

appearance of any individual must be conducted in person. Thus, to the extent that circumstances could arise in which it would be advisable to schedule an in-person appearance by an expert witness even though a VTC appearance would be possible technologically, the ALJ may schedule such an appearance. That action could be appropriate, for example, where the claimant alleges personal bias or dishonesty on the part of the expert and the ALJ determines that the claimant should have the opportunity to cross-examine the witness in person because of the greater immediacy of an in-person confrontation.

Comment: An organization commented that the ALJ has exclusive control over the way hearings are conducted, so long as they are fundamentally fair and comport with requirements of due process, and such authority necessarily implies authority to settle disputes concerning the appropriate form of a hearing in a particular case. This commenter was concerned that the proposed rules did not expressly reflect the authority of ALJs to determine if a hearing will be conducted wholly or in part by VTC, and that the lack of clarity of these rules in this regard could lead to confusion and litigation.

Response: We agree that the proposed rules were unclear in this respect. In §§ 404.936 and 416.1436, the final rules clearly reflect the authority of the ALJ to determine how hearings are conducted with respect to the use of VTC to conduct appearances, while also setting forth specific policies that direct how that authority is to be exercised.

In paragraph (c) of §§ 404.936 and 416.1436, the final rules provide that in setting the time and place of the hearing, the ALJ will determine if the appearance of the claimant or that of any other individual who is to appear at the hearing will be made in person or by VTC. Determining the medium by which appearances will be made is part of the ALJ's function of setting the time and place of the hearing because determining the hearing's "place" requires consideration of whether VTC technology will be used to conduct an appearance or appearances. See below under *Additional Changes* regarding the definition of "place" included in the final rules.

The final rules include provisions in paragraph (c) of §§ 404.936 and 416.1436 that require the ALJ to direct that the appearance of an individual be conducted by VTC if VTC technology is available to conduct the appearance, use of VTC to conduct the appearance would be more efficient than

conducting the appearance in person, and the ALJ does not determine that there is a circumstance preventing use of VTC to conduct the appearance. In setting these guidelines, it is our intent that ALJs routinely schedule appearances by VTC in areas that we have designated as ready for VTC use. An appearance in person should be scheduled in these areas only if the ALJ determines that there is a circumstance in the particular case that would make it inappropriate to use VTC in that case.

The final rules also include provisions requiring the ALJ to find good cause to change a scheduled VTC appearance of a party to an in-person appearance if the party objects to appearing by VTC. These provisions are located in paragraph (e) of §§ 404.936 and 416.1436.

Comment: An organization commented that VTC hearings have not been shown to equal the quality and accuracy of in-person hearings and that national rollout should await the study referenced in the NPRM to ensure that claimants have access to full and fair hearings.

Response: We anticipate that we will gradually rollout use of VTC procedures nationally as we are able to make high-quality VTC technology available in different areas. Under that approach, claimants and the hearing process will be able to benefit from VTC technology as soon as it is available, and we will be able to improve our VTC procedures as we move toward full national implementation.

Based on our experience in using VTC, we believe that VTC does not change adjudicative quality or change decisional outcomes. We will continue to assess the results of VTC procedures as we go forward. We will consider the accuracy and efficiency of VTC procedures and the reactions of claimants and their representatives to those procedures.

Additional Changes

Our decision not to use terminology referring to a hearing as a "video teleconference hearing" or an "in-person hearing," and to use instead language that distinguishes between appearances made in-person and by VTC, has resulted in editorial changes throughout the rules as proposed in the NPRM. These changes include eliminating the phrase "and type of hearing" from the proposed heading for §§ 404.936 and 416.1436. In the final rules, that heading reads, as it does in the current rules: "Time and place for a hearing before an administrative law judge."

To facilitate this change in terminology, and to address a question that the proposed rules did not address, we have included in §§ 404.936 and 416.1436 language defining the term "place." Under these final rules, generally, the "place" of the hearing is the hearing office or other site at which claimant is located when he or she makes his or her appearance before the administrative law judge, whether in person or by video teleconferencing. If there are multiple parties, the "place" of the hearing is the site or sites at which the parties are located when they make their appearances, whether in person or by VTC. That will be the "place" of the hearing even though the ALJ and a witness or witnesses may be located at one or more other sites. Thus, in notifying claimants of the "place" of their hearings, we will notify them, under these final rules as under our current rules, of the places at which they should arrive in order to make their appearances.

The rules as proposed were unclear regarding the function of the ALJ in setting the time and place of the hearing. We have clarified the rules in this regard by changing the final rules to use the language of the current regulations, which specifies that the "[ALJ] sets the time and place for the hearing." Use of the existing language is possible based on the definition of "place" noted above.

These final rules provide needed headings for the multiple paragraphs of §§ 404.936 and 416.1436. In doing that, the final rules distinguish the "General" material in current paragraph (a) from the matter included therein on where we hold hearings, and move the matter dealing with location into a separate, new paragraph (b) that has the heading, "Where we hold hearings." The rules include the definition of "place" in that paragraph.

The final rules also create a new paragraph (c) under the heading, "Determining how appearance will be made." This paragraph sets forth the rules, as discussed above, under which, in setting the time and place for the hearing, the ALJ determines if an appearance or appearances are to be made by VTC or in person. We have also included in this paragraph a reference to §§ 404.950 and 416.1450, which describe procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

Paragraph (b) of the current regulations is redesignated paragraph (d) and given the heading, "Objecting to the time or place of the hearing." The language of this paragraph follows the