

authority contained in these final rules. Many attorney advisors, as well as our paralegal specialists, will be available to provide ALJs with research and decision drafting support.

*Comment:* As an alternative to authorizing attorney advisors to conduct certain prehearing proceedings and issue wholly favorable decisions in appropriate cases, several commenters suggested that the proposed rule should be modified to allow OHA attorney advisors to conduct prehearing proceedings under the direction of an ALJ and make recommended decisions that the ALJ could approve or disapprove. One commenter suggested several specific modifications to the text of the proposed rule to address this issue.

*Response:* We have not adopted this comment. Under current procedures conducted under existing regulatory authority, ALJs may authorize attorney advisors to review cases pending before the ALJ before a hearing is scheduled in order to conduct certain prehearing proceedings and recommend wholly favorable decisions or the scheduling of a hearing, as appropriate. Our experience under the 1993 pilot study was that ALJs agreed with and accepted the recommendations made by attorney advisors with very few exceptions. The procedures we are implementing under these final rules will allow us to process cases more efficiently by authorizing the attorney advisors, during the period in which these rules will be effective, to issue decisions which are wholly favorable to the claimant and any other party to the hearing in appropriate cases, obviating the need for duplicative review by an ALJ. These final rules take full advantage of the experience and expertise of the attorney advisor and will allow ALJs to better focus upon the complex cases that require their skills.

*Comment:* One commenter suggested that the proposed rule be modified to authorize other individuals, such as adjudicators who make disability determinations for us in the State agencies at the initial and reconsideration steps of the administrative review process, to make revised determinations on the same basis as these final rules authorize attorney advisors to make decisions.

*Response:* We have not adopted this comment. The provisions we are establishing in these final rules complement, but do not supersede, the provisions of §§ 404.941 and 416.1441 of our regulations. These provisions allow us to refer a case after a hearing is requested, but before it is held, to the component that issued the determination being reviewed

(including a State agency) so that it may conduct a prehearing case review to determine if a wholly or partially favorable revised determination should be made. The conditions for conducting prehearing case reviews are essentially identical to those under which attorney advisors may conduct prehearing proceedings under these final rules. We would not expect, however, that a case would be subject to both prehearing proceedings by an attorney advisor and a prehearing case review by the component that issued the determination being reviewed. The establishment of temporary procedures authorizing attorney advisors to conduct such proceedings does not limit our authority to refer cases for a prehearing case review under §§ 404.941 and 416.1441.

Furthermore, on June 9, 1995, we published an NPRM proposing to establish the authority to test implementation of the position of an adjudication officer who, under the disability redesign plan, would be the focal point for all prehearing activities when a request for hearing before an ALJ is filed (60 FR 30482). Under the tests proposed in the NPRM, the adjudication officer would be authorized to take a number of actions, including issuing a wholly favorable decision when warranted by the evidence in the record. The rule as proposed for testing permits the adjudication officer to be a qualified employee of SSA or a State agency that makes disability determinations for us. Consequently, we believe that the more appropriate course of action would be to address the concerns raised by this commenter in the context of our adjudication officer rulemaking initiative.

*Comment:* A few commenters suggested other alternatives to the proposed rule to address the increasing number of claims pending at OHA, including providing ALJs with more support, hiring more ALJs and increasing the role of the claimant's representative in the administrative review process.

*Response:* As discussed above in our response to the comment concerning the practicality of the proposed rule, we are devoting appropriate, additional resources to provide staff support to the ALJs in connection with our short term initiatives to reduce the time required to process the cases awaiting a hearing.

We have no current plans to increase the number of ALJs we employ in any substantial way. However, we expect to hire enough additional ALJs so that the number on duty should, with allowances for expected attrition,

increase slightly during this fiscal year (from 1,045 at the end of October 1994 to about 1,050 at the end of FY 95).

One of our short term initiatives to process cases awaiting an ALJ hearing more efficiently is to encourage claimants and representatives to submit proposed decisional language. Under that initiative, OHA currently advises claimants and representatives early in the hearing process of the opportunity to submit arguments in the form of a recommended decision.

*Comment:* A few commenters expressed the view that the proposed rule should be modified to provide adequate quality assurance review procedures, as an alternative to or in addition to review by the Appeals Council, as provided for in the proposed rule.

*Response:* No change in these final rules or in other regulations is required to allow us to subject the decisions made by attorney advisors to quality assurance review procedures, in addition to the reviews the final rules authorize the Appeals Council to conduct on its own motion. We are establishing an intensive quality assurance review program that will supplement our own motion reviews by the Appeals Council in assuring the accuracy of the decisions made by the attorney advisors.

*Comment:* A number of commenters expressed concern that the proposed rule would encourage adjudicators to allow claims, and therefore would increase the allowance rate for cases decided at the hearing step of the administrative review process and increase program costs.

*Response:* The attorney advisor's functions are not designed to increase (or decrease) in a significant way the overall rates at which we allow claims for benefits when an individual requests a hearing before an ALJ. Based on our experience with the 1993 pilot study, we anticipate no significant change in overall allowance rates in claims in which a hearing has been requested. However, we will monitor the impact of these final rules on overall allowance rates and decisional accuracy and will curtail use of, or make appropriate adjustments to the attorney advisor procedures consistent with this regulatory authority, if we determine that there is evidence of any unacceptable change in the rates at which we allow claims for benefits when an individual requests a hearing before an ALJ.

#### Other Comments

Other comments involved suggestions for changing the rule in specific ways.