

PART 3—ADJUDICATION**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 510(a), unless otherwise noted.

2. Section 3.256 is revised to read as follows:

§ 3.256 Eligibility reporting requirements.

(a) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension or parents' dependency and indemnity compensation must promptly notify the Secretary in writing of any change affecting entitlement in any of the following:

- (1) Income;
- (2) Net worth or corpus of estate;
- (3) Marital status;
- (4) Nursing home patient status;
- (5) School enrollment status of a child 18 years of age or older; or
- (6) Any other factor that affects entitlement to benefits under the provisions of this Part.

(b) *Eligibility verification reports.* (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth (if applicable), dependency status, and any other information necessary to determine or verify entitlement to pension or parents' dependency and indemnity compensation.

(2) The Secretary shall require an eligibility verification report under the following circumstances:

- (i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number;
- (ii) If there is reason to believe that the beneficiary or, if the spouse's income could affect entitlement, his or her spouse may have received income other than Social Security during the current or previous calendar year; or
- (iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension or parents' dependency and indemnity compensation as defined in §§ 3.3 or 3.5 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(c) If VA requests that a claimant or beneficiary submit an eligibility

verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(Authority: 38 U.S.C. 1315(e) and 1506)

3. Section 3.277 is amended by revising the heading and paragraphs (b) and (c); and by adding paragraph (d) as follows:

§ 3.277 Eligibility reporting requirements.

* * * * *

(b) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension must promptly notify the Secretary in writing of any change affecting entitlement in any of the following:

- (1) Income;
- (2) Net worth or corpus of estate;
- (3) Marital status;
- (4) Nursing home patient status;
- (5) School enrollment status of a child 18 years of age or older; or
- (6) Any other factor that affects entitlement to benefits under the provisions of this Part.

(c) *Eligibility verification reports.* (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth, dependency status, and any other information necessary to determine or verify entitlement to pension.

(2) The Secretary shall require an eligibility verification report under the following circumstances:

- (i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number;
- (ii) If there is reason to believe that the beneficiary or his or her spouse may have received income other than Social Security during the current or previous calendar year; or
- (iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension as defined in § 3.3 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(d) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

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[FR Doc. 95-24673 Filed 10-3-95; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 20**RIN 2900-AH57****Rules of Practice—Advancement on the Docket**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (the Board) to provide that an appeal may be advanced on the Board's docket where administrative error results in significant delay in docketing the appeal. The Board's current Rules of Practice do not address the problem of administrative error with respect to advancement on the docket. The Rules of Practice are also amended to provide that the Board may advance a case on the docket on its own motion, the motion of the appellant, or the motion of the appellant's representative.

EFFECTIVE DATE: October 4, 1995.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (the Board) decides appeals of claims for veterans' benefits. At the close of Fiscal Year 1994, more than 47,000 appeals were pending at the Board.

Generally, the law requires that the Board consider each case in regular order according to the case's place on the Board's docket. 38 U.S.C. 7107(a)(1). The Board assigns docket numbers. Prior to 1994, docket numbers were assigned when the claims file was physically transferred from the agency of original jurisdiction (typically one of the Department's 58 regional offices) to the Board's offices in Washington, D.C. Beginning in 1994, the Board instituted a new procedure under which docket numbers are assigned as soon as the agency of original jurisdiction forwards a photocopy of the notice of appeal (VA Form 9) to the Board.

The law permits a case to be "advanced on the docket" upon motion only if it involves interpretation of law of general application affecting other claims or for other sufficient cause shown. 38 U.S.C. 7107(a)(2). Because of the large numbers of appeals—on average, the Board receives from 35,000 to 40,000 per year—the Board has taken a restrictive view of its authority to advance cases on the docket. The current regulation, 38 CFR 20.900(c), provides just two examples of "other

sufficient cause shown" (described in the regulation as "good cause"): (1) terminal illness and (2) extreme hardship which might be relieved in whole or in part if the benefits sought on appeal were granted.

The current regulation does not deal with the appeals which, due to administrative error, have not been properly processed, resulting in a significant delay in assignment of a docket number which does not, in turn, fairly represent that appeal's true place in the queue of cases waiting to be decided.

Further, with respect to the change in 1994 to the Board's docketing procedures described above, we have learned that some cases which were at regional offices awaiting hearings by traveling members of the Board under former 38 U.S.C. 7110 were not properly identified to the Board at the time of change. As a result, cases that should have numbers reflecting docketing in early 1994 may instead be assigned docket numbers reflecting mid- or late-1995 docketing.

To address these problems, this document amends the Rules of Practice to provide that "good cause" for advancing a case on the docket also includes administrative error which results in significant delay in docketing the appeal.

The Rules of Practice are also amended to provide that a motion to advance a case on the docket may be made by the Chairman, the Vice Chairman, the appellant, or the appellant's representative.

Finally, the Rules of Practice are amended to (1) delete the requirement that the Chairman make the decision on the motion to advance and (2) provide that, where a motion is received prior to the assignment of the appeal to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate that authority to a Deputy Vice Chairman. This change is required because (1) 38 U.S.C. 7102(b), as added by Pub. L. No. 103-271, prohibits cases from being assigned to the Chairman as an individual member, and (2) to maintain consistency in the decisions on such motions.

This final rule consists of agency policy, procedure, or practice and, consequently, pursuant to 5 U.S.C. 553, is exempt from notice and comment and effective date provisions.

The Secretary hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The

rule would not directly affect any small entities. Only VA beneficiaries would be directly affected. Pursuant to 5 U.S.C. 605(b), this final regulation is therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with this final rule.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: September 25, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

Subpart J—Action by the Board

2. In § 20.900, the first four sentences in paragraph (c), the seventh sentence in paragraph (c), and the authority citation at the end of the section are revised to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(c) *Advancement on the docket.* A case may be advanced on the docket if it involves an interpretation of law of general application affecting other claims or for other good cause. Examples of such good cause include terminal illness, extreme hardship which might be relieved in whole or in part if the benefits sought on appeal were granted, administrative error which results in significant delay in docketing the appeal, etc. Advancement on the docket may be requested by motion of the Chairman, the Vice Chairman, the appellant, or the appellant's representative. Such motions must be in writing and must identify the law of general application affecting other claims or other good cause involved. * * * Where a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. * * *

(Authority: 38 U.S.C. 7107(a))

[FR Doc. 95-24501 Filed 10-3-95; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC-076-1-7141a; FRL-5291-3]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 23, 1995, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the North Carolina State Implementation Plan (SIP). EPA is approving these revisions to rules 15A NCAC 2D .0501 Compliance With Emission Control Standards, .0516 Sulfur Dioxide Emissions From Combustion Sources, and .0530 Prevention Of Significant Deterioration. The intended effect of this revision is to clarify certain provisions and ensure consistency with requirements of the Clean Air Act.

DATES: This final rule is effective December 4, 1995 unless notice is received by November 3, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning