

individual to appear at his or her hearing by VTC if the individual objects to that procedure at the earliest possible opportunity before the time scheduled for the hearing. Under these final rules, if a party so objects to making his or her appearance by VTC, we will reschedule the hearing as one at which the individual may appear in person.

When we reschedule a hearing because a party objects to making his or her appearance by VTC, we will reschedule the hearing at the earliest time possible based on the request for hearing filing date. Where necessary, to expedite the rescheduling, we will give the party the opportunity to appear in person at the hearing office or any other hearing site within the service area of the hearing office at which we are first able to schedule a hearing. The party's travel expenses to the remote site or to the hearing office, and the travel expenses of his or her appointed representative, if any, and the travel expenses of any unsubpoenaed witnesses we determine to be reasonably necessary, will be reimbursed in accordance with the provisions of 20 CFR 404.999a–404.999d and 416.1495–416.1499.

To ensure that a party fully understands the right to decline to appear by VTC, a notice scheduling an individual to appear at his or her hearing by VTC will clearly state:

- What it means to appear by VTC;
- That we have scheduled the individual's appearance to be by VTC;
- That we will schedule a hearing at which the individual may appear in person if the individual tells us that he or she does not want to appear by VTC; and

- How to tell us that.

We will evaluate hearings using VTC procedures to ensure that there is no significant difference in the outcome of hearings conducted using VTC and those conducted in person and that we maintain a high degree of accuracy in decisions made based on hearings using VTC. We will also ensure that individuals:

- Understand that they are not required to appear at their hearings by VTC;
- Know how to tell us if they do not want to appear by VTC;
- Receive a full and fair hearing; and
- Are satisfied with the VTC process in relation to their appearance and the appearances of any witnesses.

The Final Regulations

We are revising 20 CFR 404.929 and 416.1429 to state that you may appear at your hearing in person or by VTC. We are revising 20 CFR 404.936 and

416.1436 to state that we may schedule your appearance or that of any individual appearing at the hearing to be by VTC and that, if we schedule you to appear by VTC and you tell us that you want to appear in person, we will schedule a hearing at which you may appear in person. We are revising 20 CFR 404.938 and 416.1438 to state that if we schedule you or anyone to appear at your hearing by VTC, the notice of hearing will tell you that and provide information about VTC appearances and about how you can tell us that you do not want to appear by VTC. Finally, we are revising 20 CFR 404.950(a) and (e) and 416.1450(a) and (e) to state that a party or a witness may appear at a hearing in person or by VTC.

Public Comments

We published these regulatory provisions in the **Federal Register** as an NPRM on January 5, 2001 (66 FR 1059). We provided the public with a 60-day comment period. In response to the NPRM, we received seven comment letters from the following sources: the Railroad Retirement Board (RRB), the Disability Law Center, the National Organization of Social Security Claimants Representatives, the Association of Administrative Law Judges, and seven ALJs commenting as individuals.

Because some of the comments were detailed, we have condensed, summarized, or paraphrased them below. However, we have tried to summarize commenters' views accurately and to respond to all of the significant issues raised by the commenters that were within the scope of the proposed rules.

Based on our consideration of the comments received, we have made a number of changes in the rules as proposed in the NPRM. We have also made a number of decisions about administrative practices we will follow in using VTC procedures. We discuss our response to each of the comments below.

In the NPRM we spoke of "VTC hearings" and "in-person hearings" as a way of distinguishing easily between hearings at which VTC procedures are used and those at which all the participants are at the same location. The public comments received reflected our use of that language (see below) without raising any specific issue about it. However, from our general consideration of the comments and further evaluation of the use of VTC procedures, we have concluded that we should not rely on language that could erroneously suggest that there are two types of hearings and should instead use

language that reflects the fact that all claimants are afforded an opportunity for one type of hearing—*i.e.*, a hearing at which the claimant's rights to procedural due process, including the right to appear and present evidence, are fully protected. Speaking of hearings as either "in-person" or "VTC" hearings would also not accurately reflect the circumstances of hearings in which some of the participants appear before the ALJ in person and some appear by VTC.

The distinctions between hearings at which all of the participants are at the same location and hearings at which some or all of the involved individuals participate by VTC are secondary distinctions. The distinctions involve the manner in which the parties and the witnesses make their appearances before the ALJ (*i.e.*, in person or by VTC), not fundamental differences that cause the hearings to be of different types. We reflect that view in the description of the final rules set forth above, in the discussion of our responses to the comments, and in specific changes we are making in the final rules. However, our comment summaries are couched in the terms we used in the NPRM.

We further discuss these revisions, and other changes in the final rules that are not in direct response to the comments, following the discussion of our responses to the comments. *See* below under the heading, *Additional Changes*.

Comment: The RRB commented that it was very pleased to see SSA's proposal. The RRB also indicated that it would be interested in determining the feasibility of its hearing officers using the VTC facilities of SSA on a fee basis to conduct some of its hearings—to reduce the significant travel in which the RRB is required to engage to conduct its hearings.

Response: As we noted above and in the NPRM, we are investigating whether we can share facilities with other federal agencies and states. We will pursue discussions with the RRB in that regard.

Comment: One organization commented that when claimants who need hearings at a remote site want to exercise their right to an in-person hearing, they will probably face even longer waits for their hearings, and that SSA must take steps to minimize the delays these claimants will face.

Response: In considering this comment, we have concluded that frequent use of VTC procedures in a remote area could delay the hearings of individuals in that area who do not want to appear by VTC. That is the case because the participation of other individuals in VTC procedures will