

located at approximate position 41° 17'9" N, 072° 54'3" W.

(b) *Enforcement period.* This section is effective from 7 a.m. (EST) October 15, 2001 to 7 a.m. (EST) October 20, 2001.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 20, 2001.

J.J. Coccia,

*Captain, U.S. Coast Guard, Captain of the Port, Group/MSO Long Island Sound.*

[FR Doc. 01-24423 Filed 9-27-01; 8:45 am]

BILLING CODE 4910-15-U

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 20**

**RIN 2900-AJ58**

**Board of Veterans' Appeals: Rules of Practice—Subpoenas**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** The Board of Veterans' Appeals (Board) adjudicates appeals from denials of claims for veterans' benefits filed with the Department of Veterans Affairs (VA). This document adopts as a final rule amendments to a Board Rule of Practice concerning subpoenas.

**DATES:** Effective date: October 29, 2001.

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

**SUPPLEMENTARY INFORMATION:** On February 15, 2000, VA published a proposed rule in the *Federal Register* (65 FR 7468), to clarify a Board Rule of Practice at 38 CFR 20.711 dealing with subpoena procedures in Board proceedings. The proposed changes relate to: (1) Where such a motion must be filed; (2) ruling on the motion; (3) service of a subpoena; (4) motions to quash or modify subpoenas; and (5) enforcing compliance with a subpoena.

Only two comments were received. A national veterans' service organization stated that it concurred in the proposed amendments. A representative of a group of attorneys engaged in the practice of veterans' law posed several objections.

The primary objection of this writer, occupying approximately half of his comments, is grounded in the misconception that these amendments remove authority from local VA offices to issue subpoenas in cases that are not before the Board. The Rule never gave that authority, nor do the amendments remove it.

The authority of field facility heads to issue subpoenas in matters within their jurisdiction is at 38 CFR 2.1(b). The Board's Rules of Practice deal only with procedures in matters that are before the Board and within its statutory jurisdiction. The Rule in question appears in a section of the Board's Rules entitled "Hearings on Appeal." Paragraph (a) of the Rule, which is not being amended, describes who may move for a subpoena under the rule as "the *appellant*, or his or her representative." (Emphasis added.) What is to be removed is a now obsolete procedure that once permitted VA field facility directors to decide motions for subpoenas in Board proceedings held at those facilities. Under 38 U.S.C. 7102(a) only members of the Board may make determinations on motions in Board proceedings.

The writer objects to the addition of certain quoted language to Rule 711(e) (38 CFR 20.711(e)) and urges that it be stricken. The language he quotes is being removed from paragraph (e), not added, as the proposed rule-making document explained. Thus this objection is also moot.

Next, the writer objects to language in proposed Rule 711(h) (which deals with motions to quash or modify a subpoena), stating that it "creates a mechanism for adversarial proceedings regarding the modification or attempts by the Agency to 'quash' subpoena requests." He maintains that this would be for the convenience of VA at the expense of veterans.

Motions to quash are not new. The procedure has been available through this Rule since 1992. (57 FR 4088, 4122) Permitting motions to quash subpoenas is standard practice throughout American jurisprudence. Such motions provide a mechanism for resolving disputes between persons seeking subpoenas and persons subpoenaed and has nothing to do with agency convenience, or the lack of it.

The amendments in fact aid veterans and their representatives, who are

usually the persons seeking subpoenas as a means of obtaining evidence to present to the Board. The amendments provide a way for them to get relief when the person who has evidence makes unreasonable demands regarding its release. The proposed rule-making document gives the example of unreasonable demands for reimbursement for costs involved in honoring a subpoena duces tecum to obtain physical evidence, typically documents. The writer further implies that this amendment is purposefully designed to impede access to documents held by VA. That is simply not the case. VA itself is seldom the subject of a subpoena in a Board proceeding because there are other methods for readily obtaining VA records. See 38 U.S.C. 5701(b) and 5 U.S.C. 552.

The proposed rule is adopted without changes.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule 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. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

**List of Subjects in 38 CFR Part 20**

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

Approved: September 20, 2001.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, amend 38 CFR part 20 as follows:

**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).

- 2. Section 20.711 is amended by:
  - (a) Revising paragraphs (c) and (e);
  - (b) Revising the second sentence of paragraph (f);
  - (c) Revising the first sentence of paragraph (g);
  - (d) Revising paragraph (h); and
  - (e) Adding paragraph (i).

The revisions and addition read as follows:

**§ 20.711 Rule 711. Subpoenas.**

\* \* \* \* \*

(c) *Where filed.* Motions for a subpoena must be filed with the Director of Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

\* \* \* \* \*

(e) *Ruling on motion for subpoena.*

(1) *To whom assigned.* The ruling on the motion will be made by the Member or panel of Members to whom the case is assigned. Where the case has not been assigned, the Chairman, or the Chairman's designee, will assign the case to a Member or panel who will then rule on the motion.

(2) *Procedure.* If the motion is denied, the Member(s) ruling on the motion will issue an order to that effect which sets forth the reasons for the denial and will send copies to the moving party and his or her representative, if any. Granting the motion will be signified by completion of a VA Form 0714, "Subpoena," if attendance of a witness is required, and/or VA Form 0713, "Subpoena Duces Tecum," if production of tangible evidence is required. The completed form shall be signed by the Member ruling on the motion, or, where applicable, by any panel Member on behalf of the panel ruling on the motion, and served in accordance with paragraph (g) of this section.

(f) \* \* \* A subpoena for a witness will not be issued or served unless the party on whose behalf the subpoena is issued submits a check in an amount equal to the fee for one day's attendance and the mileage allowed by law, made payable to the witness, as an attachment to the motion for the subpoena. \* \* \*

(g) \* \* \* The Board will serve the subpoena by certified mail, return receipt requested. \* \* \*

(h) *Motion to quash or modify subpoena.*

(1) *Filing procedure.* Upon written motion of the party securing the subpoena, or of the person subpoenaed, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown. Relief may include, but is not limited to, requiring the party who secured the subpoena to advance the reasonable cost of producing books, papers, or other tangible evidence. The motion must specify the relief sought and the reasons for requesting relief. Such motions must be filed at the address specified in paragraph (c) of this section within 10 days after mailing of the subpoena or the time specified in the subpoena for compliance, whichever is less. The motion may be accompanied

by such supporting evidence as the moving party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the motion, and any attachments thereto, were mailed to the party who secured the subpoena, or the person subpoenaed, as applicable;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed.

(2) *Response.* Not later than 10 days after the date that the motion was mailed to the responding party, that party may file a response to the motion at the address specified in paragraph (c) of this section. The response may be accompanied by such supporting evidence as the responding party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the response, and any attachments thereto, were mailed to the moving party;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed. If the subpoena involves testimony or the production of tangible evidence at a hearing before the Board and less than 30 days remain before the scheduled hearing date at the time the response is received by the Board, the Board may reschedule the hearing to permit disposition of the motion.

(3) *Ruling on the motion.* The Member or panel to whom the case is assigned will issue an order disposing of the motion. Such order shall set forth the reasons for which a motion is either granted or denied. The order will be mailed to all parties to the motion. Where applicable, an order quashing a subpoena will require refund of any sum advanced for fees and mileage.

(i) *Disobedience.* In case of disobedience to a subpoena issued by the Board, the Board will take such steps as may be necessary to invoke the aid of the appropriate district court of the United States in requiring the attendance of the witness and/or the production of the tangible evidence subpoenaed. A failure to obey the order of such a court may be punished by the court as a contempt thereof.

(Authority: 38 U.S.C. 5711, 5713, 7102(a))

[FR Doc. 01-24304 Filed 9-27-01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA-4133a; FRL-7060-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO<sub>x</sub> RACT Determinations for Ten Individual Sources Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

**SUMMARY:** Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for ten major sources of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 24, 2001 (66 FR 44532), EPA stated that if it received adverse comment by September 24, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 24, 2001 (66 FR 44580). EPA will not institute a second comment period on this action.

**EFFECTIVE DATE:** The Direct final rule is withdrawn as of September 28, 2001.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford at (215) 814-2108.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(167) is withdrawn as of September 28, 2001.

[FR Doc. 01-23633 Filed 9-27-01; 8:45 am]

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