the time of this final rule, we brought and pursued sanction actions against an appointed representative for misrepresenting facts in order to have cases transferred to a hearing office with a higher allowance rate. We have observed some individuals decline hearings by video teleconferencing after learning that the claimant is scheduled to appear before an ALJ with a lower allowance rate. We have observed other questionable conduct that, while not necessarily constituting misconduct often delays the processing of cases and prevents the use of video teleconferencing

[1] The NPRM is available at: *http://www.gpo.gov/fdsys/pkg/FR-2013-06-27/pdf/2013-14894.pdf.*

technology in certain offices. We continue to receive declinations less than 20 days [2] before the date the hearing, resulting in the loss of the hearing slot that we could have used to hold a hearing for another claimant. Finally, when we receive a declination for a hearing by video teleconferencing after the hearing has been scheduled; we must use additional administrative resources to reschedule a hearing at a time and place amenable to all hearing participants. For these types of reasons, a change to our current process was necessary.

In this final rule, before we assign an ALJ to the case or before we schedule a hearing, we will notify a claimant that he or she has the right to object to appearing at the hearing by video teleconferencing. If the claimant objects to appearing at the hearing by video teleconferencing, the claimant must tell us in writing within 30 days after the date he or she receives the notice, unless he or she shows good cause for missing the deadline. If we receive a timely objection, or we find there was good cause for missing the deadline, we will schedule the claimant for an in person hearing, with one limited exception. If a claimant moves to a different residence while his or her request for a hearing is pending, we will determine whether the claimant will appear in person or by video teleconferencing, even if the claimant previously objected to appearing by video teleconferencing. In addition, in order for us to consider a change in residence when scheduling a hearing, the claimant must submit evidence verifying a new residence. After we receive evidence regarding the claimant's new residence, we will decide how the claimant's appearance will be made. This limited exception to the rule allows us to protect the integrity of our programs while providing us with the flexibility to transfer cases when there is a legitimate change in residence and we can process the case more efficiently.

Time Period for Objecting to a Hearing

In these final rules, we also specified the time period for objecting to the time and place of a hearing. To ensure that we have adequate time to prepare for the hearing, we require that a claimant notify us of an objection in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or, if earlier, 30 days after receiving notice of the hearing. If the claimant objects to the time and place of the hearing outside of the specified time period and fails to attend the hearing, the ALJ will follow existing sub-regulatory authority to develop good cause for failure to appear. We also adopted other minor revisions in the final rules to clarify when we will reschedule a hearing for good cause. For instance, we removed the example that a claimant might offer living closer to another hearing site as a good cause reason to object to the time and place of the hearing.

Appearing at the Hearing by Telephone

To further reduce the need to reschedule hearings and to improve our efficiency, we provide that the ALJ may determine that extraordinary circumstances exist to schedule the claimant, or any other party to the hearing, to appear at the hearing by telephone. For example, an ALJ will direct a claimant or other party to the hearing to appear by telephone when the person's appearance in person is not possible, such as when the person is incarcerated, the correctional facility will not allow a hearing to be held at the facility, and video teleconferencing is not available. The flexibility in the final rule allows us to continue the practice of scheduling a hearing by telephone when the claimant specifically requests a hearing in this manner, and the ALJ determines that extraordinary circumstances prevent the claimant or other party who makes the request from appearing at the hearing in person or by video teleconferencing.

As we noted in the NPRM, we spend significant administrative resources arranging in person hearings with officials of correctional facilities. It also reduces our productivity when an ALJ travels to a confinement facility to hold one or two hearings rather than conducting a full hearing docket. These final rules will save administrative resources and allow us to provide more timely hearings to all claimants because the ALJ will be present in the hearing office to conduct a full hearing docket.

Part 405

In the final rule, we adopted several changes to Part 405 for consistency with the rules in Parts 404 and 416. We adopted changes relating to video teleconferencing and hearing appearances by telephone in extraordinary circumstances, as described above. For consistency with our pilot program [3] in all regions except Boston, we also adopted changes allowing the agency, rather than the ALJ, to set the time and place for hearing.

Public Comments on the NPRM

In the NPRM, we provided a 60-day comment period, which ended on August 26, 2013. We carefully considered the 13 public comments we received. Because some of the comments were lengthy, we summarize them below. We present the commenters' concerns and suggestions and respond to the significant issues relevant to this rulemaking. We do not respond to comments, or portions of comments, that are outside the scope of this rulemaking proceeding.

Comment: One commenter indicated that ALJs will not be able to adequately see and observe claimants if they were scheduled to appear via video teleconferencing. Another commenter argued that it is unfair if claimants have to wait longer for in-person hearings. Both commenters essentially argued that hearings held by video teleconferencing violate claimants' due process rights.

Response: We disagree with the concerns raised in these comments. First, it is important to reiterate that under these final rules claimants will generally continue to have the right to appear in person at a scheduled hearing if they timely object to appearing via video teleconferencing. Furthermore, our regulations have allowed claimants to appear via video teleconferencing at our hearings since 2003.[4] In our experience holding hearings by video teleconference, we have found that ALJs are able to observe a claimant adequately. As our resources permit, we continue to improve our video teleconferencing equipment for hearings, and we manage cases as effectively as possible to provide claimants hearings in the timeliest method available.

We also disagree with the commenters' concerns that a hearing held by video teleconferencing can adversely affect a claimant's right to due process. A number of Federal courts have held that hearings conducted via video teleconferencing adequately protect a claimant's due process rights.[5]

[2] Our regulations require that we provide notice of a hearing 20 days in advance. See 20 CFR 404.938 and 416.1438. Late declinations are even more problematic in the Boston Region where we are required to give notice 75 days in advance. See 20 CFR 405.316.

[3] See 20 CFR 404.936(a) and (h), and 416.1436(a) and (h).

[4] 68 FR 5210 and 68 FR 69003.

[5] *Lipp* v. *Astrue,* No. 2:09–cv–991, 2010 WL 4719454 at *11 (S.D. Ohio Oct. 5, 2010) (Magistrate Judge's Report and Recommendation), *adopted by district court,* 2010 WL 4718763 (S.D. Ohio November 15, 2010), *Evans* v. *Astrue,* No. 4:08–cv–66, 2010 WL 276119 (E.D. Tenn. Jan. 15, 2010)

Continued

Thus, claimants who appear at the hearing by video teleconferencing receive due process, regardless of the wait time for an in-person hearing or the use of video teleconferencing equipment.

Comment: Two commenters recommended that the first option should be to schedule in person hearings. If the claimant cannot attend the scheduled hearing, then the commenters suggested that, rather than opting out, the claimant should be able to request to appear via telephone or video teleconferencing. One commenter noted this was a concern for claimants who are homeless.

Response: As discussed above, under these final rules claimants will continue to have the right to appear in person at a scheduled hearing if they timely object to appearing via video teleconferencing, unless an exception exists. Since our agency began using the video teleconferencing process for hearings, claimants have been required to opt out of appearing at a hearing via video teleconferencing, and this process has operated efficiently for us over the last 10 years. Requiring claimants to opt into appearing at a hearing via video teleconferencing could potentially delay scheduled hearings, create additional staff work, and cost us valuable resources. This would likely result in diminished overall public service, especially to claimants who have critical cases, including homeless claimants. Furthermore, we anticipate holding a small number of hearings via telephone because our final rules provide that we will schedule a claimant to appear via telephone only when the claimant's appearance in person is not possible, or if the ALJ determines that extraordinary circumstances prevent the claimant or another party from appearing at the hearing in person or by video teleconferencing. Therefore, these final rules continue to give the claimant the option to appear in person, except in limited circumstances, while balancing our needs for administrative efficiency.

Comment: Several commenters raised a concern about the limited exception to the right to decline a hearing by video teleconferencing. Under the proposed rules, we retained the right to schedule claimants to appear at the hearing via video teleconferencing if they change residence while the case is pending, even if they have timely objected to appearing by video teleconferencing. The commenters noted that many claimants have legitimate reasons to move, often involving financial hardships, and the reason a claimant requests an in-person hearing does not change when they move.

Response: We agree that most claimants have legitimate reasons for changing residences; however, as noted in the preamble of the NPRM (78 FR at 38611), and reiterated in this final rule, we are concerned that some claimants or their appointed representatives may be misusing our procedures regarding a change in residence to undermine the random assignment of cases to our ALJs. We are aware of situations in which a representative instructed claimants to report a change of address, which was not a change of residence, so that cases would be reassigned to a different hearing office with higher allowance rates. As a result of such practices, we must have a means to ensure the integrity of our program.

We anticipate that we will apply this exception infrequently. For example, one of the commenters expressed concern that we should not apply the exception if a claimant moves within the same servicing area after an in-person hearing is scheduled. These final rules give us discretion to address this concern. Since the claimant would not be trying to gain an advantage by changing residence address, and the same hearing office would process the case, we would not expect the ALJ assigned to the case to apply the exception. In another example, if a claimant changes residences to a different servicing area, there is no additional delay to schedule the claimant to appear in person at the hearing, and we have no indication that the claimant is attempting to manipulate the assignment of the case to another ALJ, then we would use our discretion to schedule the hearing in person, in accordance with the claimant's initial objection. Therefore, we have not deleted the exception we proposed, as some of the commenters requested. Under these final rules, we continue to include a limited exception that would allow us to schedule claimants to appear at the hearing via video teleconferencing if they change residence while the case is pending, even if they have timely objected to appearing by video teleconferencing.

Comment: One commenter indicated that the proposed regulations allowing a claimant to opt out of a hearing held by video teleconferencing within 30 days of a notice, in most instances, should be more aggressive. The commenter suggested that claimants should not have the right to object to appearing at hearings via video teleconferencing.

Response: We disagree with this comment. As explained above, we have allowed claimants to request an in-person hearing since we began the video teleconferencing program in 2003. The commenter's suggestion to eliminate any possibility for opting out of appearing at a hearing via video teleconferencing would not be consistent with our prior practice or, even further, allow us to accommodate an in-person hearing when it would result in more timely and efficient case adjudication. Therefore, we have determined that we will continue to allow claimants to opt out of appearing at a hearing via video teleconferencing if they timely object to appearing by video teleconferencing. The change we are making in these rules allows us to balance claimants' needs for adequate time to make an informed decision about how to appear at hearing with our needs for program integrity and administrative efficiency.

Comment: Another commenter suggested that appointed representatives should be able to appear via telephone or video teleconferencing and in a different location than the claimants they represent. The commenter also indicated that representatives should be allowed to have video teleconferencing equipment in their offices.

Response: We do not need to revise these rules in response to the commenter's suggestion because we already have in place a mechanism similar to what the commenter requested. In 2008, we developed and began using an agency initiative, the Representative Video Project (RVP) that authorizes representatives to use their own video teleconferencing equipment for video hearings under certain circumstances. The RVP provides efficient and cost effective methods for conducting hearings. Under the RVP initiative, the claimant and his or her representative must both appear from the same representative-owned video teleconferencing site except in instances where the ALJ determines that it is in the best interest of the claimant to permit the claimant and his or her appointed representative to appear from separate locations.

Comment: One commenter recommended a handout guide of the agency's business process when claimants opt out of appearing at a hearing via video teleconferencing. A sample guide was included with the comment. The commenter agreed with the proposed regulations regarding the time period to object to a hearing by video teleconferencing and suggested business process revisions to implement the final rules.

(Order adopting and attaching Magistrate Judge's Report and Recommendation).

Response: We considered the comment and the work the commenter put into creating the guide. Once these final rules are published, we will update our sub-regulatory authority and business processes to be consistent with the rules, and we will consider whether any other resource for the public may be necessary.

Comment: One commenter questioned whether the specific hearing office would be listed on the notice sent to claimants indicating that they have 30 days to object to a hearing held via video teleconferencing. The commenter, who was a representative, indicated concern about practicing before unfamiliar hearing offices.

Response: We considered this concern, and we may or may not include specific hearing office addresses on notices to claimants about their right to request an in-person hearing within the required time period. Regardless of whether hearing office addresses are included, we operate a nationwide program at the hearing level, and all hearing offices follow the same regulations, policies, and procedures.[6] Therefore, representatives can effectively represent claimants at any hearing office. We note that ALJs have some limited variances in how they manage their cases, including requesting pre-hearing briefs. Under this process, we will continue to provide representatives with prior notice of the name of the ALJ assigned to a hearing and will continue to provide in advance any specific instructions from the ALJ that may affect how a representative prepares his or her case. We note that this same potential for minor variances among ALJs currently exists in individual hearing offices. Thus, the final rules do not significantly affect how a representative practices before us.

Comment: Multiple commenters raised the concern that there was no ''good cause'' exception for extending the 30-day time period to object to appearing at the hearing via video teleconferencing or to object to the time and place of the hearing.

Response: We agree with these commenters. There may be legitimate instances when a claimant may not be able to object to appearing at a hearing via video teleconferencing or to the time or place of hearing within the stated time period, including, but not limited to, serious illness or death in the family. Consistent with our other regulations that provide a good cause exception to filing deadlines, we revised the final rules to allow the ALJ to determine whether the claimant had good cause to file an objection outside the time period specified to object to appearing at a hearing via video teleconferencing or to the time and place of a hearing. The final rules state that ALJs will use the standard for good cause set forth in our current regulations at 20 CFR 404.911, 405.20, and 416.1411 to evaluate these late filings.

Comment: One commenter suggested that the proposed regulation allowing for a 5-day time period for objecting to the time and place of the hearing was too short. The commenter suggested the period should be longer.

Response: We considered this comment, but we disagree with it. The final rules provide that claimants must notify us in writing that they object to the time and place of the hearing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or 30 days after receiving notice of the hearing, whichever is earlier. In fiscal year 2012, we averaged scheduling hearings nationwide at least 60 days in advance. With this advance scheduling, most claimants will be required to object 30 days after receiving notice of the hearing, which allows us sufficient time to reschedule the hearing. In the limited circumstances where we schedule claimants' hearing between 20 to 35 days prior to the hearing, we need to allow claimants adequate time to consider whether they will object to the time and place of the hearing that may cause the hearing to be rescheduled at a later time. The final rules address both scenarios and give claimants adequate time to decide if they are going to object to the time and place of their hearing.

Comment: Several commenters recommended that we should retain living closer to another hearing site as a reason for to find good cause to change the time and place of a hearing. The commenters noted that it might be more difficult for a claimant to travel to another office that is further away from his or her residence.

Response: We disagree with the concerns raised in these comments. As noted previously, we are concerned that claimants or their appointed representatives may be misusing our procedures regarding a change in residence to undermine the random assignment of cases to our ALJs. We need to protect the integrity of our program and ensure that ALJs only reschedule a hearing for good cause. It may be appropriate, in some instances, for ALJs to determine that good cause exists to change the time and place of a hearing based on the claimant's residence. However, removing this reason makes the final rules more consistent and protects the integrity of our programs.

Comment: Multiple commenters noted that more limits were necessary on the use of telephone hearings. Specifically, commenters recommended that claimants should be able to object to appearing by telephone. They raised concerns about claimants or representatives who have hearing impairments and whether we will make reasonable accommodations in these situations.

Response: We considered these concerns. However, the final rules make clear that an ALJ will direct a claimant's appearance by telephone under two limited circumstances. First, an ALJ will direct a claimant to appear by telephone when the claimant's appearance in person is not possible, such as if the claimant is incarcerated, the facility will not allow a hearing to be held at the facility, and video teleconferencing is not available. Second, an ALJ will direct a claimant to appear by telephone if the ALJ determines, either on his or her own initiative, or at the request of the claimant or another party, that extraordinary circumstances prevent the claimant from appearing in person or by video teleconferencing.

Since an ALJ will direct a claimant's appearance by telephone only under certain limited circumstances, we do not believe it is necessary or appropriate to provide the claimant with an opportunity to object to the mode of this appearance. However, we will use this provision on a limited basis, and its goal is to promote efficiency of hearings. We believe the policy is consistent with our goal of making the hearing process more efficient for claimants because appearing by telephone will allow claimants to have their hearings before an ALJ in the shortest possible time period.

Claimants who are scheduled to appear by telephone will receive the same due process rights currently available to all claimants. This includes the right to object to the time or place of hearing under 20 CFR 404.936(d), 405.317, and 416.1436(d), which have been revised accordingly. Regardless of the mode of appearance, we will also continue to make reasonable accommodations for all claimants and representatives. Therefore, we will adequately protect a claimants' rights without placing additional limitations on our ability to schedule a claimant's appearance at a hearing by telephone.

[6] We note that regulations that apply only in the Boston Region allow for some variances in hearing office practices. 20 CFR 405.1 through 405.901.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the requirements for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed these final rules.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These final rules contain public reporting requirements in the regulation sections listed below. We are seeking approval for these regulation sections and for a new SSA form, which we will use to collect the information required by these sections. Below we provide burden estimates for the public reporting requirements.

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden
404.936(c)(1); 405.317(a)(1); 416.1436(d)(1).	For us to consider your change in residence, you must submit evidence verifying your new residence.	45,000	1	5	3,750
404.963(c)(2); 405.317(a)(2); 416.1436(d)(2).	If you notify us more than 30 days after the date you receive our notice that you object to appearing by video teleconference, we will extend the time period if you show good cause for missing the deadline.	13,500	1	10	2,250
405.317(c)	If you believe the issues contained in the notice are incorrect, you should notify the ALJ no later than 5 days before the date of the hearing; you must state the reason(s) for objection.	45,000	1	5	3,750
404.936(d); 405.317(a); 416.1436(d).	If you object to video teleconferencing you must notify us in writing within 30 days after you receive the notice.	850,000	1	5	70,833
404.936(e); 405.317(b); 416.1436(e).	You must notify us if you wish to object to the time and place in writing no later than 5 days prior to hearing or 30 days after receiving notice of hearing; you must state the reason(s) for objection and state the time and place you want the hearing held.	900,000	1	30	450,000
404.936(e)(1); 405.317(b)(1); 416.1436(e)(1).	If you notify us less than 5 days prior to hearing, or more than 30 days after receiving notice of hearing, we will extend the time period if you show good cause for missing the deadline.	5,000	1	5	417
404.938(a); 405.316(a); 416.1438(a).	Indication in writing that respondent does not wish to receive notice of hearing.	4,000	1	2	133
Total		1,862,500			531,133

SSA submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

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 July 25, 2014, which is 30 days after the publication of this rule. 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.

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

List of Subjects

20 CFR Part 404

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

20 CFR Part 405

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Public assistance programs, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income (SSI).

20 CFR Part 416

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

Dated: April 10, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR

chapter III, parts 404, 405, 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. The Deputy Commissioner for Disability Adjudication and Review, or his or her delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Deputy Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing, you may appear in person, by video teleconferencing, or, under certain extraordinary circumstances, by telephone. You may submit new evidence, 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. He or she 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, in person, by video teleconferencing, or by telephone, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and any new evidence that may have been submitted for consideration.

■ 3. In § 404.936, revise paragraphs (b) and (c)(1), redesignate paragraphs (d) through (h) as paragraphs (e) through (i), add a new paragraph (d), and revise redesignated paragraphs (e) and (f), to read as follows:

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

* * * * *

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. 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, whether in person, by video teleconferencing, or by telephone.

(c) * * *

(1) We will consult with the administrative law judge to determine the status of case preparation and to determine whether your appearance, or the appearance of any other party to the hearing, will be made in person, by video teleconferencing or, under extraordinary circumstances, by telephone. The administrative law judge will determine that your appearance, or the appearance of any other party to the hearing, be conducted by video teleconferencing if video teleconferencing equipment is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. The administrative law judge will direct you or another party to the hearing to appear by telephone when:

(i) An appearance in person is not possible, such as if you are incarcerated, the facility will not allow a hearing to be held at the facility, and video teleconferencing is not available; or

(ii) The administrative law judge determines, either on his or her own, or at your request or at the request of any other party to the hearing, that extraordinary circumstances prevent you or another party to the hearing from appearing at the hearing in person or by video teleconferencing.

* * * * *

(d) *Objecting to appearing by video teleconferencing.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by video teleconferencing. If you object to appearing by video teleconferencing, you must notify us in writing within 30 days after the date you receive the notice. If you notify us within that time period and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by video teleconferencing, if you change your residence while your request for hearing is pending, we may determine how you will appear, including by video teleconferencing, as provided in paragraph (c)(1) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(2) If you notify us that you object to appearing by video teleconferencing 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.

(e) *Objecting to the time or place of the hearing.* If you object to the time or place of the hearing, you must:

(1) Notify us in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or 30 days after receiving notice of the hearing, whichever is earlier (or within the extended time period if we extend the time as provided in paragraph (e)(3) of this section); and

(2) State the reason(s) for your objection and state the time and place you want the hearing to be held. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraph (f) of this section. Section 404.938 provides procedures we will follow when you do not respond to a notice of hearing.

(3) If you notify us that you object to the time or place of hearing less than 5 days before the date set for the hearing or, if earlier, more than 30 days after receiving notice of the hearing, 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.

(f) *Good cause for changing the time or place.* The administrative law judge will determine whether good cause exists for changing the time or place of your scheduled hearing. However, a finding that good cause exists to reschedule the time or place of your hearing will not change the assignment of the administrative law judge for your case, unless we determine reassignment will promote more efficient administration of the hearing process.

(1) We will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(i) A serious physical or mental condition or incapacitating injury makes it impossible for you or your representative to travel to the hearing, or a death in the family occurs; or

(ii) Severe weather conditions make it impossible for you or your representative to travel to the hearing.

(2) In determining whether good cause exists in circumstances other than those set out in paragraph (f)(1) of this section, the administrative law judge will consider your reason(s) for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays that might occur in rescheduling your hearing, and whether we previously granted you any changes in the time or place of your hearing. Examples of such other circumstances that you might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) You unsuccessfully attempted to obtain a representative and need additional time to secure representation;

(ii) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(iii) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(iv) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(v) Transportation is not readily available for you to travel to the hearing; or

(vi) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

* * * * *

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

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

* * * * *

(b) *Notice information.* The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the administrative law judge may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or witness is scheduled to be made in person, by video teleconferencing, or by telephone. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a video teleconferencing site and explain what it means to appear at your hearing by video teleconferencing.

* * * * *

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

■ 5. The authority citation for part 405 continues to read as follows:

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383(b).

■ 6. In § 405.315, revise paragraphs (a), (b), and (c)(1), and add new paragraphs (d) and (e), to read as follows:

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

(a) *General.* We may set the time and place for the hearing. We may change the time and place, if it is necessary. If we change the time and place of the hearing, we will send you reasonable notice of the change. We will notify you of the time and place of the hearing at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. 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, whether in person, by video teleconferencing, or by telephone.

(c) * * *

(1) We will consult with the administrative law judge to determine the status of case preparation and to determine whether your appearance, or the appearance of any other party to the hearing, will be made in person or by video teleconferencing or, under extraordinary circumstances, by telephone. The administrative law judge will determine that your appearance, or the appearance of any other party to the hearing, be conducted by video teleconferencing if video teleconferencing equipment is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. The administrative law judge will direct you to appear by telephone when:

(i) An appearance in person is not possible, such as if you are incarcerated, the facility will not allow a hearing to be held at the facility, and video teleconferencing is not available; or

(ii) The administrative law judge determines, either on his or her own, or at your request or at the request of any other party to the hearing, that extraordinary circumstances prevent you or another party to the hearing from appearing at the hearing in person or by video teleconferencing.

* * * * *

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

(e) *Pilot program.* The provisions in the first three sentences of paragraph (a), the first sentence of paragraph (c)(1), and paragraph (d) of this section are a

pilot program. These provisions will no longer be effective on August 9, 2014, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

■ 7. In § 405.316, revise paragraphs (a) and (b)(5), to read as follows:

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

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. We will mail or serve the notice at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

(b) * * *

(5) Whether your appearance or that of any witness is scheduled to be made in person, by video teleconferencing, or by telephone. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a video teleconferencing site and explain what it means to appear at your hearing by video teleconferencing.

* * * * *

■ 8. Revise § 405.317 to read as follows:

§ 405.317 Objections.

(a) *Objecting to appearing by video teleconferencing.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by video teleconferencing. If you object to appearing by video teleconferencing, you must notify us in writing within 30 days after the date you receive the notice. If you notify us within that time period and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by video teleconferencing, if you change your residence while your request for hearing is pending, we may determine how you will appear, including by video teleconferencing, as provided in § 405.315(c). For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(2) If you notify us that you object to appearing by video teleconferencing 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 § 405.20.

(b) Objecting to the *time and place of the hearing.* If you object to the time or place of your hearing, you must:

(1) Notify us in writing at the earliest possible opportunity before the date set for the hearing, but not later than 30 days after receiving notice of the hearing. If you notify us that you object to the time or place of hearing more than 30 days after receiving notice of the hearing, 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 § 405.20; and

(2) State the reason(s) for your objection and state the time and place you want the hearing to be held. The administrative law judge will consider your reason(s) for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays that might occur in rescheduling your hearing, and whether we previously granted you any changes in the time or place of your hearing. However, an objection to the time or place of your hearing will not change the assignment of the administrative law judge for your case, unless we determine reassignment will promote more efficient administration of the hearing process.

(c) *Issues.* If you believe that the issues contained in the hearing notice are incorrect, you should notify the administrative law judge in writing at the earliest possible opportunity, but you must notify him or her no later than 5 business days before the date set for the hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the hearing or in writing before the hearing.

■ 9. In § 405.350, revise the first sentence of paragraph (a) to read as follows:

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

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

* * * * *

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

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

■ 10. 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).

■ 11. 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. The Deputy Commissioner for Disability Adjudication and Review, or his or her delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Deputy Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing, you may appear in person, by video teleconferencing, or, under certain extraordinary circumstances, by telephone. You may submit new evidence, 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. He or she 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, in person, by video teleconferencing, or by telephone, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and any new evidence that may have been submitted for consideration.

■ 12. In § 416.1436, revise paragraphs (b) and (c)(1), redesignate paragraphs (d) through (h) as paragraphs (e) through (i), add a new paragraph (d), and revise redesignated paragraphs (e) and (f), to read as follows:

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

* * * * *

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. 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, whether in person, by video teleconferencing, or by telephone.

(c) * * *

(1) We will consult with the administrative law judge to determine the status of case preparation and to determine whether your appearance, or the appearance of any other party to the hearing, will be made in person, by video teleconferencing or, under extraordinary circumstances, by telephone. The administrative law judge will determine that your appearance, or the appearance of any other party to the hearing, be conducted by video teleconferencing if video teleconferencing equipment is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. The administrative law judge will direct you or another party to the hearing to appear by telephone when:

(i) An appearance in person is not possible, such as if you are incarcerated, the facility will not allow a hearing to be held at the facility, and video teleconferencing is not available; or

(ii) The administrative law judge determines, either on his or her own, or at your request or at the request of any other party to the hearing, that extraordinary circumstances prevent you or another party to the hearing from appearing at the hearing in person or by video teleconferencing.

* * * * *

(d) *Objecting to appearing by video teleconferencing.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by video teleconferencing. If you object to appearing by video teleconferencing, you must notify us in writing within 30 days after the date you receive the notice. If you notify us within that time period and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by video teleconferencing, if you change your residence while your request for hearing is pending, we may determine how you will appear, including by video teleconferencing, as provided in paragraph (c)(1) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(2) If you notify us that you object to appearing by video teleconferencing 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.

(e) *Objecting to the time or place of the hearing.* If you object to the time or place of your hearing, you must:

(1) Notify us in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or 30 days after receiving notice of the hearing, whichever is earlier (or within the extended time period if we extend the time as provided in paragraph (e)(3) of this section); and

(2) State the reason(s) for your objection and state the time and place you want the hearing to be held. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraph (f) of this section. Section 416.1438 provides procedures we will follow when you do not respond to a notice of hearing.

(3) If you notify us that you object to the time or place of hearing less than 5 days before the date set for the hearing or, if earlier, more than 30 days after receiving notice of the hearing, 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.

(f) *Good cause for changing the time or place.* The administrative law judge will determine whether good cause exists for changing the time or place of your scheduled hearing. However, a finding that good cause exists to reschedule the time or place of your hearing will not change the assignment of the administrative law judge for your case, unless we determine reassignment will promote more efficient administration of the hearing process.

(1) We will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(i) A serious physical or mental condition or incapacitating injury makes it impossible for you or your representative to travel to the hearing, or a death in the family occurs; or

(ii) Severe weather conditions make it impossible for you or your representative to travel to the hearing.

(2) In determining whether good cause exists in circumstances other than those set out in paragraph (f)(1) of this section, the administrative law judge will consider your reason(s) for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays that might occur in rescheduling your hearing, and whether we previously granted you any changes in the time or place of your hearing. Examples of such other circumstances that you might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) You unsuccessfully attempted to obtain a representative and need additional time to secure representation;

(ii) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(iii) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(iv) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(v) Transportation is not readily available for you to travel to the hearing; or

(vi) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

* * * * *

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

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

* * * * *

(b) *Notice information.* The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the administrative law judge may dismiss your hearing request, and other information about the

scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or witness is scheduled to be made in person, by video teleconferencing, or by telephone. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a video teleconferencing site and explain what it means to appear at your hearing by video teleconferencing.

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[FR Doc. 2014–14793 Filed 6–24–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

22 CFR Part 9

[Public Notice 8776]

RIN 1400–AC75

National Security Information Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State revises its regulations governing the classification of national security information that is under the control of the Department in order to reflect the provisions of a new executive order on national security information, E.O. 13526 and its implementing directive in Information Security Oversight Office regulations. This revision also reflects consequent changes in the Department's procedures since the last revision of the Department's regulations on this subject in 2004. These changes include some changes in the classification categories, in the rules governing the sharing of other-agency classified information, and in granting access to classified information to certain former government personnel. This regulation does not apply to information classified as Restricted Data (RD) or Formerly Restricted Data (FRD). Requirements for classifying and declassifying RD and FRD can be found in Department of Energy regulations on Nuclear Classification and Declassification, or in a Department of State regulation or internal order implementing those regulations.

DATES: This final rule is effective on June 25, 2014.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Department of State (L/M), 2201 C Street NW., Washington, DC 20520, or at *kottmyeram@state.gov*.

SUPPLEMENTARY INFORMATION: The executive order governing classification of national security information, E.O. 12958, has been superseded by E.O. 13526, effective December 29, 2009. In Section 1.4, the new order makes some minor changes in classification categories, such as eliminating reference to transnational terrorism and adding a qualifier to the term ''weapons of mass destruction.'' That section also requires that the damage to national security be identifiable and describable. These changes are reflected in Section 9.4 of the rule.

While the basis for classification and the classification levels in E.O. 13526 are basically the same as those in predecessor orders, the new executive order contains several provisions not present in its immediate predecessors, such as the training of classifiers, particularly derivative classifiers (not covered in this rule); and, in Section 4.1(i)(1), the sharing with another agency, with certain U.S. entities, or with foreign governments of classified information that was originated by another agency after the effective date of the executive order (covered in Section 9.12 of the rule). Section 4.4 of the new executive order changes a limitation in E.O. 12958 on access to classified information by former government personnel but adds a limitation that the positions that they held be senior government positions. These changes are included in Section 9.13 of this rule. This section is among several from 22 CFR Part 171 pertaining to declassification that have been transferred to Part 9 and revised.

Regulatory Analysis

Administrative Procedure Act. The Department of State is publishing this rulemaking as a final rule. 5 U.S.C. 553(b)(B) provides that a ''general notice of proposed rulemaking'' need not be published in the **Federal Register** ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The Department of State finds good cause to issue this rule without advance notice and public comment because it has determined such procedures are unnecessary. As we note above, this rulemaking incorporates into existing Department regulations the provisions of Executive Order 13526. The Executive Order is a directive that must be implemented throughout the executive branch without significant modification; otherwise, there could be significant confusion among the public, when different agencies adopt different classification standards. Because of this, the Department determined that soliciting public comment was unnecessary.

In addition, this rulemaking involves matters of internal Department management and organization; specifically, the internal procedures for the classification and handling of classified national security information; therefore, the Department has determined that this rulemaking is exempt from notice-and-comment requirements under 5 U.S.C. 553(a)(2). Finally, the Department has determined that this final rule should be effective immediately pursuant to 5 U.S.C. 553(d)(3). The Department finds ''good cause'' in the need to immediately align the Department's national security regulations with those of the White House and other agencies, thus eliminating the confusion that might be caused by conflicting regulations in such a sensitive area.

Regulatory Flexibility Act. Since the Department is not required to publish a general notice of proposed rulemaking for this rulemaking, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Act of 1995. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Information Quality Act. The Department intends to disseminate information under this rulemaking in compliance with the Information Quality Act, Public Law 106–554, and the Department of State *Information Quality Guidelines,* dated October 1, 2002, located at *http://www.state.gov/misc/13864.htm*.

Congressional Review Act. This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets. The rule is being submitted to both Houses of Congress and the Comptroller General. Since it is not a major rule, the proposed effective date is the date of publication.

Executive Orders 12866 and 13563. Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, if