

Sunshine Act Meetings

Federal Register

Vol. 57, No. 22

Monday, February 3, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 29, 1992.

TIME AND DATE: 10:00 a.m., Thursday, February 6, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Shamrock Coal Company*, Docket No. KENT 90-137. (Issues include whether the judge erred in finding that Shamrock's violation of 30 C.F.R. § 75.403 was not of a significant and substantial nature).

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-6539/(202) 709-9300 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 92-2694 Filed 1-30-92; 8:45 am]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, February 6, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2608 Filed 1-30-92; 10:36 am]

BILLING CODE 6210-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

February 14, 1992 8:30 a.m. Closed Session

February 14, 1992 9:15 a.m. Open Session

PLACE: Arnold and Mabel Beckman Center, 100 Academy Drive, Irvine, California 92715.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, February 14, 1992

Closed Session (8:30 a.m.—9:15 a.m.)

1. Minutes—November 1991 Meeting.
2. NSB and NSF Staff Nominees.
3. Vannevar Bush Award.
4. Future NSF Budgets.
5. Grants and Contracts.

Friday, February 14, 1992

Open Session (9:15 a.m.—12:00 Noon)

Swearing-in of Dr. Ian M. Ross

6. Chairman's Report.
7. Minutes—November 1991 Meeting.
8. NSB Executive Committee Report.
9. Director's Report.
10. Earthquake Science & Technology Center.

Thomas Ubois,

Executive Officer.

[FR Doc. 92-2642 Filed 1-30-92; 11:28 am]

BILLING CODE 7555-01-M

Corrections

Federal Register

Vol. 57, No. 22

Monday, February 3, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911183-1322]

RIN 0648-AE46

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 91-31331 beginning on page 381 in the issue of Monday, January 6, 1992, make the following corrections:

§ 672.23 [Corrected]

1. On page 382, in the second column, in § 672.23(d), in the fourth line, "for" should read "from".

§ 675.23 [Corrected]

2. On the same page, in the third column, in § 675.23(d), in the third line, "Groundfish" should read "groundfish".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Special Education Programs

[CFDA No. 84.029]

Notice Inviting Applications for New Awards Under Training Personnel for the Education of Individuals With Disabilities for Fiscal Year 1992

Correction

In notice document 91-26943 beginning on page 57205 in the issue of Thursday, November 7, 1991, make the following correction:

On page 57227, at the end of the document the file line was omitted and should read as follows:

[FR Doc 91-26943 Filed 11-6-91; 8:45am]

BILLING CODE 4000-01-M

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 440 and 441

[MB-41-P]

RIN 0938-AF12

Medicaid Program; Required Coverage of Nurse Practitioner Services

Correction

In proposed rule document 91-30353, beginning on page 66392, in the issue of Monday, December 23, 1991, make the following corrections:

1. On page 66392, in the second column, under **SUMMARY**, in the sixth paragraph, in the second line, "confirm" should read "conform".

2. On page 66393, in the second column, in the third paragraph, in the seventh line, "throughout" should read "through".

3. On page 66394, in the first column, under **IV. Response to Comments**, in the third line, "notable" should read "notable".

4. On the same page, in the second column, under **V. Regulatory Impact Statement**, in the sixth paragraph, in the ninth line, "11029(b)" should read "1102(b)".

5. On the same page, in the third column, in the second full paragraph, in the second line, "of" should read "or".

§ 441.10 [Corrected]

6. On page 66395, in the 2d column, in § 441.10, in the 11th and 13th lines, "Section" should read "Sections".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Action-Exchange; CA

Correction

In notice document 91-29581, beginning on page 64639, in the issue of

Wednesday, December 11, 1991, make the following corrections:

1. On page 64639, in the 3rd column, in the 23rd line, "CaCA" should read "CACA".

2. On the same page, in the same column, in the 25th line, "T. 38S." should read "T. 31S.".

3. On the same page, in the same column, in the seventh line from the bottom of the page, "T. 31S." should read "T. 31S.".

4. On page 64640, in the first column, in the file line at the end of the document, "FR Doc. 91-28581" should read "FR Doc. 91-29581".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

RIN 1029-AB33

Surface Coal Mining and Reclamation Operations; Underground Mining Activities; Temporary Cessation of Operations

Correction

In proposed rule document 92-1417 appearing on page 2235 in the issue of Tuesday, January 21, 1992, in the third column, in the third line from the bottom, "not" should read "now".

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

Correction

In notice document 91-26905 beginning on page 57031 in the issue of Thursday, November 7, 1991, make the following correction:

On page 57032, at the end of the first column, the file line was omitted and should read as follows:

[FR Doc 91-26905 Filed 11-6-91; 8:45 am]

BILLING CODE 8120-02-M

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

49 CFR Part 571

[Docket No. 1-21; Notice 11]
RIN 2127-AE13

Federal Motor Vehicle Safety
Standards; Theft Protection*Correction*

In rule document 92-1344 beginning on page 2039 in the issue of Friday, January 17, 1992, make the following corrections:

1. On page 2040, in the third column, in the first full paragraph, in the first and second lines, the phrase "Petitions for Reconsideration of March 1991 Final Rule" should have been set as a heading and the paragraph should begin with "NHTSA".

2. On page 2042, in the second column, in the first full paragraph, in the sixth line, after "systems" insert ". Many manufacturers have recently redesigned their transmission lock systems".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

49 CFR Part 572

[Docket No. 89-03; Notice 02]

RIN 2127-AC09

Anthropomorphic Test Dummies—6-
Year-Old Child*Correction*

In rule document 91-27099 beginning on page 57830 in the issue of Thursday, November 14, 1991, make the following correction:

§ 572.73 [Corrected]

On page 57837, in the second column, the section heading should read as set forth below:

**§ 572.73 Neck assembly and test
procedure.**

BILLING CODE 1505-01-D

is part of Federal Register

Monday
February 3, 1992

Part II

Department of Veterans Affairs

38 CFR Parts 14, 19, and 20
Appeals Regulations; Rules of Practice;
Final Regulations and Proposed
Regulations

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 14, 19, and 20

RIN 2900-AE02

Appeals Regulations; Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulatory amendments revising the Board of Veterans' Appeals' (BVA) Appeals Regulations and Rules of Practice governing appeals practices and procedures within VA. Conforming amendments have also been made to other related VA regulations. The effect of these amendments will be to revise and update these regulations to reflect current law and practices and to provide information needed by individuals who wish to appeal decisions made by VA adjudicatory bodies to the BVA. The revisions are necessary in order to provide appellate procedures which conform to current law and to inform the public about those procedures.

EFFECTIVE DATE: These rules are effective March 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Keller, Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2978.

SUPPLEMENTARY INFORMATION: On August 18, 1989, VA published in the *Federal Register* (54 FR 34334) a notice proposing amendment of part 19 and the addition of part 20 of title 38, Code of Federal Regulations, to update the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals. Conforming revisions to part 14 were also proposed.

VA received ten comments on the proposed regulations—four from service organizations, two from legal services organizations allied with a service organization, two from Members of the Board of Veterans' Appeals, one from a VA employee, and one from a private attorney-at-law.

Some commenters have referred to various sections of the Veterans' Judicial Review Act (Pub. L. 100-687). In the remarks which follow, provisions of the Act which have been codified will be referred to by their section numbers in title 38, United States Code (as amended by Pub. L. 100-687), rather than by section numbers of the Act. All references to section numbers in title 38, United States Code, throughout this document have been revised to reflect

the renumbering accomplished by recent legislation.

There were several general comments, in addition to specific comments concerning individual amendments.

One commenter objected to moving the cross-references from individual sections, where they are currently located, to appendices to parts 19 and 20—asserting that this format was less helpful to the user of the regulations. VA agrees that this method of setting out cross-references is somewhat less desirable, but the change was made at the direction of the Office of the Federal Register. The BVA plans to issue an updated version of a pamphlet which includes these regulations (VA Pamphlet 1-1) within the next few months. This pamphlet version will use the old cross-reference format.

The same commenter suggested that the Rule of Practice references in part 20 be abandoned and that only the CFR citation be used. This suggestion has not been adopted. The Rule of Practice terminology is widely used by judicial and quasijudicial bodies, such as the BVA. The use of Rule numbers, as opposed to CFR citations for individual Rules of Practice, is common in appellate practice before the BVA. VA sees no benefit to be gained by abandoning this useful terminology, particularly at a time when attorneys-at-law who are very familiar with the terminology are becoming increasingly involved in appellate practice before VA field personnel and the BVA.

Finally, this commenter felt that the period of time allowed for public comment was too short—noting difficulty in preparing comments within the time allowed. With respect to this comment, the BVA notes that it is generally willing to grant reasonable requests for an extension of time within which to comment if such an extension proves necessary. This commenter did not request an extension.

One commenter suggested that regulations be promulgated "indicating specifically how BVA will handle 'errors' in previous AOJ or BVA decisions 'discovered' in the course of a current appellate review." Methods of addressing error in a prior BVA decision are set out in § 20.904; in § 20.1000, et seq.; and in a notice of proposed rulemaking published elsewhere in this issue of the *Federal Register*. VA does not believe that additional regulation on the subject of the correction of error in prior rating decisions by the agency of original jurisdiction is necessary at this time. The Board may always correct error in prior rating decisions which are properly before it on appeal and may call errors in determinations which are

not properly before it to the attention of the agency of original jurisdiction.

One commenter offered several paragraphs of criticism under the heading "General Comments." These were essentially conclusionary paragraphs summarizing the nature of complaints about specific amendments. Except to the extent that they are addressed in the next two paragraphs, these comments will be discussed in the context of specific amendments.

As might be expected with a proposal of this size, some of the comments were in opposition to each other and some of the comments were internally inconsistent. One commenter essentially suggested that many of these amendments are contrary to the letter and spirit of Public Law 100-687, while another observed that many of the proposed amendments were straightforward implementations of that Act. The former's criticisms included a complaint that the amendments were too adversarial, technical and legal, while at the same time requesting such additions as formal discovery proceedings.

Some commenters were generally complimentary, expressing the view that the amendments were well structured and would facilitate an orderly appellate process. One commenter noted that many of the amendments codified existing practices.

Comments concerning specific amendments are set out in the material which follows.

No comments, suggestions, or objections were received regarding the amendments to part 14 and to §§ 19.1 and 19.2. There was a typographical error in the heading of redesignated § 14.635 (formerly § 14.637). The word "office" was placed in the wrong location. This has been corrected. With this correction, these amendments are adopted as proposed.

Three comments were received concerning the amendment of § 19.3. One commenter suggested that paragraph (b) be revised to require that BVA Sections have three Members unless "overwhelming circumstances prevent this." This suggestion has not been adopted. The language proposed conforms to the provisions of 38 U.S.C. 7102. While the Chairman of the BVA has divided the BVA into three-Member Sections, circumstances might arise in the future which would require an en banc approach in some instances. In addition, as contemplated by 38 U.S.C. 7102(a)(2) and by paragraph (d) of this section, there will inevitably be times when less than three Members are available in an individual Section due to

the absence of a Member of the Section, a vacancy on the Board, or the inability of a Member assigned to a Section to serve.

One commenter charged that the language in paragraph (b), noting that a Chief Member may be redesignated as a Member, was added under the guise of being an editorial change and was an inappropriate provision allowing the "demotion" of "independent decision makers." This revision was not described as an editorial change. It was clearly identified in the notice of proposed rule making. (See 54 FR 34334.) The position of Chief Member of a BVA Section is one which adds administrative tasks, which are entirely separate and apart from decision making in individual cases before the BVA, to the normal duties of a Member of the BVA. It does not carry with it any increase in pay or entitlements. Chief Members, as such, are judged on their administrative skills and not on their decision making record. 38 U.S.C. 7102(a)(1) provides that the Chairman may designate the Chief Member of a BVA Section. This regulation merely makes clear what was implicit in that authority, that one individual may be designated in place of another when appropriate. Such a reassignment does not involve any loss of pay or entitlements and does not constitute a "demotion."

One commenter voiced the opinion that 38 U.S.C. 7102 and 7103 require that a minimum of two Members participate in an appeal and that the use of the word "Members" at the end of paragraph (d) is therefore contrary to law. VA does not agree with this statutory interpretation. While it would be unusual to have two vacancies, absences, or Members who were unable to serve in an individual section at any given time, VA is of the opinion that proceeding with one Member is permissible under 38 U.S.C. 7102(a)(2)(A)(iii) under such circumstances. The use of the plural does not represent a change from the prior regulation on which this paragraph was based.

The same commenter also objected to the use of the phrases "other good cause" and "participate effectively" in paragraph (d), asserting that these provisions are contrary to the provisions of 38 U.S.C. 7102(a)(2)(A) and violate a "claimant's" rights to an unbiased BVA panel. VA does not agree with this statutory interpretation, nor does this amendment bring about any impairment of an appellant's rights. VA does agree, however, that the terms objected to are somewhat vague and they have been

removed. In their place, a cross-reference to the more specific standards set out in § 19.12 has been added. Editorial changes have also been made in paragraph 19.3(a) to make it clearer that the Deputy Vice Chairmen are chosen from Members of the Board. With these changes, the amendment to § 19.3 is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 19.4. This amendment is adopted as proposed.

Three comments were received concerning § 19.5. Each commenter noted that this section, which lists the criteria governing the disposition of appeals by the BVA, omitted a reference to decisions of the United States Court of Veterans Appeals (COVA). VA is of the opinion that no such reference is necessary. VA, of course, recognizes that the BVA will be bound by court decisions in some cases.

Proposed § 19.6 has been withdrawn and this section number is reserved. This paragraph concerned the composition of Board of Veterans' Appeals hearing panels, and it is being withdrawn because it was more restrictive than necessary regarding the composition of hearing panels. Two comments were received, neither of which relates to the reason for the withdrawal of this paragraph.

One comment was received on § 19.7. This commenter suggested that the phrase "and upon consideration of all evidence and material of record and applicable provisions of law and regulations," found in 38 U.S.C. 7104(a), be added to the closing sentence of paragraph (a). This suggestion has not been adopted. This paragraph already provides that decisions of the BVA are based upon the entire record. The "entire record" necessarily includes "all evidence and material of record." Governing criteria, such as the law and regulations, are the subject of § 19.5. Adding the suggested phrase would be redundant.

VA is withdrawing proposed paragraph 19.7(b). That paragraph suggested (in part) that issues on appeal could be disposed of by remand or by vacating a prior decision of the Board with respect to the issues. That was not accurate. A remand serves to direct further development prior to the appellate disposition of the issues. It does not "dispose" of an issue on appeal. Neither does vacating a prior Board decision dispose of an issue. When a prior decision is vacated, it is normally followed by a new decision which disposes of the issue.

Due to the withdrawal of proposed paragraph 19.7(b), proposed paragraph 19.7(c) has been redesignated as 19.7(b).

With these changes, the amendment is adopted.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.8 and 19.9. Information has been added to § 19.8 to make it clearer that BVA decisions in contested claims which are provided to the contesting claimants will include only information pertinent to the contested issues. With this addition, these amendments are adopted as proposed.

Proposed § 19.10 has been withdrawn and this section number is reserved. The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on August 27, 1990, which concluded, in essence, that statutory changes brought about by the Veterans' Judicial Review Act (Pub. L. 100-687) had the effect of eliminating "obvious error" as the standard for review by a reconsideration Section after a motion for reconsideration has been granted. (See O.G.C. Precedent Opinion 89-90, 56 FR 1225.) This change also eliminated the principal basis for proposed § 19.10 which, in most cases, limited the evidence which could be considered by a reconsideration Section to that which was of record at the time that the decision being reconsidered was rendered.

One comment was received regarding § 19.11. Proposed paragraph (c) provided that when a traveling BVA Section is expanded to address the reconsideration of a prior BVA decision involving radiation, Agent Orange, or asbestos exposure, the additional Members of the expanded Section will include Members specializing in those issues. The commenter suggested that this requirement for Members specializing in particular issues be expanded to include post-traumatic stress disorder and "complex medical causation issues such as the dates of inception of a veteran's cancer or other disease."

This suggestion has been adopted in part. Post-traumatic stress disorder has been added, as suggested. Familiarity with this area is helpful in ensuring complete development of the appellate record. Material regarding medical causation issues has not been added. Medical causation issues must be decided on the basis of the evidence of record (see *Colvin v. Derwinski*, U.S. Vet. App. No. 90-196 (Mar. 8, 1991)). In cases of extraordinary complexity, Members have the option of seeking the

opinion of an independent medical specialist. (See § 20.901, *infra*.)

Section 19.11, as proposed, continued the long-existing practice of allowing a three-Member BVA Section to hear cases before the BVA on reconsideration when none of the Members who participated in the original decision is available. 38 U.S.C. 7103(b) now requires that all reconsideration actions be heard "by an expanded section of the Board." The references to three-Member Sections have therefore been withdrawn.

An editorial revision has been made to change the word "panel" to "Section" in the section heading and in the text of this section when the reference is to a reconsideration Section. This change has been made so that the amendment will parallel the language which appears in 38 U.S.C. 7103(b).

With these revisions, the proposed amendment is adopted.

Two comments were received concerning proposed section § 19.12. Essentially, the commenters feel that paragraph (c) gives the Chairman too much authority over other Members of the BVA, is beyond statutory authority, and should be removed. VA does not agree. This paragraph allows the Chairman to disqualify a Member of the Board from participating in a particular appeal if the Member gives the appearance of bias, has participated in a prior administrative appeal in the same case on the same issue (and who might naturally tend to be biased in favor of his or her prior decision), or is unable or unwilling to act in the case. VA believes that a procedure for Member disqualification under these circumstances is lawful and is essential. Impartiality is basic to an equitable appellate process. (See, for example, Canons 2 "A Judge should avoid impropriety and the appearance of impropriety in all his activities" and 3 "A Judge should perform the duties of his office impartially and diligently" of the ABA Code of Judicial Conduct.) BVA decisions are to be made on the basis of "the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation." (38 U.S.C. 7104(a)). They are not to be made on the basis of personal prejudice. 38 U.S.C. 7102 provides options to the Chairman, including substitution of another Member, when a Member of a BVA Section is unable to serve. VA is of the opinion that a Member who is biased or who is unwilling to serve in a particular case has demonstrated an inability to serve within the meaning of this statutory provision. VA does feel that 38 U.S.C. 7104 should be included in

the statutory authority cited, however, and this authority has been added in the interest of clarity. With this addition, the amendment is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 19.13. The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on May 17, 1990, which had the effect of invalidating the "administrative allowance" procedures of the BVA both in its current Rules of Practice and in these proposed regulations. (See O.G.C. Precedent Opinion 11-90, 55 FR 27756.) Such opinions are binding upon the BVA. (See 38 U.S.C. 7104(c).) Accordingly, all references to those procedures have been withdrawn from these proposed amendments. The material withdrawn includes proposed paragraph 19.13(b). Proposed paragraph 19.13(c) has been redesignated as 19.13(b). With these changes, this proposed amendment is adopted.

Proposed § 19.14 has been withdrawn. This proposed regulation dealt with the manner in which written decisions of the BVA should be prepared when the case involves a prior rating determination by the agency of original jurisdiction which has become final due to the failure to file a timely appeal to the BVA. Decisions by COVA, issued after this regulation was published in proposed form, have altered the BVA's traditional approach to prior "final" adjudicative actions. (E.g., see *Manio v. Derwinski*, U.S. Vet. App. No. 90-86 (Feb. 15, 1991); *Colvin v. Derwinski*, U.S. Vet. App. No. 90-196 (March 8, 1991); and *Smith v. Derwinski*, U.S. Vet. App. No. 89-13 (March 15, 1991).) The proposed regulation was not in complete accord with these decisions and COVA's opinions provide sufficient guidance concerning BVA decision preparation in this area.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.15 and 19.25. Proposed § 19.15 has been redesignated as § 19.14 in view of the withdrawal of proposed § 19.14. The reference to proposed § 19.6, which has been withdrawn, has been deleted. With these revisions, these amendments are adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment to § 19.26. However, this section has been revised in response to comments offered in connection with § 20.201. See the discussion concerning § 20.201, *infra*, for information concerning this change. The amendment, as revised, is adopted.

No comments, suggestions, or objections were received regarding the

amendments to §§ 19.27 and 19.28. These amendments are adopted as proposed.

Two comments were received concerning § 19.29.

One commenter suggested that this section be modified to require a discussion of applicable COVA case law and of any applicable precedent opinions of the General Counsel of the Department of Veterans Affairs in the Statement of the Case as an aid to unrepresented appellants. While VA appreciates the concern which motivated this suggestion, it has not been adopted. This regulation, and the statute upon which it is based, already requires that the Statement of the Case include the reasons for each determination of the agency of original jurisdiction with respect to which disagreement has been expressed. This would include decisions by courts of competent jurisdiction and opinions by the General Counsel when they are applicable.

The second commenter suggested that the phrase "and a discussion of how such laws and regulations affect the determination" be deleted from paragraph (b), contending that the phrase "would constitute a repetition of information already required by subparagraph (c)." This suggestion has not been adopted. The language in question is a direct quotation of language added to 38 U.S.C. 7105(d)(1) by Public Law 100-687. The language does not duplicate the language in paragraph (c). The new statutory language appears to require a discussion of why various statutes and regulations are applicable to a particular case while paragraph (c) requires a discussion of why a particular decision was made. This decision could be (and often is) on a purely factual basis as opposed to a technical legal basis. While there can be some overlap, the requirements of the two paragraphs are not interchangeable.

This amendment is adopted as proposed.

One comment was offered concerning § 19.30. The commenter suggested, in essence, that VA require that documents provided to representatives be sent by mail and that using a "drop-box," as is done at some VA Regional Offices, be forbidden. It was alleged that the "drop-box" service was not effective, but no explanation of why this is the case was given. This suggestion has not been adopted and the amendment is adopted as proposed. This delivery control is not proper subject matter for these regulations. Further, VA is not aware of any special problems with "drop-box" service, which is more expeditious than

mail delivery and which is a relatively convenient means of document delivery for both VA and representatives. It is suggested that any problem with document delivery at any particular field office be brought to the attention of the director of that office so that corrective action may be taken.

Three comments were received on § 19.31. The current equivalent regulation (38 CFR 19.122) provides, in part, that a Supplemental Statement of the Case is required when additional pertinent evidence is received and that a Supplemental Statement of the Case is not required following a hearing before field personnel when no additional pertinent evidence is received. The amended regulation makes it clear that the evidence referred to includes testimony concerning relevant facts or expert opinion, as well as documentary evidence, but that argument is not evidence.

Two commenters suggested that a Supplemental Statement of the Case be required to answer arguments advanced at a hearing held by the agency of original jurisdiction. VA does not believe that this further requirement is necessary or desirable. The purpose of Statements and Supplemental Statements of the Case is to provide appellants with the data which they need, but may not have, to prepare their appeal to the BVA—a summary of the pertinent evidence, information concerning pertinent laws and regulations, and the decision of each issue and a summary of the reasons for each decision. (38 U.S.C. 7105(d)(1)). They are not appellate decisions. Addressing arguments raised by appellants is the function of the appellate decision. The BVA is not bound by an agency of original jurisdiction's position with respect to arguments advanced by appellants and their representatives.

The third commenter asserted that language should be added to more clearly define the difference between testimony and argument, using as an example a situation in which a veteran might regard his or her own statement of facts concerning the symptomatology associated with his or her disability as testimony while a hearing officer "or other responsible person" might regard the same statement as argument. This suggestion has not been adopted. While there may be certain gray areas, these terms are relatively well understood. It is impossible to anticipate every variation which may arise. Disputes concerning what is testimonial evidence and what is argument are best resolved on a case by case basis. In the example

given, the veteran would certainly be correct and the hearing officer would be in error. A veteran's oral description of his or her symptoms in a case in which the nature or severity of a disability is at issue would very clearly be "testimony concerning the relevant facts" in the terms used by the amended regulation. Statements of fact made by appellants and witnesses are evidence which must be weighed by the decision maker.

While these comments have been considered, § 19.31 is adopted as proposed.

One comment was submitted concerning § 19.32. This commenter suggested that the word "response" in the second sentence be changed to "Substantive Appeal." VA agrees that this would be preferable. This section is adopted, with that change.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.33 and 19.34. These amendments are adopted as proposed.

One comment was received on § 19.35. The commenter asked that language be included to require that the issues listed in the appeal certification (VA Form 1-8) be the same as the issues covered in the Statement of the Case and any Supplemental Statements of the Case. That is normally the correct practice. Nevertheless, this suggestion has not been adopted. Completion of VA Form 1-8 is accomplished for administrative purposes. Primarily, it serves as a last-minute appeal processing check list for use by VA field facilities prior to transfer of the appeal to the BVA. The appeal certification does not have any effect on the BVA's jurisdiction. Details of how the VA Form 1-8 is completed are best left to VA administrative manuals. For the same reason, other details concerning completion of the form have been withdrawn and the language of the section has been simplified. As simplified, the amendment is adopted.

Two comments were received concerning § 19.36.

One commenter suggested that the notice of certification of an appeal to the BVA include notification as to the issues being certified. VA does not believe that that is necessary. Appellants and their representatives are informed of the issues considered to be in an appellate status through the Statement and Supplemental Statements of the Case. The appeal certification primarily functions as a check list for the agency of original jurisdiction to insure that all appeal processing procedures have been completed prior to the transfer of the case to the BVA. The certification does

not serve to confer jurisdiction on the BVA with respect to a particular issue. The second commenter offered the same comment on this section as was offered on § 19.30 concerning the use of "drop-boxes" to deliver documents to representatives. The same response applies.

Proposed § 19.36 was essentially a duplicate of a proposed amendment of 38 CFR 19.174(a) which had been published for public comment on July 6, 1989. (54 FR 28445) The final version of 38 CFR 19.174 was published on May 15, 1990. (55 FR 20144) Several changes arising out of comments received were incorporated into the final rule. These included a requirement that appellants and their representatives be notified of various restrictions concerning changes in representation, requests for personal hearings, and the submission of additional evidence after an appeal has been certified to the BVA. A conforming revision has been made to § 19.36 and, with this revision, the amendment is adopted.

One comment was received on § 19.37. This commenter felt that paragraph (a) should be revised to delete the language providing that a Supplemental Statement of the Case need not be issued when duplicate evidence is received which has already been discussed in a Statement of the Case or Supplemental Statement of the Case. VA finds no merit in this suggestion. Appellants and representatives often submit duplicate copies of documents which they have submitted before or copies of records which they obtained from VA in the first place. No useful purpose is served by again discussing evidence which has already been discussed.

Two comments were received concerning § 19.38. The proposed section provides that development completed by the agency of original jurisdiction pursuant to a remand from the BVA should be reviewed by that agency to determine if that development shows that the benefit sought on appeal should be allowed. One commenter suggested that a review of the entire record be required and felt that the proposed section seemed to indicate that the review would be limited to only the information developed as a result of the remand. It is certainly not VA's intent that the post-remand development be reviewed in a vacuum. Changes have been made to make it clear that the review is to take into consideration the evidence which was previously of record. The other commenter noted that the 30-day period referenced in this section is in conflict with the provisions

of § 20.302(c). The commenter is correct and this error has been corrected. With these changes, the amendment is adopted.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.50 through 19.53, 19.75 through 19.77, and 19.100 through 19.102. Material has been added to §§ 19.101 and 19.102 to make it clearer that information which is provided to the contesting claimants in contested claims is limited to information pertinent to the contested issues. With this addition, these amendments are adopted as proposed.

One commenter did suggest that VA's substantive appeal form (VA Form 1-9) be annotated to show that requests for hearings before traveling sections of the BVA should be submitted to the applicable VA field office, rather than to the BVA, as required by § 19.75. This form was extensively revised in October 1989 and now includes this information.

A commenter suggested that a cross-reference from § 19.76 to § 20.704 be added to appendix A to part 19. VA agrees that this would be helpful and this cross-reference has been added. References to proposed §§ 19.13(b) and 19.14, which have been withdrawn, have been removed. The appendix is adopted, with these revisions.

One comment was received on § 20.1. It was suggested that the introductory clause "In accordance with the agency's policy of providing assistance to the appellant," be restored to what is now paragraph (b). The operative language of the prior section "These rules are to be construed to secure a just and speedy decision in every appeal" has been retained. The omitted introductory clause adds nothing of substance. This amendment is adopted as proposed.

One comment was received regarding § 20.2. This commenter alleged that this section (which provides that the Chairman may prescribe procedures consistent with the provisions of title 38, United States Code, and the BVA's Rules of Practice when a situation arises which is not covered by any existing rule or procedure) removes authority from Chief Members which they previously had, that it is contrary to the intent of Public Law 100-687, and that it is inefficient inasmuch as Board Sections will be forced to delay processing of a case while it is routed through the Chairman's office. VA does not agree with these remarks and the amendment is adopted as proposed. This authority has not been removed from Chief Members. Section 20.102, paragraph (c), extends this authority to the Vice Chairman; the Deputy Vice Chairmen; and, in connection with

proceedings assigned to them, to other Members of the Board who have been designated as the Chief (or Acting Chief) Member of a Section or who are acting as the presiding Member of a hearing panel. It should also be borne in mind that the Chairman is, in fact, a Member of the Board (see 38 U.S.C. 7101) and has the same decision making authority as any other Member of the Board—in addition to special authority conferred by law in certain instances (e.g., see 38 U.S.C. 7103). In addition, he or she is the chief administrative officer of the Board in a position not unlike that of the chief judge of an appellate court. It is, of course, impossible to anticipate every procedural contingency when writing Rules of Practice and, from time to time, procedures must be devised to deal with unique situations. Occasions arise when special procedures must be devised in cases which are not yet before a BVA Section or in which Section action has been completed. The requirement that any necessary ad hoc procedure be consistent with existing statutory and regulatory authorities provides protection from abuse.

One comment was received concerning § 20.3. The commenter stated that "legal intern" should be defined as a law student, rather than as a graduate of a law school who has not yet been admitted to the bar, and that the definition of "legal intern" proposed was actually the appropriate definition of "law clerk." The proposed definition of "legal intern" is consistent with BVA practice and with the definition in "Black's Law Dictionary," which defines an intern as "an advanced student or recent graduate in a professional field." (Black's Law Dictionary 732 (5th ed. 1979). A separate definition of "law student" is provided. Inasmuch as these terms are clearly defined in this section, no confusion should result.

"Cemetery" has been added to the list of VA facilities which are included in the definition of "agency of original jurisdiction" as an editorial change. Cemeteries were previously included via the phrase "or other Department of Veterans Affairs facility."

Paragraph 20.3(k), as published, contained typographical errors. In the second sentence, "60 days" should read "90 days" and the reference to § 20.609(g) should have been to § 20.609(i). These errors have been corrected.

With these revisions, § 20.3 is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 20.100. This amendment is adopted as proposed.

Two comments were received on § 20.101. With one exception, both concern the third sentence of paragraph (a), which is similar to language in proposed § 19.5, and both comments are essentially the same as the comments offered concerning § 19.5, *supra*. The same response applies. One of the commenters also felt that the statement in paragraph (c) that only the Board of Veterans' Appeals will make final decisions with respect to its jurisdiction might mislead readers to believe that the United States Court of Veterans Appeals could not review such a determination. The statement, of course, applies only to determination of BVA jurisdiction within VA. The statement has been modified to reflect that such a determination may be subject to judicial review. With this change, the amendment is adopted.

One comment was offered concerning § 20.102. The commenter indicated that the intent of paragraph (d) was unclear, inasmuch as it appeared to authorize any Member of the BVA to rule on a motion for a subpoena or to quash a subpoena under proposed § 20.711(e) and (f), respectively. VA agrees that clarification is in order. This comment and comments in response to § 20.609(i), *infra*, bring to light the fact that this proposed regulation did not make it clear that the various authority exercised by BVA Members assigned to BVA Sections is to be exercised in the context of proceedings which have been assigned to them for disposition in accordance with the provisions of 38 U.S.C. 7102(c). Appropriate material has been added to paragraphs (c) and (d) to clarify this aspect of the regulation. While not noted by a commenter, there is one typographical error in paragraph (d). The reference to § 20.609(g) should be to § 20.609(i). This error has been corrected. A reference to proposed § 20.1101, which has been withdrawn, has been removed. The amendment, with the revisions noted, is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 20.200. This amendment is adopted as proposed.

Three comments were received concerning § 20.201.

One commenter noted that this section refers to filing a Notice of Disagreement with an adjudicative determination by an agency of original jurisdiction and suggested that a provision be included specifically addressing appeal of determinations by VA's Veterans Health Administration (VHA)—apparently under the mistaken belief that the term "agency of original jurisdiction" applies only to field

facilities of the Veterans Benefits Administration. When a VHA facility has made the determination being appealed, it is the "agency of original jurisdiction." (See § 20.3(a).)

The commenters raised objection to what are alleged to be unwarranted procedural requirements for Notices of Disagreement, including the use of the word "must" in the second sentence and the requirement that the issues with which disagreement is being expressed be identified. VA does not agree that these provisions are unwarranted. The word "must" to which the objection is raised occurs in the following sentence: "While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review." VA has always been, and will continue to be, liberal in determining what constitutes a Notice of Disagreement. The continuation of this policy is demonstrated by the lack of a requirement for special wording and the use of the phrase "can be reasonably construed." Nevertheless, some indication which reasonable persons can construe as disagreement with a determination by an agency of original jurisdiction and a desire to appeal that determination is at the very heart of what constitutes a Notice of Disagreement. Without such an expression, the communication may be something, but it is not a Notice of Disagreement. Not much is required, but the communication must be recognizable as a Notice of Disagreement.

Important consequences flow from filing a Notice of Disagreement. As provided in 38 U.S.C. 7105(a), appellate review is initiated by a Notice of Disagreement. The Notice of Disagreement is jurisdictional—that is, without a Notice of Disagreement, the BVA does not have jurisdiction over an issue (except as provided in § 19.13). Further, it would not be fair for the BVA to assume jurisdiction over an issue before a claimant, who may still have months remaining before the time to appeal lapses, has completed his or her preparation and is ready to initiate an appeal as to that issue. Thus, it is vital that the BVA be able to tell which issues have been appealed when several determinations have been made which are appealable.

It is not VA's intent to deprive anyone of his or her right to appeal. As one commenter pointed out, a Department of Veterans Benefits operational manual (M21-1, paragraph 18.03b) requires that clarification sufficient to identify the

issue being appealed be requested when a Notice of Disagreement is received following a multiple-issue determination and it is not clear which issue, or issues, the claimant desires to appeal. VA strongly supports this policy and, in view of the concerns raised here, has made it applicable throughout VA by adding this requirement to § 19.26 "Action by agency of original jurisdiction on Notice of Disagreement." The BVA may also remand cases for issue clarification when necessary. With this addition, § 20.201 is adopted as proposed.

Three comments were also received concerning § 20.202.

One commenter objected to the requirement that the issues being appealed be identified. VA believes that this requirement is appropriate for the same reasons noted in conjunction with a similar objection to § 20.201. It is also noted that one of the purposes of the current statutory appellate process is to narrow appeals to those issues which an appellant really wants to appeal after the reasons for a determination have been explained to him or her in the Statement of the Case and that 38 U.S.C. 7105(d)(3) provides that the benefits sought on appeal must be clearly identified in the formal appeal.

Two commenters objected to the use of the word "must," rather than "should" in conjunction with the requirement that the Substantive Appeal set out specific argument relating to errors of fact or law made by the agency of original jurisdiction. This objection is well taken in view of the word "should" in the statute on which this provision is based (38 U.S.C. 7105(d)(3)) and this has been corrected.

One commenter stated that "we are very much concerned by the new authority created by this section which would allow the BVA to unilaterally dismiss an appeal which does not allege an error of fact or law." This authority is not new. 38 U.S.C. 7105(d)(5) specifically states that "The Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed." VA believes that it is appropriate that this fact be brought to the attention of appellants and their representatives in this Rule of Practice. VA also notes that the BVA has been, and will continue to be, very liberal in this area. This Rule of Practice also provides that "The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal * * * and § 20.203 provides that appellants and representatives will be given notice and

an opportunity to contest the matter when the BVA questions the adequacy of the Substantive Appeal.

One commenter objected to a perceived requirement for "the claimant to lay out all specific arguments in the Substantive Appeal," observing that it had previously been sufficient to address issues in general terms and to be more specific in "the presentation to the BVA" (apparently a reference to formal and informal hearing presentations and/or appellate briefs). There is nothing in the proposed amendment which changes the practice described. That is, this amendment neither precludes nor discourages raising additional arguments, or further explaining prior arguments, concerning appealed issues in presentations subsequent to the Substantive Appeal.

This proposed amendment is adopted, with the correction described above.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.203, 20.204, 20.300 and 20.301. These amendments are adopted as proposed.

One comment was received on § 20.302. This commenter feels that the language in paragraph (c) which extends the time to respond to a Supplemental Statement of the Case to 60 days should not be adopted and that the response time should remain at 30 days. As the commenter notes and as was set forth in the notice of proposed rulemaking, the reason for this change is that when new issues are included in a Supplemental Statement of the Case it becomes the Statement of the Case as to the new issues. The law provides that an appellant has 60 days after receiving a Statement of the Case within which to file a Substantive Appeal. (See 38 U.S.C. 7105(d)(3).) The commenter argues that new issues should not be included in Supplemental Statements of the Case. While VA understands that the "purest" procedure might arguably be to require a separate Statement of the Case concerning new issues raised, that is not the procedure used by VA regional offices in some cases. There is nothing legally wrong with consolidating the appeals, provided that the agency of original jurisdiction bears in mind that when a new issue is raised and denied, there must be a Notice of Disagreement with respect to the new issue before it is included in a Statement or Supplemental Statement of the Case. This amendment is adopted as proposed.

The same commenter raised an objection to § 20.303 with the following comment: "Please refer to comments pertaining to the '60-day period' under the preceding paragraph." The

paragraph referred to was the one containing the above objection to § 20.302. Apparently, the objection relates to the reference to a 60-day period for responding to a Supplemental Statement of the Case. The language in this amendment has not been modified for the same reasons noted in the discussion concerning § 20.302. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.304. This amendment is adopted as proposed.

One commenter feels that the presumption in § 20.305 that a document had been postmarked 5 days prior to its receipt when the actual postmark is not available is too liberal and that a three day period is more appropriate. While VA agrees that this is perhaps liberal, this suggestion has not been adopted. This commenter also noted that mail service is provided on Saturday—in essence suggesting that the exclusion of Saturday in calculating the 5-day period is inappropriate. VA notes that mail service is not provided in all areas on Saturdays. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.306. "Martin Luther King, Jr.'s Birthday" has been changed to "Birthday of Martin Luther King, Jr." and the apostrophe has been removed from "Veterans Day" to conform with 5 U.S.C. 6103. This amendment is adopted with these revisions.

One comment was received concerning § 20.400. The commenter suggested that the fourth sentence be modified by adding the words "by the claimant or the claimant's representative," or similar words, after the word "argument" to make it clear that only the claimant or his or her representative may authorize a merged appeal. While that is already relatively clear from the proposed regulation, the suggested addition is accepted and the proposed amendment is adopted with this addition.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.401 and 20.500. These amendments are adopted as proposed.

One comment was received regarding § 20.501. This commenter, who was also the only commenter on § 20.302, suggested revision of the last two sentences of paragraph (c) "for the same reasons previously eluded (sic) to in comments pertaining to 20.302, as proposed." Presumably, the objection is to the concept of inclusion of new issues in a Supplemental Statement of the Case. For the same reasons outlined in

response to the comments concerning § 20.302, this suggestion has not been adopted and the amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.502 through 20.504 and 20.600 through 20.605. Section 20.603(a), as proposed, was slightly more restrictive than 38 CFR 14.629(c) with respect to the documentation required to appoint an attorney-at-law as a representative in VA proceedings. Section 20.603(a) has been revised to make it consistent with 38 CFR 14.629(c). With this revision, these amendments are adopted as proposed.

Two comments were received concerning § 20.606, both addressed to paragraph (e) which notes that permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual. (This authority has also been delegated to the Vice Chairman, the Deputy Vice Chairmen, and Members of the Board. See § 20.102(d).)

One commenter felt that this paragraph "unlawfully" singles out legal interns, law students and paralegals for "an entirely new and separate discipline system for such representatives" and suggested that procedures such as those set out in 38 CFR 14.633(c) (pertaining to termination of recognition of representatives) be adopted. The second commenter felt that this paragraph was based upon an assumption that law students are more prone to engage in unprofessional conduct than are other representatives and cited the care used by law students utilized by the commenting organization in preparation for BVA hearings and the training which the commenting organization gives to law students participating in such hearings. Fear was expressed that an appellant's case would be prejudiced should a law student be disqualified during the course of a hearing and a supervising attorney, who had not established an equally close working relationship with the appellant, be required to complete the hearing. Fear was also expressed that various pre-hearing and hearing requests by students which might be inconvenient to the BVA's administrative staff and Board Members could be deemed "unprofessional" and that irritation with a "representative's" persistence might therefore cut off the representative's ability to properly develop the record.

The BVA has permitted law students, paralegals, and legal interns to

participate in hearings (with professional supervision by attorneys-at-law) for a number of years. VA makes no assumption that law students are especially prone to unprofessional conduct and recognizes that most of these individuals are sincere and dedicated. It also recognizes the valuable experience which such participation provides in the training of law students. Unless independently qualified, however, these individuals are not representatives. They may be future representatives in training, but they do not have the same status as representatives and they are not subject to the disciplinary procedures described in 38 CFR 14.633. Rather, they are permitted to assist an attorney-at-law who is the accredited representative as a courtesy to that representative. It is the supervising attorney-at-law who is responsible for the prosecution of the appeal.

While VA recognizes the valuable contribution which BVA experience may provide in the training of paralegals, law students, and interns and the valuable service which these individuals provide to appellants in most instances, the Board's primary responsibility is to insure that justice is done in each individual case and that appellants are not ill-served by inexperienced individuals in training.

The BVA encourages zeal in the prosecution of appeals. Thorough representation is very helpful to the BVA, as well as to appellants, in ensuring that all facts and applicable legal theories are brought to light so that justice may be served in each individual appeal. Nevertheless, BVA Board Members have a right to expect that they will be treated with professionalism in the course of appellate presentations. Further, training in professional responsibility is no less a proper part of a law students' education than is training in substantive and procedural law. The American Bar Association's "Model Rules of Professional Conduct" provide, in part, that a lawyer shall not engage in conduct intended to disrupt a tribunal. (Rule 3.5) The following comment, which follows that provision, is germane:

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient

firmness no less effectively than by belligerence or theatrics.

A mechanism such as that in paragraph (e) is necessary for the protection of the appellate process in those few cases where the privilege extended to these individuals is abused. Considering the status of these individuals, the elaborate procedures provided for the suspension or debarment of a representative set out in 38 CFR 14.633 are not appropriate. VA has no reason to believe that the authority described in this paragraph will be abused by any Member of the BVA. Should such a situation arise, the issue may be appropriately raised on appeal. If the supervising attorney performs his or her function appropriately and monitors the professionalism of the law student, legal intern, or paralegal who is assisting him or her at an appellate hearing, there will be no cause for excluding such an assistant during the course of a hearing. The supervising attorney is the representative of record. He or she is responsible for being thoroughly prepared for hearings in order, at the very least, to properly supervise his or her assistants. He or she should, and must, be prepared to take charge of any aspect of a hearing when required. This amendment is adopted as proposed.

Only one comment was received concerning § 20.607. The commenter voiced support for the provisions of this section, but noted that it conflicts with limitations imposed by § 20.1304 concerning a request for a change in representation following certification of an appeal and transfer of the appellate record to the BVA. A reference to this limitation has been added and, with this addition, the proposed amendment is adopted.

Two comments were received regarding § 20.608. Both deal with the restriction in paragraph (b) on a representative's right to withdraw from a case after an appeal has been certified to the BVA for review.

One commenter felt that there should be no restriction and expressed particular concern about a situation in which there might be an antagonistic relationship between a representative and appellant or disagreement between the representative and appellant on how to proceed in a particular case. VA feels that a limited restriction on the right of a representative to withdraw at the appellate level is justified. Unfortunately, there have been abuses in this area. For example, there have been cases in which representatives have left appellants unrepresented minutes before a hearing was to begin

because they had not taken the trouble to evaluate the case prior to the hearing or did not choose to continue with a case which they felt might not enhance their record of success. VA considers an undertaking to represent an appellant to be a very serious matter. The proposed section already provides that withdrawal will be permitted when good cause is shown and that good cause includes "factors which make the continuation of representation impractical or impossible." Clearly, the two situations mentioned by the commenter would fall into this category.

The second commenter noted that there could be situations in which a representative could be compelled to represent an appellant whom he or she had never agreed to represent, inasmuch as designations of representation can be filed by appellants without the prior agreement of the representative. This commenter suggested that, if the proposal were adopted, it should contain an exception for such cases. Concern was also expressed about placing representatives in a situation in which they might be forced to continue representation in situations where continued representation might be in violation of the "Code of Professional Responsibility." In this regard, it was suggested that "unethical" be added to "impractical" and "impossible" at the close of the second sentence of paragraph (b) and that representatives not be required to explain how or why continued representation would be unethical. VA agrees that these concerns are valid. The paragraph has been modified to provide that permission to withdraw is not required unless a representative has agreed to act in the case and the word "unethical" has been added as suggested. Language has also been added to make it clear that motions to withdraw should not include information which it would be unethical for the representative to reveal.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

The citation of authority has been expanded to include 38 U.S.C. 7105(a).

With these modifications, the proposed amendment is adopted.

Three comments were received concerning § 20.609.

Paragraph (f) of this section states that fees charged by attorneys-at-law

and agents in proceedings before VA will be presumed to be reasonable if they total no more than 20 percent of any past-due benefits awarded. One commenter asserted that this provision was contrary to law, inasmuch as 38 U.S.C. 5904(d)(1) limited the 20-percent test to contingent-fee cases, while a reasonableness test applies to other types of fee arrangements. In addition, the commenter argued that this provision would induce representatives to tailor their fees to approximate 20 percent even though they might be "grossly disproportionate" to the work required, that Congress meant the 20-percent figure to be a ceiling and not the norm, and that the presumption transferred the burden of proof from the representative to the claimant/appellant. With regard to the latter, concern was expressed about an unrepresented individual meeting this burden.

VA does not agree that this provision is unlawful and finds no evidence that it is contrary to the intent of Congress. 38 U.S.C. 5904(c)(2) provides, in essence, that the BVA is charged with determining what fees are reasonable. This presumption serves to announce that the BVA considers fees meeting the 20-percent test to be reasonable unless the contrary is shown. VA believes that it may be construed from the provisions of 38 U.S.C. 5904(d)(1) that it is the sense of the Congress that fees of 20 percent are not unreasonable. It is true that this presumption serves to shift the burden of proof, but VA does not feel that this transfer is unwarranted. Fees of 20 percent would be relatively modest in most cases. Attorneys' fees in many types of civil actions, for example, typically run to a greater amount. At least as to contingent fees, fees of 25 percent of past-due benefits have apparently become the norm in Social Security cases. (Department of Health & Human Services, Social Security Administration, Office of Hearings and Appeals; "Report to Congress, Attorney Fees Under Title II of the Social Security Act" 2 (1988).) Further, most cases allowed by the BVA do not result in large awards of past-due benefits.

VA has no reason to believe that abuse by representatives who would charge "grossly disproportionate" fees will arise except in unusual cases. Should there be any such abuse, this section and 38 U.S.C. 5904(c)(2) provide for review by the BVA to protect the claimant/appellant. As to unrepresented individuals, the BVA has not and will not penalize legally unsophisticated appellants—nor will it tolerate "grossly disproportionate" fees, even though they

may meet the 20-percent test. Obviously, if fees of 20-percent were grossly disproportionate to the amount of work done, the presumption of reasonableness would be overcome.

The same commenter urged that this regulation include a provision for notifying appellants of their right to file a motion for review of fee agreements under paragraph (i), possibly by inclusion of notice in the form used to designate attorneys and agents as representatives (VA Form 2-22a) and by a requirement that it be included in privately drawn designations of a representative which does not use the form. VA does not currently believe that the need for such notice is so strong as to justify the burden of imposing a regulatory duty of proving that such notice has been given to appellants by agents and attorneys who do not use the form mentioned.

The second commenter voiced disagreement with the indication in paragraph (c)(1) that a condition precedent to the charging of fees by attorneys-at-law and agents is a final BVA decision "with respect to the issue, or issues, involved." The commenter argues that the only criteria should be that there was a prior decision, not that the exact issue or issues were decided in that decision, and that this provision is contrary to the intent of Congress. VA does not find that this objection is well-founded. It was clearly not the intent of Congress that a BVA decision on any subject in the case of a particular veteran would open the door to fees by attorneys-at-law and agents with respect to every matter which might ever arise in the future. The statutory requirement that there be a final decision in the case makes little sense unless the intent is that the decision has been on point. The remarks of the Honorable Alan Cranston, United States Senate, in discussing Public Law 100-687 are instructive. These remarks include the following:

Let me be clear—I do not believe that most veterans with claims before the VA would be well advised to seek the assistance of an attorney. Certainly, were I asked, my first advice to a veteran with such a claim would be to contact a veterans' service officer. But the existence of the valuable, free resource of representation before the VA by veterans' service officers in claims adjudication is not a reason for precluding a veteran from seeking to obtain the services of an attorney at the end of the internal VA process if the veteran wishes to do so.

The compromise agreement before us today prohibits attorneys fees until after the BVA makes its first final decision, thus contemplating that the current practice of veterans being assisted by skilled veterans' service officers throughout the VA and initial

BVA administrative processes would continue to operate exactly as it does now.

(134 Cong. Rec. S 16646 (daily ed. Oct. 18, 1988).)

Essentially, the idea is that attorneys and agents will not become involved in claims for particular benefits from VA on a fee basis until after the claim has been denied at the VA field facility level and, after an appeal, the BVA has had an opportunity to rule on the merits of the particular claim—in short, until after the normal administrative procedures have run their course. For example, the fact that there had been a recent BVA decision on the issue of entitlement to service connection for one disability would permit a fee agreement with respect to that issue (assuming that the other criteria were met), but it would not furnish a basis for a fee agreement on another entirely separate issue (e.g., entitlement to an increased evaluation for another disability) on which the BVA had not yet ruled. It should be noted that the term "issue" in the context of this regulation means the principal issue (e.g., entitlement to service connection for a particular disability). It is not the intent of this regulation to restrict fees for services performed in conjunction with the disposition of the collateral issues which must be addressed in order to reach a decision on the principal issue.

The same commenter felt that the words "applicable Board of Veterans' Appeals decision" in paragraph (c)(2) are confusing and objected that the right to obtain an attorney on a fee basis was unfairly restricted if the intent was to refer back to paragraph (c)(1). (While the comment is not clear in this regard, this objection is apparently on the same basis as the objection to paragraph (c)(1).)

The intent was, indeed, to refer back to paragraph (c)(1). Paragraphs (c)(1) through (c)(3) constitute an interconnected list of criteria which must be met. To remove any doubt, however, the language in paragraphs (c)(2) and (c)(3) has been amended to conform to the language in paragraph (c)(1). With respect to the appropriateness of the language, the comments concerning paragraph (c)(1) apply.

Also with respect to paragraph (c)(2), this commenter argues that there should be no requirement that the Notice of Disagreement received on or after November 18, 1988, must precede the BVA decision with respect to the issue, or issues, involved. Essentially, the commenter feels that the statute (38 U.S.C. 5904(c)(1)), read together with section 403 of Public Law 100-687, is

satisfied if there is a final BVA decision and if there is a Notice of Disagreement filed on or after November 18, 1988, even though the decision predated the Notice of Disagreement. For example, the commenter argues that if there is a final BVA decision following a pre-November 18, 1988, Notice of Disagreement denying a benefit, the claim is reopened and again denied at the agency of original jurisdiction level, and a Notice of Disagreement is filed after November 18, 1988, on the reopened claim, there should be an immediate right to enter into a fee agreement rather than a necessity to await the BVA decision on the reopened claim.

VA has not found material in the legislative history which shows that this particular point was specifically considered in the drafting of Public Law 100-687. However, VA is of the opinion that the construction in this proposed amendment is the one which is the most logical. It appears that the intent with respect to the effective date for the allowance of fee agreements was that there would be a clear line of demarcation centered on the date of enactment of Public Law 100-687 (November 18, 1988) with an orderly progression of subsequent events, culminating in a BVA decision, before fee agreements are permitted. Independent analysts have also apparently arrived at the same conclusion. (e.g., see Stichman, "The Veterans' Judicial Review Act of 1988: Congress Introduces Courts and Attorneys to Veterans' Benefits proceedings," 41 Ad. L. Rev. 365 at 387, 388 (1989)).

Once the BVA denies an appeal, its decision is final and conclusive aside from the right to appeal to the United States Court of Veterans Appeals, or another Federal court, under some circumstances and a possible motion for reconsideration. (38 U.S.C. 7103(a)) When an appeal is denied by the Board, it may not thereafter be reopened and allowed on the same factual basis, but only on the basis of new and material evidence. (38 U.S.C. 5108 and 7104(b)) Thus, a reopened claim, even with a Notice of Disagreement filed on or after November 18, 1988, has little legal relationship to a prior denied appeal. The earlier appeal is, in essence, a separate case. Inasmuch as 38 U.S.C. 5904(c) bars payment of a fee for "services provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case," VA believes that fees are payable only for service provided subsequent to a final BVA decision following upon a

Notice of Disagreement filed on or after November 18, 1988.

Moreover, Congress contemplated that the operative BVA decision, for the purposes of Public Law 100-687, would follow rather than precede the Notice of Disagreement. Regarding the effective date provisions, for example, Senator Cranston noted the following:

Given the fact that it currently takes on the average over 355 days from the issuance of the statement of the case—the step after the filing of the notice of disagreement—to the entry of a final BVA decision, the new court should have sufficient time before its effective date on September 1, 1989, in which to become fully operational before it receives its first significant number of cases.

(134 Cong. Rec. S 16650 (daily ed. Oct. 18, 1988))

Further, the judicial-review provisions and the attorney-fee provisions were enacted together, as an organic whole. The attorney-fee provisions were added primarily to assist veterans in retaining counsel for assistance in appealing BVA decisions to the United States Court of Veterans Appeals. Senator Cranston emphasized that veterans should be assisted by veterans service officers throughout VA field facility and initial BVA processes, concluding that the attorney-fee provisions would enable a veteran, "once he or she has received an initial BVA decision and has sought an attorney's assistance to appeal that decision, * * * to seek further BVA review with the assistance of counsel before going to court." (134 Cong. Rec. S 16646 (daily ed. Oct. 18, 1988)) To the extent a veteran has filed a Notice of Disagreement in a reopened claim, but has not received a BVA decision thereon, an appeal to the court would be premature. Thus, the need for counsel envisioned by Congress (i.e., to assist in an appeal to the COVA) has not arisen.

In an analogous situation, Congress expressed its desire to bar payment of fees where counsel is not retained within one year of the final BVA decision. Senator Cranston explained the effect of this provision in the context of stale appeals as follows:

This provision is not intended to limit a claimant from changing attorneys once an appeals process has begun, but rather to address the possibility of a claimant receiving a final BVA decision waiting a number of years without any action, and then retaining an attorney to request a reopening and pursuit of the claim at the regional office level. In such a case, no fee could be paid to the attorney until after a new final decision. (134 Cong. Rec. S 16647 (daily ed. Oct. 18, 1988))

VA believes that the same analysis may be applied where there is a disjunction between a pre-Public Law

100-687 decision and a post-Public Law 100-687 Notice of Disagreement. There is no compelling reason to allow the payment of fees before a veteran has exhausted administrative procedures in a reopened claim and, as Senator Cranston's remarks suggest, there is every reason to bar the payment of fees in stale appeals.

Paragraph (b) of § 20.609 points out that agents and attorneys-at-law may receive fees, but that other representatives may not. This commenter also suggested that paragraph (b) be amended to specify when agents and attorneys-at-law who are also accredited representatives of recognized organizations may receive fees. Explanatory language has been added, as suggested. Only one representative may be recognized at any given time in the prosecution of a particular claim. (See § 20.601 and 38 U.S.C. 7105(b)(2).) An attorney-at-law or agent could also be an accredited representative of a recognized service organization. (See 38 CFR 14.628, "Recognition of organizations," and 14.629 "Requirements for accreditation of representatives, agents, and attorneys.") Whether he or she may charge fees for services performed in a particular case will depend upon the capacity in which he or she is acting at the time. If the organization has been designated as representative and he or she is acting in his or her capacity as an accredited representative of a recognized organization, it is the organization which is the representative in the case, not the accredited representative of the organization. Recognized organizations may not receive fees and the fact that the particular accredited representative who is working on the case for the organization may also happen to be an attorney-at-law or agent does not alter that fact. If he or she has been appropriately designated and is acting in his or her own capacity as an attorney-at-law or agent as the designated representative, then fees may be charged if the other criteria are also met. (Also see proposed § 20.603(b) concerning attorneys employed by recognized organizations.)

The third commenter suggested that the list of factors to be considered in determining whether fees charged by attorneys-at-law and agents are reasonable contained in paragraph (e) should include "the delay in payment" and "the contingent nature of the representation." VA assumes that the reference to "the contingent nature of the representation" is actually a reference to the contingent nature of payment in contingent fee cases. On that

assumption, this part of the suggestion has been adopted. The suggestion concerning including delay in payment as an element for consideration has not been adopted. Potential difficulty in collecting fees from clients exists in every case. If the concern here is about the fact that payment must await the result in contingent fee cases, that would be part of the justification for higher fees in contingent fee cases and is contemplated by the inclusion of consideration of whether the payment of fees is contingent upon achieving a favorable result.

This commenter felt that paragraph (f), which provides that fees which total no more than 20 percent of any past-due benefits awarded will be presumed to be reasonable, should be "clarified" to show that fees over 20 percent would not be presumed to be unreasonable. VA believes that it is obvious that that would not be a reasonable construction of paragraph (f) and that no further clarification is necessary. (See the discussion concerning the first commenter's remarks regarding this paragraph.)

This commenter argues that paragraph (i) should provide that motions for the review of fee agreements should be ruled on by "the Board," rather than by the Chairman, citing the language in the section of Public Law 100-687 which has been codified as 38 U.S.C. 5904 and arguing that Board Members are in the best position to judge the quality and quantity of an attorney's work on a case. This suggestion has not been adopted.

Such motions are in fact reviewable by any of the Members of the Board when the motion is properly before them. (See § 20.102(d).) VA regrets any confusion which may have been caused in this regard by the typographical error which resulted in an erroneous reference to § 20.609(g), rather than § 20.609(i), in § 20.102(d).

Secondly, this comment seems to be based on the erroneous assumption that the Chairman is not a Member of the Board with decision-making authority at least equal to that of any other Member. Clearly, that is not the case. (See, for example, 38 U.S.C. 7101(b).)

Next, from an administrative standpoint, choosing which Members of the Board will dispose of motions is one of the Chairman's duties. Sections of the Board dispose of motions which are before them in connection with proceeding which have been specifically assigned to them by the Chairman. (See 38 U.S.C. 7102(c).)

Finally, VA agrees that Members of Board Sections will be in a good

position to rule on motions concerning fee agreements in matters in which they have been personally involved. It is contemplated that such Members will rule on motions concerning fee agreements which arise during the course of appeals or other proceedings which have been assigned to them in accordance with 38 U.S.C. 7102(c). (As a result of these comments, material has been added to § 20.102 to make this clearer.) However, motions concerning the reasonableness of fee agreements (as well as other motions) do not always arise in the context of appeals before Sections of the Board for disposition. Essentially, 38 U.S.C. 5904 charges the BVA with monitoring the reasonableness of fee agreements concerning cases brought throughout the Department regardless of whether they are in the context of an appeal. For example, an attorney-at-law may be hired to represent a claimant at the field level in a reopened claim which follows a recent BVA decision. The representative may be successful in the prosecution of the reopened claim and the case will never come before the BVA on appeal. Nevertheless the claimant could file a motion with the BVA for review of the reasonableness of the attorney's fees. Along the same lines, 38 U.S.C. 5904(c)(2) and these rules provide for filing a copy of any fee agreement with the BVA and that the Board may review agreements for reasonableness on its own motion. It seems clear that the BVA has the responsibility under this statute to conduct at least a preliminary screening of agreements filed with it to guard against the abuse of veterans and their survivors and dependents. Some centralized filing and initial review process at the Board is desirable both from the standpoint of reasonable administrative efficiency and from the standpoint of uniformity of approach.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

References to "agents" have been removed from paragraph (h), inasmuch as the provisions of 38 U.S.C. 5904(d) apply only to attorneys-at-law.

VA assumed when drafting these amendments that parties would submit such evidence as they might wish to the BVA in conjunction with a motion for

review of a fee agreement. Material has been added to paragraph (i) to make it clear that this is permitted and also to note that the ruling on the motion will be in the form of an order, as noted in 38 U.S.C. 5904(c)(2). Other editorial changes have been made to the paragraph to make it clear that the BVA need not file its own motions with itself.

The phrase "Department of Veterans Affairs personnel" has been changed to read "Department of Veterans Affairs field personnel" in the section heading and in paragraph (a) as an editorial change in the interest of clarity.

With the modifications described in the preceding paragraphs, § 20.609 is adopted.

One comment was received concerning § 20.610. This comment, like the commenter's remarks pertaining to § 20.609(i), suggests that notice of the availability of review of the reasonableness of representatives' expenses be included in VA Form 2-22a and any other designation of representation by an attorney-at-law or agent. The same response given in the discussion concerning § 20.609(i) applies.

This commenter also suggested that the BVA take into consideration, when reviewing motions pertaining to the reasonableness of representatives' expenses, whether expenses have been incurred for the services of experts which should have been provided by the representative rather than the expert. Normally, experts are used to provide opinions on technical matters, rather than to provide normal representational skills. Based upon past experience, VA does not currently perceive a significant potential for abuse in this area warranting regulation. VA notes that the list of criteria at the end of paragraph (d) is not intended to be all inclusive and that such a problem could be addressed under the regulation—as proposed—should abuse occur. If future experience should show that it is warranted, appropriate specific language can be added at a later time.

Finally, this commenter suggested that whether there was prior authorization of an expense by the claimant or appellant should be added to the list of criteria set out in paragraph (d) used to judge the reasonableness of expenses. In this regard, the commenter expressed concern about claimants not being aware of the cost of litigation. This regulation already contemplates that there will be an agreement between the parties as to whether a representative will be reimbursed for expenses. (See paragraph (b).) While VA recognizes and appreciates the concerns voiced by

this commenter, it is reluctant to impose what would in effect be a requirement for the approval of each individual litigation expense in advance in addition to a general agreement for expense reimbursement. Such a requirement would be very burdensome to both claimants/appellants and representatives. Consideration will be given to a requirement for advance approval with respect to large expenses, perhaps those exceeding a particular amount, in the future if experience indicates a need for further regulatory control. At this time, however, this suggestion has not been adopted.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

VA assumed when drafting these amendments that parties would submit such evidence as they might wish to the BVA in conjunction with a motion for review of a representative's bill for expenses. Material has been added to paragraph (d) to make it clear that this is permitted and also to note that the ruling on the motion will be in the form of an order.

The phrase "Department of Veterans Affairs personnel" has been changed to read "Department of Veterans Affairs field personnel" in the section heading and in paragraph (a) as an editorial change in the interest of clarity.

With the modifications described in the preceding paragraphs, § 20.610 is adopted.

One commenter objected to the provision in § 20.611 allowing a representative to continue representation in a case on behalf of survivors for the first year following the death of a claimant or appellant—alleging that the "lengthy period of recognition would constitute an unwarranted invasion of the privacy rights of any survivor(s)." It was suggested that the period be reduced to 30 or 60 days or that there should be a requirement incorporated in the regulation that any survivor who files a claim must be placed on notice of the "power-of-attorney" in effect and offered the opportunity to rescind, limit, or change it.

The suggested changes have not been adopted. A similar provision has been in effect for many years, except that the current regulation provides for

continuation of representation for a "reasonable" period. (See 38 CFR 19.155(c).) This amendment substitutes a one year period (or a period sufficient to complete any appeal pending at the time of the death of the claimant/appellant) for the rather vague standard of "a reasonable period." As is very clear from the proposed amendment, this provision does not preclude the survivor from changing representatives or terminating representation during the applicable period if he or she wishes. Rather, it serves the function of relieving distraught survivors from the burden of being forced to deal with such matters during the initial year following the death of an appellant or claimant and allows representatives to protect the interests of such survivors during this critical period. The amendment is adopted as proposed.

Four comments were received concerning § 20.700.

One commenter recommended that sworn testimony at a personal hearing be recognized as "primary" evidence and that the term "evidence" be defined to include testimony. The commenter argues that this regulation should provide that the BVA must state affirmative reasons for rejecting any testimony and that it should provide that the BVA may not "find a fact to be contrary to the veteran's testimony solely by reason that no reference to such fact exists or is contained in the service records."

That testimony by a veteran or any other witness is evidence is really not a matter which is open to debate. VA, of course, recognizes that it is. (See, for example, proposed § 19.31.) This point is so well settled that VA sees no need to include it in a definition in these rules of practice. The other suggestions from this commenter, described previously, pertain to the deliberative and decision-preparation process of Members of the Board. The weight to be accorded to any particular item of evidence, whether testimony or documentary evidence, is a matter for the triers of fact—in this case, Members of the Board—to determine. Many elements go into determining whether a witness is credible, including his or her demeanor while giving testimony. Little would be gained by a regulatory requirement that the Board specifically state that it did not find a particular witness to be trustworthy.

This commenter asked that paragraph (c) be revised to require that reasons for excluding evidence at hearings on the grounds of lack of relevancy or materiality or because of its repetitious nature be included in the final written decision by the BVA. The place for argument and discussion of why

evidence should or should not be excluded at a hearing is at the hearing. The reasons for a ruling on the admissibility of evidence will be articulated at that time. In the event that appeal is taken to a higher tribunal on the question of whether evidence was wrongfully excluded, the hearing transcript will be available.

This commenter objected to the provisions in paragraph (d) limiting informal hearing presentations to 30 minutes, asserting that this was not in the interest of the appellant. These presentations on audio cassette tapes are limited to 30 minutes because the tapes are transcribed by VA at no cost to the appellant or representative as a service to the appellant and representative. Government funds for this service are limited. The use of this procedure is optional. Appellants and their representatives may present recorded or written presentations of any length they wish at their own expense. VA also notes that the 30 minutes allowed is 30 minutes of actual dictation. Off-line time to compose comments is not included. Thus 30 minutes of actual dictation on tape may represent several hours of work. Thirty minutes of dictation tape translates, on the average, into approximately eleven pages of typed material, single spaced. In a 1987 sample survey, the average informal hearing presentation was just under two and one-half pages in length and the longest in the sample survey was five and one-half pages in length.

The other three commenters expressed concern about the provisions of this amendment which limit hearings solely for oral argument unless good cause for such a hearing is shown. Some pointed out that give-and-take discussions with Members of the Board are often very valuable in defining the issues. One commenter expressed concern about obtaining hearings in cases in which an appellant was unable to attend personally due to age or infirmities.

VA does not believe that, in most cases, the benefit to be gained justifies the time and expense necessary to conduct such hearings. In most cases, there is little which can be presented at oral argument which can not be presented equally well in briefs. The proposed regulation provides for exceptions in unusual cases. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.701. This amendment is adopted as proposed.

Two comments were received concerning § 20.702.

One commenter pointed out the error in the spelling of the word "appear" in the paragraph heading of paragraph (d). This was a typesetting error which has been corrected. This commenter also suggested that the sentence "Ordinarily, however, hearings will not be postponed more than 30 days" be added following the sixth sentence of paragraph (d). The suggested language duplicates language found in paragraph (c)(2) and VA agrees that the suggested addition is appropriate. This suggestion has been adopted.

The second commenter pointed out, in essence, that paragraph (d) has not been constructed to recognize hearings in which only representatives appear to present oral argument. This was an oversight which has been corrected.

With these revisions, the amendment is adopted.

One commenter alleged that the discussion of an individual's right to a Travel Board hearing in § 20.703 was confusing and should be further clarified. Unfortunately, the commenter did not indicate why or how the discussion was considered to be confusing. Inasmuch as no explanation was given and inasmuch as the material in the amendment is relatively simple and straightforward, no change has been made.

A second commenter suggested that § 20.703 should be altered to provide that Travel Board hearings will not be granted concerning reconsideration of a prior BVA decision unless a motion for reconsideration has been granted. VA agrees that this is appropriate and this suggestion has been adopted.

This proposed section failed to mention that Travel Board hearings are available in an appeal of a claim reopened after a prior BVA decision. This oversight has been corrected.

With the changes described, the amendment is adopted.

Two comments were received concerning § 20.704.

Paragraph (c) of § 20.704 provides, in part, that requests for a change in a Travel Board hearing date may be made at any time prior to the scheduled date of the hearing if good cause is shown and that if good cause is not shown, the appellant and representative will be notified and given an opportunity to appear at the hearing previously scheduled. One commenter suggested, in essence, that this paragraph be modified to account for the situation in which the request for a change in the hearing date is received so late that notice of the denial of the request cannot be given until after the originally scheduled hearing date has passed. Suggested

language was proposed. The suggested language (which provided that if the original hearing date had already passed by the time that notice of the denial of the request for a new hearing date could be given, the request for the hearing would be deemed to have been withdrawn) has not been adopted. VA agrees, however, that a potential problem with the proposed amendment has been identified by this commenter. Obviously, a request for a new hearing date must be given far enough in advance of the originally scheduled hearing date for the agency of original jurisdiction to act on the request. This problem is solved in the section dealing with hearings other than Travel Board hearings by requiring that a request for a new hearing date must be submitted not later than two weeks prior to the scheduled hearing date. (See § 20.702(c).) The § 20.704 amendment has been revised to include a similar requirement.

The second commenter pointed out, in essence, that paragraph (d) has not been constructed to recognize hearings in which only representatives appear to present oral argument. This was an oversight which has been corrected.

For reasons noted in the following paragraph, the substance of the second sentence of proposed § 20.705(b) has been moved to paragraph (a) of § 20.704. With this correction, and the revisions described in the previous two paragraphs, the § 20.704 amendment is adopted.

One comment was received concerning § 20.705. The commenter suggested that the word "or" be moved from proposed paragraph (a) (paragraph (a)(1) as adopted) to the end of proposed paragraph (b) (paragraph (a)(2) as adopted) and that the second sentence of proposed paragraph (b) be placed in parentheses. VA agrees that the structure of this amendment could be improved, but is taking an alternative approach. The word "or" has been moved as suggested, but the substance of the second sentence of proposed paragraph (b) has been moved to § 20.704(a). The substance of the remainder of § 20.705 has not been changed, but it has been reorganized for greater clarity. With these changes, § 20.705 is adopted.

One comment was received concerning § 20.706. This commenter expressed concern about the reference to the presiding Member of a hearing panel in this section, and in several others, feeling that this was not sufficient to encompass the Hearing Officer program of the Veterans Benefits Administration. No specific changes have been made to mention this

program in these amendments. The proposed amendment is not incompatible with the program. The Hearing Officer would be a panel of one and would, of course, be the presiding Member of that panel. This amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.707. In response to a comment, post-traumatic stress disorder was added to the list of BVA Board Member specialties in § 19.11(c) to be taken into consideration when Section expansion is required because an issue presented to a traveling Section of the BVA involves reconsideration of a prior BVA decision. Post-traumatic stress disorder has been added to a similar list in this section for consistency.

An editorial revision has been made to change the word "panel" to "section" in the text of paragraph (b) when the reference is to a reconsideration section or to a traveling section. This change has been made so that the amendment will parallel the language which appears in 38 U.S.C. 7103(b) and 7110.

The proposed amendment is adopted, with these revisions.

The individual who commented on § 20.706 offered the same remarks concerning § 20.708. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has not been adopted and the amendment is adopted as proposed.

Two comments were received pertaining to § 20.709.

This regulation provides for the procedures to be followed when the record is to be left open for a reasonable period of time following a personal hearing in order to allow an appellant and his or her representative to submit additional evidence. One commenter suggested that the amendment be revised to provide clarification of the nature of such evidence, to provide information concerning whether the development of the evidence is the sole responsibility of the appellant or representative, and to distinguish between evidence requested by the BVA as opposed to evidence volunteered by the appellant. This suggestion has not been adopted.

It is neither necessary nor desirable to define all of the types of potential evidence which might come to light during the course of a hearing. Any attempt at such a definition would likely be incomplete, inasmuch as it is virtually impossible to guess at the nature of all such evidence in advance, and little (if anything) would be gained by such an attempt. This is a matter best addressed on a case-by-case basis.

This regulation was not meant to be all inclusive with respect to post-hearing evidence development. It merely provides an opportunity for the record to be left open as a service to appellants and representatives so that they may submit additional evidence after the hearing if they indicate a desire to do so during the hearing. The BVA does not force appellants or representatives to submit evidence against their will, even when it is obvious that the evidence would help their cause. If the Board Members participating in the hearing feel that additional evidence is required, they may undertake the development administratively or through remand. That, however, is beyond the scope of this section governing practice by appellants and representatives before the Board.

The individual who commented on § 20.706 offered the same remarks concerning § 20.709. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has not been adopted. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.710. This amendment is adopted as proposed.

Two comments were received regarding § 20.711.

The first commenter recommended that additional information be included as to who may be subpoenaed, noting that the regulation specifies that VA adjudication personnel are exempt but that the exemption did not appear to extend to personnel of the Department of Veterans Affairs' Veterans Health Administration, and that the amendment does not discuss "hostile" witnesses. No change has been made as a result of these comments. Essentially, any witness may be subpoenaed—provided that the requirements of the regulation concerning the need for a subpoena are met. In addition, no particular information concerning "hostile" witnesses is necessary. Obviously, some lack of voluntary cooperation is implicit in the need for a subpoena.

The second commenter complained because this amendment does not allow appeal of rulings on a motion to quash a subpoena, citing the provisions of 38 U.S.C. 7104 which (together with the provisions of 38 U.S.C. 511(a)) provide that all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans are subject to one review on appeal. VA agrees that this is a valid criticism. The restriction complained of, which

appeared in proposed paragraph (f), arose out of concern that appeals would be endlessly delayed due to appeals of interlocutory matters. This concern can also be addressed by providing that the various subpoena related motions are appealable, but that they are not subject to interlocutory appeals. Paragraphs (e) and (h) have been revised to take this less restrictive approach.

The second commenter also argued that the failure of this section to provide for deposing witnesses and its restriction of the issuance of subpoenas to those cases where the necessary evidence cannot be obtained in any other reasonable way are in violation of the provisions of 38 U.S.C. 5711. For the reasons set out below, VA does not agree and no modifications have been made as a result of this criticism.

VA agrees that 38 U.S.C. 5711 is broad enough to support a regulation permitting formal discovery proceedings and broader subpoena power, but the authority of the Secretary (and those to whom he or she chooses to delegate that authority) under this statute is discretionary. The statute confers subpoena power, but it does not compel the exercise of that power. The power to issue subpoenas has existed for a number of years, but its exercise has been limited. The provisions of this section are in conformance with existing procedures and are compatible with the authority which the Secretary has delegated to the Chairman of the BVA and the heads of regional offices and centers. (See 38 CFR 2.1.)

Some erosion of past simplicity of VA adjudication and appeal procedures is inevitable with the growing complexity of veterans' law, the involvement of attorneys-at-law in the adjudication and appeal processes, and the advent of judicial review of decisions of the BVA. VA recognizes the growing complexity of veterans' law and is willing to exercise more subpoena power than has been exercised in the past, but believes that this inherently adversarial process is best limited to those cases where no other reasonable approach will work. VA is also of the opinion that the complexity and adversarial nature of formal discovery proceedings are incompatible with the relatively informal VA adjudication and appeal process. Accordingly, such procedures will not be implemented at this time.

A comment concerning § 20.712 (*infra*) brought to light the absence of any instructions concerning the payment of witness fees in conjunction with the service of a subpoena. Material concerning this subject has been added.

With the revisions described, proposed § 20.711 is adopted.

One commenter urged that § 20.712 include clarification with regard to "how the appellant would 'incur' expenses other than for reproduction costs" and information on what, if any, reimbursement witnesses may claim and from whom.

In view of this comment, the section heading has been modified to more accurately reflect its intended scope. The purpose of this section is to alert appellants, representatives, and witnesses that VA cannot reimburse them for their expenses. The potential expenses of an appellant in conjunction with a hearing are many and varied. (Various travel and lodging expenses come immediately to mind as examples.) The nature and extent of expenses which an appellant may be willing to incur in conjunction with a hearing are really decisions which he or she must make in consultation with his or her representative. Apart from the availability of review for reasonableness of expenses charged to an appellant by a representative (see § 20.610), no need for regulation in this area is currently perceived. The reimbursement of witnesses is also a matter to be privately determined between the witness and the appellant or representative who requests his or her appearance, except that by law (38 U.S.C. 5711, 38 CFR 2.1(c)) witnesses who are subpoenaed are entitled to the same fees and mileage expenses as are paid witnesses in the district courts of the United States. This comment has brought to light the need for an additional paragraph in § 20.711 pertaining to fees. This paragraph has been added. Except for the modification to the section heading, however, § 20.712 is adopted as proposed.

One comment was received pertaining to § 20.713. This commenter pointed out that there were typographical errors in paragraph (b), in that references to § 20.702(c)(i) and (c)(ii) should be to § 20.702(c)(1) and (c)(2). These typographical errors have been corrected. Editorial changes have also been made to clarify paragraph (a). As originally proposed, it suggested that notices of hearings in simultaneously contested claims would always be given by the BVA itself. That was, of course, not accurate. With these corrections, the proposed amendment is adopted.

Two comments were received regarding § 20.714.

The first commenter suggested, in essence, that what is "good cause" for the preparation of a written transcript should be clarified. No suggested grounds were furnished by the commenter. This suggestion has not been adopted. The BVA has already

provided for the automatic transcription of hearings in those situations where a transcript is normally required. (See paragraphs (a)(2) through (a)(5) of the section.) The provision that a transcript will also be prepared when good cause is shown is provided to allow for unanticipated circumstances. This is a matter best determined on a case-by-case basis.

This commenter also suggested that provision be made for the automatic preparation of hearing transcripts when the hearing panel consists of fewer than three Members of the BVA. Such a requirement is not necessary. The audio tape recordings of hearings conducted by traveling Sections of the Board or by the BVA in Washington, DC, are available for review by any additional Board Members who may be assigned to the review of the case after a hearing has been conducted. Proposed § 20.714(a)(4)(iii), regarding the preparation of hearing transcripts in hearings by traveling Sections of the Board consisting of fewer than three Members of the Board, has been withdrawn.

The second commenter asked that "good cause" in paragraph (a)(1) be defined to specifically include situations in which the appellant or a representative wishes to examine a transcript in order to assess whether to appeal to the United States Court of Veterans Appeals. This request has not been granted. There may well be cases in which this would furnish good cause for the preparation of a written transcript, but defining good cause in such a manner as to result in the automatic preparation of a written transcript on this basis is not warranted. Appellants and their representatives will normally have been present at BVA hearings and are well aware of what transpired at the hearing. Further, hearing tape recordings are available to them for review upon request. Convenience alone is not an adequate basis for the considerable expenditure of government funds necessary to produce a written transcript.

Editorial changes have been made in paragraph (c).

This proposed amendment is adopted with the revisions noted.

No comments, suggestions, or objections were received regarding the amendment of § 20.715. This amendment is adopted as proposed, with the addition of minor editorial changes.

The individual who commented on § 20.706 offered the same remarks concerning § 20.716. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has

not been adopted and the amendment is adopted as proposed, with minor editorial changes.

Two comments were received concerning § 20.717.

The first commenter asked that loss of hearing tapes and transcripts be defined to include instances where the tape is generally unintelligible and instances where a written transcript contains substantial errors in transcription. These suggestions have not been adopted. The proposed amendment already contemplates unintelligible recordings. For example, factors to be considered in determining whether a new hearing will be granted include "the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible * * *." (See paragraph (d).) The remedy for correcting errors in transcription is a motion for the correction of the transcript. (See § 20.716.)

This commenter also suggested that provision be made for reimbursing appellants and representatives for expenses which they might incur in attending a new hearing which is required because of loss of the record of a prior hearing due to mishandling or loss of a tape recording or transcript of a hearing by VA. VA is unaware of any legal authority for such reimbursement and the commenter offered none. This comment has not been adopted.

The second commenter is the individual who commented on § 20.706. This individual offered the same remarks concerning § 20.717. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has not been adopted and the amendment is adopted as proposed.

One comment was received concerning § 20.800. The comment pertains to the limitations set out in § 20.1304 which are merely cross-referenced in § 20.800. This objection will be addressed in the discussion of the comments concerning § 20.1304. Section 20.800 is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.900. This amendment is adopted as proposed.

One comment was received regarding §§ 20.901 through 20.903. The commenter objected because these regulations do not refer to authority included in Public Law 100-687 for VA field facilities to obtain independent medical expert opinions. Regulations concerning obtaining opinions in the field are beyond the scope of these amendments, which pertain to practice before the Board of Veterans' Appeals. VA's Veterans Benefits Administration has already issued a final regulation

concerning obtaining independent medical opinions at the field level (55 FR 18601 dated May 3, 1990). Sections 20.901 through 20.903 are adopted as proposed.

The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on May 17, 1990, which had the effect of invalidating the "administrative allowance" procedures of the BVA both in its current Rules of Practice and in these proposed regulations. (See O.G.C. Precedent Opinion 11-90, 55 FR 27756 dated July 5, 1990.) Such opinions are binding upon the BVA. (See 38 U.S.C. 7104(c).) Accordingly, all references to those procedures have been withdrawn from these proposed amendments. The material withdrawn includes proposed § 20.904.

No comments, suggestions, or objections were received regarding proposed § 20.905. Due to the withdrawal of § 20.904, proposed § 20.905 has been redesignated as § 20.904. The proposed amendment, as redesignated, is adopted.

No comments, suggestions, or objections were received regarding the amendments in proposed §§ 20.1000 through 20.1002. The provisions concerning reconsideration of BVA decisions that were designated in the proposal as §§ 20.1000(d) and 20.1002 are withdrawn. This is necessary as it has been determined, after further consideration, that such provisions of the proposal are, in some respects, inconsistent with the statutory provisions contained in 38 U.S.C. 7103. Instead, VA is publishing additional provisions concerning reconsideration of BVA decisions as part of a proposal in a companion document in this issue of the *Federal Register*. The remainder of § 20.1000 is adopted as proposed.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including § 20.1001(a). This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

Section 20.1001 is adopted as proposed with this revision and with the addition of the words "or evidence" at the end of the second sentence of paragraph (c)(2) to make it clear that additional evidence may now be submitted once a motion for reconsideration has been granted.

Section 20.1002 is reserved.

Two comments were submitted regarding § 20.1003. These comments are similar to the comments offered with respect to proposed provisions in § 20.700 which restrict hearings solely for oral argument by a representative. The response to those comments applies. VA does agree, however, that the latitude permitted in this area in nonreconsideration hearings should also be permitted in the case of reconsideration hearings. Accordingly, modifications have been made to make this section compatible with the provisions of § 20.700(b). With these revisions, the amendment is adopted.

The provisions concerning finality of BVA decisions that were designated in the proposal as §§ 20.1100 and 20.1101 are withdrawn. This is necessary as it has been determined, after further consideration, that such provisions of the proposal are, in some respects, inconsistent with the statutory provisions contained in 38 U.S.C. 7103. Instead, VA is publishing revised provisions dealing with this topic in two separate formats. First, language merely interpreting existing statutory provisions is set forth in § 20.1100 as part of this final rule. (Its provisions constitute interpretative rules and, as such, are exempt from the notice and comment provisions of 5 U.S.C. 553.) Second, additional provisions concerning this topic are set forth as part of a proposal in a companion notice of proposed rulemaking in this issue of the *Federal Register*.

Section 20.1101 is reserved.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.1102 through 20.1106, 20.1200, 20.1201, and 20.1300 through 1302. These amendments are adopted as proposed, with minor editorial changes to § 20.1300 and the editorial revisions to §§ 20.1105 and 20.1301 described in the following paragraphs.

As proposed, the first sentence of § 20.1105 read as follows: "When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a new factual basis for allowing the claim." The requirement that a "new factual basis" be established was carried forward from current 38 CFR 19.194 which was, in turn, based on language contained in what is now 38 U.S.C. 7104(b) which provides that a claim may not again be considered "on the same factual basis" after it has been disallowed by the BVA.

While that statutory language still remains, revisions to 38 U.S.C. 7104(b) made by the Veterans' Judicial Review Act (Pub. L. 100-687) provide an exception in the case of claims reopened under what is now 38 U.S.C. 5108, a new section added by the same act as 38 U.S.C. 3008. Inasmuch as § 20.1105 applies to reopened claims, the words "new factual" have been withdrawn to make the first sentence of the section consistent with the new statutory provisions.

Paragraph (b) of § 20.1301 includes an example of a BVA decision locator number. The form of the locator numbers has recently changed due to the archiving of BVA decisions in computer records rather than on microfilm. Material indicating that the format of locator numbers has changed and an example of the new type of locator number have been added to the proposed amendment, inasmuch as the most recent BVA decisions have the new type of locator number. Material has also been added to note that the copies of BVA Index I-01-1 which are available for public review at the BVA in Washington, DC, are located in the BVA's Research Center. (Of course, BVA decisions are not made available to the public in a form permitting the identification of individuals.)

Two comments were received regarding § 20.1303.

One comment was that "it is suggested that the term 'nonprecedential' be more clearly defined and the relationship to decisions of the Court of Veterans Appeals." (sic) The meaning of the word "nonprecedential" (which appears in the section heading) is fully explained in the text of the section and there is little which would be useful which could be added. Nonprecedential has its usual meaning. That is, as has been VA's position for many years, a BVA decision in one case is not binding in another. This amendment, of course, applies only to BVA decisions and has no bearing on decisions by the United States Court of Veterans Appeals.

The second commenter objected to the removal of the first sentence of the Rule of Practice upon which this amendment was based (current § 19.197). That sentence read as follows: "The Board will strive for consistency in issuing its decisions." The commenter argued that removing the consistency provision was contrary to "due process" and Public Law 100-687.

VA perceives no violation of either "due process" or of Public Law 100-687 through the removal of the sentence in question and the commenter offered no explanation of why it was thought that

this was the case. The removal of the sentence was actually a matter of editorial judgment and did not represent any change in policy. In view of the concern expressed, however, similar language has been added.

The second commenter also argued that the Board should be attempting to achieve more consistent opinions, especially in light of the creation of the United States Court of Veterans Appeals, by using BVA decisions as precedential guides. This suggestion has not been adopted.

Several factors are behind the long-standing rule that BVA decisions are not precedential in nature. The majority of decisions by the BVA turn on unique fact situations. For example, the many facts which establish a particular degree of disability in one individual are almost never the same as in the case of another individual. Another, and perhaps the most important, factor is that proceedings before the BVA are *ex parte* in nature. Questions of fairness would arise by, in effect, making a BVA decision precedential when the Department has no opportunity to present and defend its position in the proceeding. Further, VA may not appeal a BVA decision to the United States Court of Veterans Appeals. (38 U.S.C. 7152(a)). In addition to these historical, and still valid, considerations, uniformity will be achieved on important questions through precedent decisions of the United States Court of Veterans Appeals.

With the addition previously described, the amendment is adopted.

Four comments were received regarding § 20.1304.

This proposed section was essentially a duplicate of a proposed amendment of 38 CFR 19.174 (b) through (e) which was published for public comment on July 6, 1989 (54 FR 28445). The final version of that regulation was published on May 15, 1990. (55 FR 20144). Several changes arising out of comments received were incorporated into the final version of 38 CFR 19.174.

One of the four commenters on proposed § 20.1304 incorporated its prior comments concerning the amendment of 38 CFR 19.174 by reference and submitted an affidavit in support of those comments. Two of the other three commenters offered objections similar to those raised concerning the amendment of 38 CFR 19.174. The comments concerning the amendment of 38 CFR 19.174 were exhaustively discussed in the Federal Register at the time that the final version of that regulation was adopted. These three commenters are referred to that discussion. As noted in that discussion,

several changes were made. These included extending the time limit for submitting a request for a change in representation, submitting a request for a personal hearing, and for submitting additional evidence following certification of an appeal to the BVA from 60 to 90 days, or until the date the appellate decision in the case is promulgated by the BVA, whichever comes first. Section 20.1304 has been modified to conform to the final version of 38 CFR 19.174.

The fourth commenter pointed out, correctly, that the reference to § 19.112(b) should be to § 19.37(b). This error has been corrected.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

Clarifying material has been added to the first sentence of paragraph (d) to point out that the only evidence provided to all contesting claimants in a contested claim is evidence which is pertinent to the matter contested.

With the revisions noted, this amendment is adopted.

Proposed § 20.1305 has been withdrawn. The purpose of that section was to provide transitional effective date rules in the event that these amendments were adopted prior to September 1, 1989—the effective date of many of the provisions of Public Law 100-687.

There was a typesetting error in Appendix A to part 20. The numbers "20.700-20.717" at the bottom of the left-hand column, beneath the number "20.1304," should have been printed in the second column after the comma which appears after the citation "38 CFR 3.103(c)" which is in the second column directly to the right of the number "20.1304" in the left-hand column. This error has been corrected. The appendix has also been corrected to reflect the changes discussed in previous pages. With these corrections, the appendix is adopted.

The Secretary has determined that these regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The regulations will not have a \$100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these regulatory amendments 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 reason for this certification is that the regulations have only a limited effect on claimants/appellants and their representatives. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The information collection requirements contained in §§ 20.202, 20.608, 20.609, 20.610, 20.702, and 20.704 of these regulations have been approved by the Office of Management and Budget (OMB) under OMB control number 2900-0085.

There are no Catalog of Federal Domestic Assistance numbers associated with these regulatory amendments.

List of Subjects

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

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

Approved: November 6, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 14 and 19 are amended, and 38 CFR part 20 is added, as set forth below:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 is revised to read as follows:

Authority: 38 U.S.C. 501, 5901-5905.

§§ 14.634 and 14.635 [Removed]

§§ 14.636 and 14.637 [Redesignated as §§ 14.634 and 14.635]

2. Sections 14.634 and 14.635 are removed and §§ 14.636 and 14.637 are redesignated as new §§ 14.634 and 14.635 respectively.

3. In newly designated § 14.634, the last sentence is removed and an authority citation and cross-references are added at the end of the section to read as follows:

§ 14.634 Banks or trust companies acting as guardians.

(Authority: 38 U.S.C. 5903, 5904)

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

4. In newly designated § 14.635, cross-references are added at the end of the section to read as follows:

§ 14.635 Office space and facilities.

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

5. 38 CFR Part 19, Board of Veterans' Appeals, is revised to read as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

Subpart A—Operation of the Board of Veterans' Appeals

- Sec.
- 19.1 Establishment of the Board.
- 19.2 Composition of the Board.
- 19.3 Appointment, assignment, and rotation of Members.
- 19.4 Principal functions of the Board.
- 19.5 Criteria governing disposition of appeals.
- 19.6 [Reserved]
- 19.7 The decision.
- 19.8 Decision notification.
- 19.9 Remand for further development.
- 19.10 [Reserved]
- 19.11 Reconsideration Section.
- 19.12 Disqualification of Members.
- 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.
- 19.14 Delegation of authority—Appeals Regulations.
- 19.15-19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

- 19.25 Notification by agency of original jurisdiction of right to appeal.
- 19.26 Action by agency of original jurisdiction on Notice of Disagreement.
- 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.
- 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.
- 19.29 Statement of the Case.
- 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.
- 19.31 Supplemental Statement of the Case.
- 19.32 Closing of appeal for failure to respond to Statement of the Case.
- 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.
- 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.
- 19.35 Certification of appeals.
- 19.36 Notification of certification of appeal and transfer of appellate record.
- 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.
- 19.38 Action by agency of original jurisdiction when remand received.
- 19.39-19.49 [Reserved]

Subpart C—Administrative Appeals

- 19.50 Nature and form of administrative appeal.
- 19.51 Officials authorized to file administrative appeals and time limits for filing.
- 19.52 Notification to claimant of filing of administrative appeal.
- 19.53 Restriction as to change in payments pending determination of administrative appeals.
- 19.54-19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans' Appeals

- 19.75 Travel Board hearing docket.
- 19.76 Notice of time and place of Travel Board hearing.
- 19.77 Providing Statement of the Case when Travel Board hearing has been requested.
- 19.78-19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

- 19.100 Notification of right to appeal in simultaneously contested claims.
- 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.
- 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

Appendix A to Part 19—Cross-References (Authority: 38 U.S.C. 501(a).

Subpart A—Operation of the Board of Veterans' Appeals

§ 19.1 Establishment of the Board.

The Board of Veterans' Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.

§ 19.2 Composition of the Board.

The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members, and professional, administrative, clerical and stenographic personnel.

(Authority: 38 U.S.C. 501(a), 512, 7101(a))

§ 19.3 Appointment, assignment, and rotation of Members.

(a) *Appointment of Members.* The Chairman is appointed by the President of the United States, by and with the advice and consent of the United States Senate. Members of the Board, including the Vice Chairman, are appointed by the Secretary upon the recommendation of the Chairman with the approval of the President of the United States. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(Authority: 38 U.S.C. 501(a), 512, 7101(b))

(b) *Assignment.* The Chairman may divide the Board into Sections of three Members, assign Members of the Board to each such Section, and designate the Chief Member of each such Section. From time to time, a Member may be designated as a Chief Member or a Chief Member may be redesignated as a Member.

(Authority: 38 U.S.C. 7102)

(c) *Rotation.* The Chairman may from time to time rotate the Members of the Sections.

(Authority: 38 U.S.C. 7102)

(d) *Inability to serve.* If, as a result of a vacancy, absence, or for reasons set forth in § 19.12 of this part, a Member of a Section of the Board is unable to participate in the disposition of an appeal before the Section, the Chairman may assign or substitute another Member or direct the Section to proceed without any additional assignment or substitution of Members.

(Authority: 38 U.S.C. 7102)

§ 19.4 Principal functions of the Board.

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions

in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 7102, 7104)

§ 19.5 Criteria governing disposition of appeals.

In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

(Authority: 38 U.S.C. 501(a), 7104(c))

§ 19.6 [Reserved]

§ 19.7 The decision.

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 7104(a), 7105(d)(4))

(b) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.

(Authority: 38 U.S.C. 7104(d))

§ 19.8 Decision notification.

After a decision has been rendered by the Board, all parties to the appeal and the representatives, if any, will be notified of the results by the mailing of a copy of the written decision to the parties and their representatives at their last known addresses. In the case of appeals involving contesting claimants, the content of the Board's decision will be limited to that information which directly affects the payment or potential payment of the benefit(s) which is (are) the subject of the contested claim. Any Board decision in the same case, but involving separate appeal issues which are not a part of the contested claim, will be made the subject of a separate

written decision which will be mailed only to that appellant and his or her representative.

(Authority: 38 U.S.C. 7104(e))

§ 19.9 Remand for further development.

When, during the course of review, it is determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Section of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(Authority: 38 U.S.C. 7102, 7104(a))

§ 19.10 [Reserved]

§ 19.11 Reconsideration Section.

(a) *Assignment of members.* When a motion for reconsideration is allowed, the Chairman will assign a Section to conduct the reconsideration.

(b) *Number of Members constituting a reconsideration Section.* The number of Board Members assigned to the reviewing Section will be determined by increasing the number of Members who participated in the original decision by not less than three additional Members, in increments of three Members. Except when necessary to obtain a majority opinion, a reconsideration Section will not exceed nine Members.

(c) *Members included in the reconsideration Section.* The reconsideration Section will include those Members who participated in the original decision who are available, additional Members assigned by the Chairman to substitute for Members who participated in the decision being reconsidered who are no longer available, and additional Members assigned in accordance with paragraph (b) of this section. In the case of Travel Board hearings involving reconsideration of a prior Board decision, the Members of the traveling Section of the Board will be included in the expanded Section established pursuant to paragraph (b) of this section. If the prior Board decision being reconsidered involves questions concerning post-traumatic stress disorder or radiation, Agent Orange, or asbestos exposure, the traveling Section will be included in an expanded Section which also includes Board Members specializing in those issues.

(Authority: 38 U.S.C. 7102, 7103, 7110)

§ 19.12 Disqualification of Members.

(a) *General.* A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in

which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(Authority: 38 U.S.C. 7102, 7104)

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Members of the Board who made the decision on an administrative appeal will disqualify themselves from acting on a subsequent appeal by the claimant on the same issue.

(Authority: 38 U.S.C. 7102, 7104, 7106)

(c) *Disqualification of Members by the Chairman.* The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in paragraphs (a) and (b) of this section and in those cases where a Member is unable or unwilling to act.

(Authority: 38 U.S.C. 7102, 7104, 7106)

§ 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit, and

(b) Order VA Central Office investigations of matters before the Board.

(Authority: 38 U.S.C. 303, 512(a))

§ 19.14 Delegation of authority—Appeals Regulations.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(b), 19.3(c), and 19.12(c) of this part may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(d) and 19.11 of this part may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

§§ 19.15–19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.25 Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to

a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.

(Authority: 38 U.S.C. 7105(a))

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

When a Notice of Disagreement is timely filed, the agency of original jurisdiction must reexamine the claim and determine if additional review or development is warranted. When a Notice of Disagreement is received following a multiple-issue determination and it is not clear which issue, or issues, the claimant desires to appeal, clarification sufficient to identify the issue, or issues, being appealed should be requested from the claimant or his or her representative. If no preliminary action is required, or when it is completed, the agency of original jurisdiction must prepare a Statement of the Case pursuant to § 19.29 of this part, unless the matter is resolved by granting the benefits sought on appeal or the Notice of Disagreement is withdrawn by the appellant or his or her representative.

(Authority: 38 U.S.C. 7105(d)(1))

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the adequacy of a Notice of Disagreement, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 7105, 7106)

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105)

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate

citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 7105(d)(1))

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

(a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a Substantive Appeal; information on hearing and representation rights; and a VA Form 1-9, "Appeal to Board of Veterans' Appeals."

(Authority: 38 U.S.C. 7105)

§ 19.31 Supplemental Statement of the Case.

A Supplemental Statement of the Case, so identified, will be furnished to the appellant and his or her representative, if any, when additional pertinent evidence is received after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued, when a material defect in the Statement of the Case or a prior Supplemental Statement of the Case is discovered, or when, for any other reason, the Statement of the Case or a prior Supplemental Statement of the Case is inadequate. A Supplemental Statement of the Case will also be issued following development pursuant to a remand by the Board unless the only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case or unless the Board specifies in the remand that a Supplemental Statement of the Case is not required. If the case is remanded to cure a procedural defect, a Supplemental Statement of the Case will be issued to assure full notification to the appellant of the status of the case, unless the Board directs otherwise. A Supplemental Statement of the Case is required following a hearing on appeal before field personnel when new documentary evidence or evidence in

the form of testimony concerning the relevant facts or expert opinion is presented, but is not required if only argument is presented.

(Authority: 38 U.S.C. 7105(d))

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 7105(d)(3))

§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 7105, 7106)

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105)

§ 19.35 Certification of appeals.

Following receipt of the Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals. Certification is accomplished by the completion of VA Form 1-8, "Certification of Appeal." The certification is used for administrative purposes and does not serve to either confer or deprive the Board of Veterans' Appeals of jurisdiction over an issue.

(Authority: 38 U.S.C. 7105)

§ 19.36 Notification of certification of appeal and transfer of appellate record.

When an appeal is certified to the Board of Veterans' Appeals for appellate review and the appellate record is transferred to the Board, the

appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in Rule of Practice 1304 (§ 20.1304 of this chapter).

(Authority: 38 U.S.C. 7105)

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

(a) *Evidence received prior to transfer of records to Board of Veterans' Appeals.* Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans' Appeals after an appeal has been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

(b) *Evidence received after transfer of records to the Board of Veterans' Appeals.* Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans' Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.

(Authority: 38 U.S.C. 7105(d)(1))

§ 19.38 Action by agency of original jurisdiction when remand received.

When a case is remanded by the Board of Veterans' Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development, together with the evidence which was previously of record, supports the allowance of all benefits sought on appeal. If so, the Board and the appellant and his or her representative, if any, will be promptly

informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 60-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

(Authority: 38 U.S.C. 7105(d)(1))

§§ 19.39-19.49 [Reserved]

Subpart C—Administrative Appeals

§ 19.50 Nature and form of administrative appeal.

(a) *General.* An administrative appeal from an agency of original jurisdiction determination is an appeal taken by an official of the Department of Veterans Affairs authorized to do so to resolve a conflict of opinion or a question pertaining to a claim involving benefits under laws administered by the Department of Veterans Affairs. Such appeals may be taken not only from determinations involving dissenting opinions, but also from unanimous determinations denying or allowing the benefit claimed in whole or in part.

(b) *Form of Appeal.* An administrative appeal is entered by a memorandum entitled "Administrative Appeal" in which the issues and the basis for the appeal are set forth.

(Authority: 38 U.S.C. 7106)

§ 19.51 Officials authorized to file administrative appeals and time limits for filing.

The Secretary of Veterans Affairs authorizes certain officials of the Department of Veterans Affairs to file administrative appeals within specified time limits, as follows:

(a) *Central Office—(1) Officials.* The Chief Benefits Director or a Service Director of the Veterans Benefits Administration, the Chief Medical Director or a service director of the Veterans Health Administration, and the General Counsel.

(2) *Time limit.* Such officials must file an administrative appeal within 1 year

from the date of mailing notice of such determination to the claimant.

(b) *Agencies of original jurisdiction—*
(1) *Officials.* Directors, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

(2) *Time limit.* The Director or comparable official must file an administrative appeal within 6 months from the date of mailing notice of the determination to the claimant. Officials below the level of Director must do so within 60 days from such date.

(c) *The date of mailing.* With respect to paragraphs (a) and (b) of this section, the date of mailing notice of the determination to the claimant will be presumed to be the same as the date of the letter of notification to the claimant.

(Authority: 38 U.S.C. 7106)

§ 19.52 Notification to claimant of filing of administrative appeal.

When an administrative appeal is entered, the claimant and his or her representative, if any, will be promptly furnished a copy of the memorandum entitled "Administrative Appeal," or an adequate summary thereof, outlining the question at issue. They will be allowed a period of 60 days to join in the appeal if they so desire. The claimant will also be advised of the effect of such action and of the preservation of normal appeal rights if he or she does not elect to join in the administrative appeal.

(Authority: 38 U.S.C. 7106)

§ 19.53 Restriction as to change in payments pending determination of administrative appeals.

If an administrative appeal is taken from a review or determination by the agency of original jurisdiction pursuant to §§ 19.50 and 19.51 of this part, that review or determination may not be used to effect any change in payments until after a decision is made by the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 7106)

§§ 19.54–19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans' Appeals

§ 19.75 Travel Board hearing docket.

Travel Board hearings will be

scheduled in the order in which requests for such hearings are received by Department of Veterans Affairs field facilities. Any requests submitted directly to the Board will be transferred to the appropriate field facility and will not be considered to have been filed for docketing purposes until received by the applicable field facility. Each Departmental facility generating appeals activity will:

(a) Mark each written request for a Travel Board hearing to show the date of receipt, and

(b) Maintain a formal log showing, in the order that each request for a Travel Board hearing is received:

- (1) The date that each request for a Travel Board hearing was received,
- (2) The name of the appellant,
- (3) The name of the representative,
- (4) The applicable Departmental file number,

(5) Whether the request for a Travel Board hearing has been withdrawn,

(6) And the date that the hearing was conducted or a notation that the appellant failed to appear for the hearing.

(Authority: 38 U.S.C. 7110)

§ 19.76 Notice of time and place of Travel Board hearing.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a Travel Board hearing not less than 60 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled Travel Board hearing with good cause. The requirement will also be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled Travel Board hearing.

(Authority: 38 U.S.C. 7110)

§ 19.77 Providing Statement of the Case when Travel Board hearing has been requested.

If not previously furnished, the appellant and his or her representative will be provided with a Statement of the Case not later than the date on which the agency of original jurisdiction furnishes them with notification of the place and time of the Travel Board

hearing. A Statement of the Case is not required when the only issue to be considered by the traveling Section of the Board is the reconsideration of a prior Board of Veterans' Appeals decision.

(Authority: 38 U.S.C. 7105(d)(1), 7110)

§§ 19.78–19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

(Authority: 38 U.S.C. 7105A(a))

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The Statement of the Case so furnished will contain only information which directly affects the payment or potential payment of the benefit(s) which is (are) the subject of that contested claim. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 1–9, "Appeal to Board of Veterans' Appeals."

(Authority: 38 U.S.C. 7105A(b))

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, the content of the Substantive Appeal will be furnished to the other contesting parties to the extent that it contains information which could directly affect the payment or potential payment of the benefit which is the subject of the contested claim.

(Authority: 38 U.S.C. 7105A(b))

APPENDIX A TO PART 19—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
19.5	38 CFR 14.507(b)	See re "precedent opinions" of the General Counsel of the Department of Veterans Affairs.
	38 CFR 20.1303	Rule 1303. Nonprecedential nature of Board decisions.
19.7	38 CFR 20.905	Rule 905. Vacating a decision.
19.13	38 CFR 2.66	Contains similar provisions.
19.25	38 CFR 19.52	Notification to claimant of filing of administrative appeal.
	38 CFR 19.100	Notification of right to appeal in simultaneously contested claims.
19.26	38 CFR 20.302	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
19.27	38 CFR 19.50-19.53	See re administrative appeals.
19.30	38 CFR 20.202	Rule 202. Substantive Appeal.
19.32	38 CFR 20.302	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
	38 CFR 20.501	Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
19.33	38 CFR 19.50-19.53	See re administrative appeals.
19.50	38 CFR 19.53	Restriction as to change in payments pending determination of administrative appeals.
19.76	38 CFR 20.704	Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
19.100	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
19.101	38 CFR 19.30	Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

6. New Part 20, Board of Veterans' Appeals: Rules of Practice, is added to 38 CFR to read as follows:

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

Subpart A—General

Sec.

- 20.1 Rule 1. Purpose and construction of Rules of Practice.
- 20.2 Rule 2. Procedure in absence of specific Rule of Practice.
- 20.3 Rule 3. Definitions.
- 20.4-20.99 [Reserved]

Subpart B—The Board

- 20.100 Rule 100. Name, business hours, and mailing address of the Board.
- 20.101 Rule 101. Jurisdiction of the Board.
- 20.102 Rule 102. Delegation of authority—Rules of Practice.
- 20.103-20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

- 20.200 Rule 200. What constitutes an appeal.
- 20.201 Rule 201. Notice of Disagreement.
- 20.202 Rule 202. Substantive Appeal.
- 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.
- 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.
- 20.205-20.299 [Reserved]

Subpart D—Filing

- 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.
- 20.301 Rule 301. Who can file an appeal.
- 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
- 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.
- 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.
- 20.305 Rule 305. Computation of time limit for filing.

- 20.306 Rule 306. Legal holidays.

20.307-20.399 [Reserved]

Subpart E—Administrative Appeals

- 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.
- 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.
- 20.402-20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

- 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.
- 20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
- 20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.
- 20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.
- 20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.
- 20.505-20.599 [Reserved]

Subpart G—Representation

- 20.600 Rule 600. Right to representation.
- 20.601 Rule 601. Only one representative recognized.
- 20.602 Rule 602. Representation by recognized organizations.
- 20.603 Rule 603. Representation by attorneys-at-law.
- 20.604 Rule 604. Representation by agents.
- 20.605 Rule 605. Other persons as representative.
- 20.606 Rule 606. Legal interns, law students and paralegals.
- 20.607 Rule 607. Revocation of a representative's authority to act.
- 20.608 Rule 608. Withdrawal of services by a representative.

- 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

- 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

- 20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

20.612-20.699 [Reserved]

Subpart H—Hearings on Appeal

- 20.700 Rule 700. General.
- 20.701 Rule 701. Who may present oral argument.
- 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.
- 20.703 Rule 703. When right to Travel Board hearing arises.
- 20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
- 20.705 Rule 705. Where hearings on appeal are conducted.
- 20.706 Rule 706. Functions of the presiding Member.
- 20.707 Rule 707. When a hearing panel makes the final appellate decision.
- 20.708 Rule 708. Prehearing conference.
- 20.709 Rule 709. Procurement of additional evidence following a hearing.
- 20.710 Rule 710. Witnesses at hearings.
- 20.711 Rule 711. Subpoenas.
- 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.
- 20.713 Rule 713. Hearings in simultaneously contested claims.
- 20.714 Rule 714. Record of hearing.

- 20.715 Rule 715. Recording of hearing by appellant or representative.
 20.716 Rule 716. Correction of hearing transcripts.
 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.
 20.718–20.799 [Reserved]

Subpart I—Evidence

- 20.800 Rule 800. Submission of additional evidence after initiation of appeal.
 20.801–20.899 [Reserved]

Subpart J—Action by the Board

- 20.900 Rule 900. Order of consideration of appeals.
 20.901 Rule 901. Medical opinions and opinions of the General Counsel.
 20.902 Rule 902. Filing of requests for the procurement of opinions.
 20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.
 20.904 Rule 904. Vacating a decision.
 20.905–20.999 [Reserved]

Subpart K—Reconsideration

- 20.1000 Rule 1000. When reconsideration is accorded.
 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.
 20.1002 Rule 1002. [Reserved]
 20.1003 Rule 1003. Hearings on reconsideration.
 20.1004–20.1099 [Reserved]

Subpart L—Finality

- 20.1100 Rule 1100. Finality of decisions of the Board.
 20.1101 Rule 1101. [Reserved]
 20.1102 Rule 1102. Harmless error.
 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.
 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.
 20.1105 Rule 1105. New claim after promulgation of appellate decision.
 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.
 20.1107–20.1199 [Reserved]

Subpart M—Privacy Act

- 20.1200 Rule 1200. Privacy Act request—appeal pending.
 20.1201 Rule 1201. Amendment of appellate decisions.
 20.1202–20.1299 [Reserved]

Subpart N—Miscellaneous

- 20.1300 Rule 1300. Access to Board records.
 20.1301 Rule 1301. Disclosure of information.
 20.1302 Rule 1302. Death of appellant during pendency of appeal.
 20.1303 Rule 1303. Nonprecedential nature of Board decisions.
 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

Appendix A to Part 20—Cross-References

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

Subpart A—General

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.

(a) *Purpose.* These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 501(a), 7102, 7104)

(b) *Construction.* These rules are to be construed to secure a just and speedy decision in every appeal.

(Authority: 38 U.S.C. 501(a), 5107, 7104)

§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.

Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.

(Authority: 38 U.S.C. 501(a), 512(a), 7102, 7104)

§ 20.3 Rule 3. Definitions.

As used in these Rules:

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs regional office, medical center, clinic, cemetery, or other Department of Veterans Affairs facility which made the initial determination on a claim or, if the applicable records are later permanently transferred to another Department of Veterans Affairs facility, its successor.

(b) *Agent* means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of Rule 604 (§ 20.604 of this part). It does not include representatives recognized under Rules 602, 603, or 605 (§ 20.602, 20.603, or § 20.605 of this part).

(c) *Appellant* means a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 7105.

(d) *Attorney-at-law* means a member in good standing of a State bar.

(e) *Benefit* means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.

(f) *Claim* means application made under title 38, United States Code, and implementing directives for entitlement to Department of Veterans Affairs benefits or for the continuation or increase of such benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) *Claimant* means a person who has filed a claim, as defined by paragraph (f) of this section.

(h) *Hearing on appeal* means a hearing conducted after a Notice of Disagreement has been filed in which argument and/or testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.

(i) *Law student* means an individual pursuing a Juris Doctor or equivalent degree at a school approved by a recognized accrediting association.

(j) *Legal intern* means a graduate of a law school, which has been approved by a recognized accrediting association, who has not yet been admitted to a State bar.

(k) *Motion* means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, the questions of whether a representative's fees are reasonable or whether additional evidence may be submitted more than 90 days after certification of an appeal to the Board are raised by motion (see Rule 609, paragraph (i), and Rule 1304, paragraph (b) §§ 20.609(i) and 20.1304(b) of this part). Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.

(l) *Paralegal* means a graduate of a course of paralegal instruction given by a school which has been approved by a recognized accrediting association, or an individual who has equivalent legal experience.

(m) *Simultaneously contested claim* refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

(n) *State* includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

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

§§ 20.4–20.99 [Reserved]

Subpart B—The Board

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.

(a) *Name.* The name of the Board is the Board of Veterans' Appeals.

(b) *Business hours.* The Board is open during business hours on all days except Saturday, Sunday and legal holidays.

Business hours are from 8 a.m. to 4:30 p.m.

(c) *Mailing address.* Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7101(a))

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans' Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to, and benefits resulting from, service-connected disability or death (38 U.S.C. chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 1312) and certification and entitlement to death gratuity (38 U.S.C. 1323).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 1318).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. chapter 35).

(10) Veterans' Job Training (Pub. L. 98-77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 1728).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 1151).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 5302).

(19) Waiver of recovery of overpayments (38 U.S.C. 5302).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 6102-6105).

(21) Character of discharge (38 U.S.C. 5303).

(22) Determinations as to duty status (38 U.S.C. 101(21)-(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101(4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 5307).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 5503).

(28) Benefits for surviving spouses and children of deceased veterans under Public Law 97-377, section 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

(b) *Appellate jurisdiction of determinations of the Veterans Health Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an

individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular issue. This includes questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal. Subject to review by courts of competent jurisdiction, only the Board of Veterans' Appeals will make final decisions with respect to its jurisdiction.

(Authority: 38 U.S.C. 511(a), 7104)

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 900(c) (§ 20.900(c) of this part) MAY ALSO be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 608(b), 717(d), and 1001(c) (§§ 20.608(b), 20.717(d), and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2 of this part) may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in conjunction with a proceeding or motion in connection therewith assigned to them by the Chairman, by Members of the Board who have been designated as the Chief Member of a Section of the Board or as the Acting Chief Member of a Section of the Board and by a Member of the Board who is acting as the presiding Member of a hearing panel.

(d) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 606(e), 609(i), 610(d), 711(e), 711(f), and 1304(b) (§§ 20.606(e), 20.609(i), 20.610(d), 20.711(e), 20.711(f), and 20.1304(b) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board. When, however, the matter arises in conjunction with an appeal or any proceeding instituted before the Board, or any motion in connection therewith,

assigned to a Section, or Sections, by the Chairman for a hearing and/or disposition, this authority shall be exercised by the Members of the Board Section, or Sections, involved.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

(Authority: 38 U.S.C. 7105)

§ 20.201 Rule 201. Notice of Disagreement.

A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear.

(Authority: 38 U.S.C. 7105)

§ 20.202 Rule 202. Substantive Appeal.

A Substantive Appeal consists of a properly completed VA Form 1–9, "Appeal to Board of Veterans' Appeals," or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal should set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the

Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are the last actions the appellant needs to take to perfect an appeal.

(Authority: 38 U.S.C. 7105(d)(3)–(5))

(Approved by the Office of Management and Budget under control number 2900–0085)

§ 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.

A decision as to the adequacy of allegations of error of fact or law in a Substantive Appeal will be made by the Board of Veterans' Appeals. When the Board raises the issue of adequacy of the Substantive Appeal, the appellant and representative, if any, will be given notice of the issue and a period of 60 days following the date on which such notice is mailed to present written argument or to request a hearing to present oral argument on this question. The date of mailing of the notice will be presumed to be the same as the date of the letter of notification.

(Authority: 38 U.S.C. 7105(d)(3), 7108)

§ 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.

(a) *Notice of Disagreement.* A Notice of Disagreement may be withdrawn in writing before a timely Substantive Appeal is filed.

(Authority: 38 U.S.C. 7105(d)(1))

(b) *Substantive Appeal.* A Substantive Appeal may be withdrawn in writing at any time before the Board of Veterans' Appeals promulgates a decision.

(Authority: 38 U.S.C. 7105(d)(3))

(c) *Who May Withdraw.* Withdrawal may be by the appellant or by his or her authorized representative, except that a representative may not withdraw either a Notice of Disagreement or Substantive Appeal filed by the appellant personally without the express written consent of the appellant. The agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal after filing of either or both.

(Authority: 38 U.S.C. 7105(b)(2))

§§ 20.205–20.299 [Reserved]

Subpart D—Filing

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.

(Authority: 38 U.S.C. 7105 (b)(1), (d)(3))

§ 20.301 Rule 301. Who can file an appeal.

(a) *Persons authorized.* A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) *Notice of Disagreement.* Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within

one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105(b)(1))

(b) *Substantive Appeal.* Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105(b)(1), (d)(3))

(c) *Response to Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished, a period of 60 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 7105(d)(3))

§ 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

An extension of the 60-day period for filing a Substantive Appeal, or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required, may

be granted for good cause. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board.

(Authority: 38 U.S.C. 7105(d)(3))

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

The filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

(Authority: 38 U.S.C. 7105)

§ 20.305 Rule 305. Computation of time limit for filing.

(a) *Acceptance of postmark date.* When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.

(b) *Computation of time limit.* In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

(Authority: 38 U.S.C. 7105)

§ 20.306 Rule 306. Legal holidays.

For the purpose of Rule 305 (§ 20.305 of this part), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Birthday of Martin Luther King, Jr.—Third Monday in January; Washington's

Birthday—Third Monday in February; Memorial Day—Last Monday in May; Independence Day—July 4; Labor Day—First Monday in September; Columbus Day—Second Monday in October; Veterans Day—November 11; Thanksgiving Day—Fourth Thursday in November; and Christmas Day—December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.

(Authority: 5 U.S.C. 6103)

§§ 20.307–20.399 [Reserved]

Subpart E—Administrative Appeals

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

When an official of the Department of Veterans Affairs enters an administrative appeal, the claimant and his or her representative, if any, are notified and given a period of 60 days from the date of mailing of the letter of notification to join in the administrative appeal. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. If the claimant, or the representative acting on his or her behalf, elects to join in the administrative appeal, it becomes a "merged appeal" and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument by the claimant or his or her representative in response to notification of the right to join in the administrative appeal will be construed as an election to join in the administrative appeal. If the claimant does not authorize the merger, he or she must hold such evidence or argument in abeyance until resolution of the administrative appeal.

(Authority: 38 U.S.C. 7106)

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

(a) *Merged appeal.* If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights.

(b) *Appeal not merged.* If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and a decision in a separate appeal perfected by the claimant will be entered by a Section of the Board which does not include Members who made the decision on the administrative appeal. The period of time from the date

of notification to the claimant of the administrative appeal to the date of the Board's decision on the administrative appeal is not chargeable to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.

(Authority: 38 U.S.C. 7106)

§§ 20.402-20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.

In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 501 (§ 20.501 of this part).

(Authority: 38 U.S.C. 7105(b)(2), 7105A)

§ 20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 7105A(a))

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105A(b))

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be presumed

to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 30 days of the date of mailing of the Supplemental Statement of the Case in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 7105(d)(3), 7105A(b))

§ 20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.

Notice of an appeal by another contesting party in a simultaneously contested claim is given by sending a copy of that party's Substantive Appeal to all other contesting parties. A period of 30 days from the date of mailing of the copy of the Substantive Appeal is allowed for filing a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy.

(Authority: 38 U.S.C. 7105A(b))

§ 20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.

An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.

(Authority: 38 U.S.C. 7105A(b))

§ 20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 7105A(b))

§§ 20.505-20.599 [Reserved]

Subpart G—Representation

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.600 Rule 600. Right to representation.

An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.

(Authority: 38 U.S.C. 5901-5905, 7105(a))

§ 20.601 Rule 601. Only one representative recognized.

A specific claim may be prosecuted at any one time by only one recognized organization, attorney, agent or other person properly designated to represent the appellant.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.602 Rule 602. Representation by recognized organizations.

In order to designate a recognized organization as his or her representative, an appellant must execute a VA Form 21-22, "Appointment of Veterans Service Organization as Claimant's Representative." This form gives the organization power of attorney to represent the appellant. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked by the appellant or unless the representative has properly withdrawn.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.603 Rule 603. Representation by attorneys-at-law.

(a) *Designation.* An attorney-at-law may be designated as an appellant's representative through a properly executed VA Form 2-22a, "Appointment of Attorney or Agent as Claimant's Representative." This form gives the attorney power of attorney to represent the appellant. In lieu thereof, an attorney may state in writing on his or her letterhead that he or she is authorized to represent the appellant in order to have access to information in the appellant's file pertinent to the particular claim presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed

consent from the appellant or the appellant's guardian. Such consent shall be equivalent to an executed power of attorney. The designation must be of an individual attorney, rather than a firm or partnership. An appellant may limit an attorney's right to act as his or her representative in an appeal to representation with respect to a specific claim for one or more specific benefits by noting the restriction in the written designation. Unless specifically noted to the contrary, however, designations of an attorney as a representative will extend to all matters with respect to claims for benefits under laws administered by the Department of Veterans Affairs. Designations are effective when they are received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn. Legal interns, law students, and paralegals may not be independently accredited to represent appellants under this Rule.

(b) *Attorneys employed by recognized organization.* A recognized organization may employ an attorney-at-law to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant for the substitution of representatives must be obtained and submitted to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. When the signed consent is received by the agency of original jurisdiction or the Board, as applicable, the attorney will be recognized as the appellant's representative in lieu of the organization.

(c) *Participation of associated or affiliated attorneys.* With the specific written consent of the appellant, an attorney associated or affiliated with the appellant's attorney of record, including an attorney employed by the same legal services office as the attorney of record, may assist in representation of the appellant and may have access to the appellant's Department of Veterans Affairs records to the same extent as the attorney of record. Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or an attorney employed by the same legal services office. The

consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney of record; the consent of the appellant for the use of the services of the associated or affiliated attorney and for that individual to have access to applicable Department of Veterans Affairs records; and the name of the associated or affiliated attorney who will be assisting in the case. The consent must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans' Appeals. The presiding Member at a hearing on appeal may require that not more than one attorney participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing. (Authority: 38 U.S.C. 5901, 5904)

§ 20.604 Rule 604. Representation by agents.

(a) *Designation.* The designation of an agent will be by a duly executed power of attorney, VA Form 2-22a, "Appointment of Attorney or Agent as Claimant's Representative," or its equivalent. The designation must be of an individual, rather than a firm or partnership. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(b) *Admission to practice.* The provisions of 38 U.S.C. 5904 and of § 14.629(b) of this chapter are applicable to the admission of agents to practice before the Department of Veterans Affairs. Authority for making determinations concerning admission to practice rests with the General Counsel of the Department of Veterans Affairs, and any questions concerning admissions to practice should be addressed to: Office of the General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 5904)

§ 20.605 Rule 605. Other persons as representative.

(a) *Scope of rule.* This section applies to representation other than by a

recognized organization, an agent admitted to practice before the Department of Veterans Affairs, or an attorney-at-law.

(b) *Who may act as representative.* Any competent person may be recognized as a representative for a particular claim, unless that person has been barred from practice before the Department of Veterans Affairs.

(c) *Designation.* The designation of an individual to act as an appellant's representative may be made by executing a VA Form 2-22a, "Appointment of Attorney or Agent as Claimant's Representative." This form gives the individual power of attorney to represent the appellant in all matters pertaining to the presentation and prosecution of claims for any and all benefits under laws administered by the Department of Veterans Affairs. In lieu of using the form, the designation may be by a written document signed by both the appellant and the individual representative, which may be in the form of a letter, which authorizes a named individual to act as the appellant's representative only with respect to a specific claim involving one or more specific benefits. The document must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; the name of the individual representative; a description of the specific claim for benefits to which the designation of representation applies; and a certification that no compensation will be charged or paid for the individual representative's services. The designation, in either form, must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans' Appeals. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(d) *Representation of more than one appellant.* An individual recognized as an appellant's representative under this Rule may represent only one appellant. If an individual has been recognized as

a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in § 14.630 of this chapter.

(Authority: 38 U.S.C. 5903)

§ 20.606 Rule 606. Legal interns, law students and paralegals.

(a) *When services of legal interns, law students and paralegals may be used.* Not more than two legal interns, law students or paralegals may assist an attorney-at-law in the presentation of evidence and argument in appeals before the Board of Veterans' Appeals in Washington, DC, or before traveling Sections of the Board at Department of Veterans Affairs field facilities.

(b) *Consent of appellant.* If it is contemplated that a legal intern, law student, or paralegal will assist in the appeal, written consent must be obtained from the appellant. The written consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable Department of Veterans Affairs records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of appeals before traveling Sections of the Board, the consent must be presented to the presiding Member of the traveling Section as noted in paragraph (d). Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or another attorney employed by the same legal services office.

(c) *Supervision.* Legal interns, law students and paralegals must be under the direct supervision of a recognized attorney-at-law in order to prepare and present cases before the Board of Veterans' Appeals.

(d) *Hearings.* Legal interns, law students and paralegals who desire to participate at a hearing before the Board in Washington, DC, must make advance arrangements with the Chief of the

Hearing Section and submit written authorization from the attorney naming the individual who will be participating in the hearing. In the case of proceedings before traveling Sections of the Board in the field, the attorney-at-law must inform the office of the Department of Veterans Affairs official who gave notice of the Travel Board hearing date and time not more than 10 days prior to the scheduled hearing date that the services of a legal intern, law student, or paralegal will be used at the hearing. At the same time, a prehearing conference with the presiding Member of the traveling Section must be requested. At the conference, the written consent of the appellant for the use of the services of such an individual required by paragraph (b) must be presented and agreement reached as to the individual's role in the hearing. Legal interns, law students or paralegals may not present oral arguments at hearings either in the field or in Washington, DC, unless the recognized attorney-at-law is present. Not more than two such individuals may make presentations at a hearing. The presiding Member at a hearing on appeal may require that not more than one such individual participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(e) *Withdrawal of permission for legal interns, law students, and paralegals to assist in the presentation of an appeal.* When properly designated, the attorney-at-law is the recognized representative of the appellant and is responsible for ensuring that an appeal is properly presented. Legal interns, law students, and paralegals are permitted to assist in the presentation of an appeal as a courtesy to the attorney-at-law. Permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual.

(Authority: 38 U.S.C. 5904, 7105(b)(2))

§ 20.607 Rule 607. Revocation of a representative's authority to act.

Subject to the provisions of § 20.1304 of this part, an appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. The revocation is

effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.

(Authority: 38 U.S.C. 5904-5904)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) *Withdrawal of services prior to certification of an appeal.* A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans' Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of the withdrawal is received by the agency of original jurisdiction.

(b) *Withdrawal of services after certification of an appeal—(1) Applicability.* The restrictions on a representative's right to withdraw contained in this paragraph apply only to those cases in which the representative has previously agreed to act as representative in an appeal. In addition to express agreement, orally or in writing, such agreement shall be presumed if the representative makes an appearance in the case by acting on an appellant's behalf before the Board in any way after the appellant has designated the representative as such as provided in §§ 20.602 through 20.605 of this part. The preceding sentence notwithstanding, an appearance in an appeal solely to notify the Board that a designation of representation has not been accepted will not be presumed to constitute such consent.

(2) *Procedures.* After the agency of original jurisdiction has certified an appeal to the Board of Veterans' Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown

on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impossible, impractical, or unethical. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted. Such motions should not contain information which would violate privileged communications or which would otherwise be unethical to reveal. Such motions must be filed at the following address: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The representative must mail a copy of the motion to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the motion. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion. The appellant must mail a copy of any such response to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be made by the Chairman.

(Authority: 38 U.S.C. 5901-5904, 7105(a))

(Approved by the Office of Management and Budget under control number 2900-0085)

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized pursuant to Rule 605 (§ 20.605 of this part) are not permitted to receive fees. An attorney-at-law or agent who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as representative in accordance with Rule 603(a) or Rule 604(a) (§ 20.603(a) or § 20.604(a) of this part) in his or her individual capacity.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if all of the following conditions have been met:

(1) A final decision has been promulgated by the Board of Veterans' Appeals with respect to the issue, or issues, involved;

(2) The Notice of Disagreement which preceded the Board of Veterans' Appeals decision with respect to the issue, or issues, involved was received by the agency of original jurisdiction on or after November 18, 1988; and

(3) The attorney-at-law or agent was retained not later than one year following the date that the decision by the Board of Veterans' Appeals with respect to the issue, or issues, involved was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(d) *Payment of fee by disinterested third party.* An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met.

(e) *Fees permitted.* Fees permitted under paragraph (c) for services of an attorney-at-law or agent admitted to practice before the Department of Veterans Affairs must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in paragraph (h)(3) of this section, will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. (Also see paragraph (h)(4) for information concerning additional filing requirements when fees are to be paid by the Department of Veterans Affairs from past-due benefits.)

(h) *Payment of fees by Department of Veterans Affairs directly to an attorney-at-law from past-due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an attorney-at-law may enter into a fee agreement providing that payment for the services of the attorney-at-law will be made directly to the attorney-at-law by the Department of Veterans Affairs out of any past-due benefits awarded as a result of a

successful appeal to the Board of Veterans' Appeals or an appellate court or as a result of a reopened claim before the Department following a prior denial of such benefits by the Board of Veterans' Appeals or an appellate court. Such an agreement will be honored by the Department only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and § 3.750 et seq. of this chapter.))

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, "past-due benefits" means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the attorney-at-law represents the claimant or appellant in that phase of the claim, the attorney-at-law will be paid a supplemental payment at the time that the appellant is paid retroactive

benefits based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the attorney-at-law, the attorney-at-law's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals as required by paragraph (g) of this section, the attorney-at-law must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement. Payment of the attorney's share of any past due benefits will be made at the same time that any such benefits are paid to the claimant or appellant.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable. Such motions (other than motions by the Board) must be filed at the following address: Office of Counsel to the Chairman (01C), Board of Veterans'

Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. They should be accompanied by all such evidence as the moving party desires to submit. The moving party must mail a copy of the motion and accompanying evidence to all other parties to the agreement, with return receipts requested. The receipts, which must bear the signatures of the other parties, must then be filed with the Board at the same address as proof of service of the motion. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. A copy of any such response and any accompanying evidence must be mailed to the moving party, with a return receipt requested. The receipt, which must bear the signature of the moving party, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals. Failure to do so may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals and/or prosecution under the provisions of 38 U.S.C. 5905.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900-0065)

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's

dependents or survivors in the prosecution of a claim for benefits pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans' Appeals.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include nonrecurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. "Expenses" do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) *Expense charges permitted—motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. They must specifically identify which expenses charged are felt to be unreasonable and the reason, or reasons, why the amount of the expenses is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of Counsel to the Chairman (01C), Board of

Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. They should be accompanied by all such evidence as the moving party desires to submit. The appellant or claimant, as applicable, must mail a copy of the motion and any accompanying evidence to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the motion. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. The representative must mail a copy of any such response and any accompanying evidence to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(Authority: 38 U.S.C. 5904)

(Approved by the Office of Management and Budget under control number 2900-0085)

§ 20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

A recognized organization, attorney, agent, or person properly designated to represent a claimant or appellant will be recognized as the representative of his or her survivors for a period of one year following the death of the claimant or appellant. A representative may also continue to act with respect to any appeal pending upon the death of the claimant or appellant until such time as a final decision has been promulgated by the Board of Veterans' Appeals. The provisions of this section do not apply to any survivor who has appointed another representative in accordance with these rules or who has indicated in writing that he or she does not wish to be represented by the claimant's or appellant's representative. Written notice that a survivor does not wish to be represented by the claimant's or appellant's representative will be

effective when received by the agency of original jurisdiction or, if the case has been certified to the Board for appellate review, by the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 5902-5904)

§§ 20.612-20.699 [Reserved]

Subpart H—Hearings on Appeal

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to appear in person.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue. It is contemplated that the appellant and witnesses, if any, will be present. A personal hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with paragraph (d) of this section. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member of the hearing panel involved.

(c) *Nonadversarial proceedings.* Hearings conducted by and for the Board are ex parte in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative may present oral arguments, not exceeding 30 minutes in length, to the Board on an audio cassette without personally appearing before a Board of Veterans' Appeals hearing panel. These arguments will be transcribed by Board personnel for subsequent review by the panel

members. This procedure will not be construed to satisfy an appellant's request to appear in person.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before the Board of Veterans' Appeals or before Department of Veterans Affairs field personnel acting for the Board.

(Authority: 38 U.S.C. 7102, 7104(a), 7105)

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.

(a) *General.* To the extent that officials scheduling hearings for or on behalf of the Board of Veterans' Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date

must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the requests must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. An adverse determination by the agency of original jurisdiction as to whether good cause for postponement has been shown is an appealable issue. In the case of a hearing conducted by the Board of Veterans' Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member of the hearing panel assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion for a new hearing date must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7105A)

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a

representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. An adverse determination by the agency of original jurisdiction as to whether good cause for failure to appear has been shown is an appealable issue. In the case of hearings before the Board of Veterans' Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member of the hearing panel to which the case was assigned.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7105A)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be

sent to: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the notice must be sent to the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))
(Approved by the Office of Management and Budget under control number 2900-0085)

§ 20.703 Rule 703. When right to Travel Board hearing arises.

A Travel Board hearing is a "hearing on appeal". Accordingly, there is no right to a hearing before a traveling Section of the Board until such time as a Notice of Disagreement has been filed. Any request for such a hearing filed with a Notice of Disagreement, or filed subsequent to the filing of a Notice of Disagreement, will be accepted by the agency of original jurisdiction. Requests for such hearings before a Notice of Disagreement has been filed, or after the Board has entered a final decision in the case on the issue (or issues) appealed will be rejected, except for requests for such hearings after a Notice of Disagreement has been filed appealing a denial of benefits in a reopened claim which followed a prior Board decision or after a motion for reconsideration of a prior Board decision has been granted.

(Authority: 38 U.S.C. 7105(a), 7110)

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Travel Board hearings are conducted by traveling Sections of the Board of Veterans' Appeals during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. The hearings will be scheduled during such visits in the order in which requests for such hearings were received by the agency of original jurisdiction. Requests for Travel Board hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a Travel Board hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a Travel Board hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted to the presiding Member of the traveling Section for review when the traveling Section of the Board arrives at the agency of original jurisdiction to conduct Travel Board hearings. If the presiding Member does not concur with the determination that good cause has not been shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled Travel Board hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled Travel Board hearing must be in writing, must be filed within 15 days of the originally

scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Travel Board Secretary (0141F1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the failure to appear has been removed. Whether good cause for such failure to appear has been established will be determined by the presiding Member of the traveling Section of the Board. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of Travel Board hearing requests.* A request for a Travel Board hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a Travel Board hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be forwarded to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(Authority: 38 U.S.C. 7104(a), 7110)

(Approved by the Office of Management and Budget under control number 2900-0085)

§ 20.705 Rule 705. Where hearings on appeal are conducted.

(a) *General.* A hearing on appeal may be held in one of the following places at the option of the appellant:

- (1) Before a Section of the Board of Veterans' Appeals in Washington, DC,
- (2) Before a traveling Section of the Board of Veterans' Appeals, or
- (3) Before appropriate personnel in the Department of Veterans Affairs facility having original jurisdiction over the claim at issue, acting as a hearing agency for the Board of Veterans' Appeals. Personnel conducting such hearings as agents for the Board of Veterans' Appeals will allow the appellant and/or representative to present any argument and testimony, as well as any witnesses before the panel, subject to the exclusion of testimony, documentary evidence, and/or argument which is not relevant or material to the issues being considered or which is unduly repetitious. Rule 706 (§ 20.706 of this part) and Rules 709 through 713 (§§ 20.709-20.713 of this part) are applicable to such hearings.

(b) *Request for hearing at an alternate Department of Veterans Affairs field facility.* If the appellant desires a hearing before Department of Veterans Affairs personnel acting as a hearing agency for the Board of Veterans' Appeals as specified in paragraph (a)(3) of this section, but resides within the jurisdiction of, or in closer proximity to, a Department of Veterans Affairs facility other than the one that rendered the determination at issue, the appellant may request that the hearing be conducted at the more convenient facility. That request will be granted upon the certification of the director of the second facility that that facility has appropriate physical and personnel resources, including personnel with expertise in the issues involved, available to conduct such a hearing within a reasonable period of time.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.707 Rule 707. When a hearing panel makes the final appellate decision.

(a) *Hearings in Washington, DC.* Hearings held before a Section of the Board of Veterans' Appeals in Washington, DC, are normally held before Members who will make the final decision on the appeal.

(b) *Hearings held before traveling Sections of the Board.* Hearings held before traveling Board Sections are normally held before Members who will make the final decision on the appeal unless an issue on appeal involves radiation, Agent Orange, or asbestos exposure; the case involves the reconsideration of a prior Board of Veterans' Appeals decision; or the hearing panel consists of fewer than three Members of the Board. Appeals involving radiation, Agent Orange, or asbestos exposure issues will be decided by Board Members specializing in those issues. Decisions in appeals

involving reconsideration of a prior Board of Veterans' Appeals decision on the same issue, or issues, may involve Board Members in addition to those Members making up the traveling Section. An expanded reconsideration Section considering issues involving post-traumatic stress disorder or radiation, Agent Orange, or asbestos exposure will include both the traveling Section and Board Members specializing in those issues. If a Travel Board Section is comprised of fewer than three Board Members, the Chairman may assign an additional Member, or Members, to constitute a three-Member Section which will make the final decision in Washington, DC.

(Authority: 38 U.S.C. 7102, 7104(a), 7110)

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing panel in order to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before Members of the Board at Washington, DC, arrangements for a prehearing conference must be made through: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before traveling Sections of the Board and hearings to be held before Department of Veterans Affairs personnel acting as agents for the Board must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.709 Rule 709. Procurement of additional evidence following a hearing.

If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will

be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.710 Rule 710. Witnesses at hearings.

(a) *General.* The testimony of witnesses, including appellants, will be heard. Testimony may include presentations by Members of the Congress or Congressional staff members appearing on an appellant's behalf.

(b) *Testimony under oath.* All testimony must be given under oath unless excused because of religious principles or other good cause. If the witness declines to take an oath, he or she must be informed that testimony will be permitted on affirmation. The witness must then be requested to make a solemn declaration as to the truth of the testimony about to be given. The witness may use such words as he or she considers binding on his or her conscience. Administration of the oath for the sole purpose of presenting contentions and argument is not required.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.711 Rule 711. Subpoenas.

(a) *General.* An appellant, or his or her representative, may arrange for the production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence cannot be obtained in any other reasonable way, the appellant, or his or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) *Contents of motion for subpoena.* The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) *Where motion for subpoena is to be filed.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, motions for a subpoena must be filed with the Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In those cases

where the appellate record has not been transferred to the Board, such motions must be filed with the Director of the Department of Veterans Affairs facility where the appellate record is located.

(d) *When motion for subpoena is to be filed in cases involving a hearing on appeal.* Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) *Ruling on motion for subpoena.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, the ruling on the motion will be made by the Chairman. In those cases where the appellate record has not been transferred to the Board, the ruling on the motion will be made by the Director of the Department of Veterans Affairs facility where the appellate record is located. In cases where the production of documents or other tangible evidence is sought, the granting of the motion may be conditioned upon the advancement by the appellant of the reasonable cost of producing the books, papers, documents, or other tangible evidence requested. The question of whether denial of a motion for a subpoena by a Director of a Department of Veterans Affairs facility was proper may be appealed as a part of the overall appeal, but is not subject to a separate interlocutory appeal.

(f) *Fees.* Any person who is required to attend a hearing as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. A subpoena will not be served unless that party on whose behalf the subpoena is issued delivers 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, to the official issuing the subpoena. Except for checks on the business accounts of attorneys-at-law, agents, and recognized service organizations, such checks must be in the form of certified checks or cashiers checks.

(g) *Service of subpoenas.* The official issuing the subpoena will serve the subpoena by certified mail, return receipt requested. The check for fees and mileage described in paragraph (f) of this section shall be mailed with the subpoena. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(h) *Motion to quash or modify subpoena.* If an individual served with a subpoena considers the subpoena to be unreasonable or oppressive, he or she may move that the subpoena be quashed or modified. Such motions must be in writing and must explain why the subpoena is unreasonable or oppressive and what relief is sought. Such motions must be filed with the office of the official who issued the subpoena not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the official who issued the subpoena, who will inform all interested parties of the ruling in writing. The quashing of any subpoena shall be conditional upon the return of the check for fees and mileage to the party on whose behalf the subpoena was issued. The question of whether the ruling by a Director of a Department of Veterans Affairs facility on a motion to quash or modify a subpoena was proper may be appealed as a part of the overall appeal, but is not subject to a separate interlocutory appeal.

(Authority: 38 U.S.C. 5711, 7102(c), 7104(a))

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

§ 20.713 Rule 713. Hearings in simultaneously contested claims.

(a) *General.* If a hearing is scheduled for any party to a simultaneously contested claim, the other contesting claimants and their representatives, if any, will be notified and afforded an opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.

(b) *Requests for changes in hearing dates.* Any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 702, paragraph (c) (§ 20.702(c) of this part), or Rule 704, paragraph (c) (§ 20.704(c) of this part), as applicable. In order to obtain a new hearing date under the provisions of Rule 702, paragraph (c)(1), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, paragraph (c)(2) of that

rule will apply even though the request is submitted within 60 days from the date of the letter of notification of the time and place of the hearing. A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(Authority: 38 U.S.C. 7105A)

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before Members of the Board, whether held in Washington, DC, or before a traveling Section, will be recorded on audio tape. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing as a duplicate record of the hearing. Tape recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:

(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member of the hearing panel will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why transcription is necessary. They must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.)

(2) Testimony and/or argument has been presented at the hearing pertaining

to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a traveling Section of the Board:

(i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;

(ii) The appeal involves reconsideration of a prior Board of Veterans' Appeals decision on the same issue; or

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Veterans Appeals.

(b) *Field offices.* The hearing proceedings before field office personnel after the filing of a Notice of Disagreement will be recorded and a copy of the complete written transcript incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder as the official record of the hearing.

(c) *Copy of hearing tape recording or written transcript.* One copy of the tape recording of hearing proceedings before the Board of Veterans' Appeals, or the written transcript of such proceeding when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, and/or a copy of the written transcript of field office appellate hearing proceedings shall be furnished without cost to the appellant or representative if a request is made in accordance with § 1.577 of this chapter.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may only be authorized when prior written consent is obtained from all appellants and contesting claimants, if any, and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus. In all such situations, advance arrangements must be made. In the case of hearings held before Members of the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the

Chief of the Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before traveling Sections of the Board or before Department of Veterans Affairs personnel acting as agents for the Board, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans' Appeals or a transcript prepared by the Board of Veterans' Appeals or by Department of Veterans Affairs personnel acting as agents for the Board is the only official record of a hearing on appeal. Alternate transcript versions prepared by the appellant and representative will not be accepted. If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for the correction of the hearing transcript within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before Members of the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing. The ruling on the motion will be made by the presiding Member of the hearing panel concerned.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) *Motion for new hearing.* In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would

result from the failure to provide a new hearing.

(b) *Time limit for filing motion for a new hearing.* The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans' Appeals decision or, in cases appealed to the United States Court of Veterans Appeals, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.

(c) *Where motion for a new hearing is filed.* In the case of hearings held before Members of the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing unless the appellant has received notice that the case has been transferred to the Board of Veterans' Appeals for appellate review or unless a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question. In such cases, the motion must be filed with the Board at the address specified herein.

(d) *Ruling on motion for a new hearing.* Except as noted hereinafter, the ruling on the motion for a new hearing will be made by the presiding Member of the hearing panel concerned. If the presiding Member of the hearing panel is no longer available, the ruling on the motion may be made by any other member of the hearing panel who is available. In cases in which a hearing was held before Department of Veterans Affairs personnel acting as agents for the Board and the appellate record has been transferred to the Board of Veterans' Appeals for appellate review, or in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the ruling on the motion will be by the Chairman of the Board. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board

of Veterans' Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

§§ 20.718-20.799 [Reserved]

Subpart I—Evidence

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

(Authority: 38 U.S.C. 7105(d)(1))

§§ 20.801-20.899 [Reserved]

Subpart J—Action by the Board

§ 20.900 Rule 900. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket.

(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, etc. Advancement on the docket is requested by motion. Such motions must be in writing and must identify the law of general application affecting other claims or other good cause involved. They must also include the name of the veteran, the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (O14), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will

be noted in the Board's decision when rendered.

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

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion of the Chief Medical Director.* The Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 5107(a))

(b) *Armed Forces Institute of Pathology opinions.* The Board may refer pathologic material to the Armed Forces Institute of Pathology and request an opinion based on that material.

(Authority: 38 U.S.C. 7109(a))

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(Authority: 38 U.S.C. 7104(c))

(d) *Independent medical expert opinions.* When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(Authority: 38 U.S.C. 7109)

(e) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of a Section of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7104(c), 7109)

§ 20.902 Rule 902. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 901 (§ 20.901 of this part). The request must be in writing. It will be granted upon a showing of good cause,

such as the identification of a complex or controversial medical or legal issue involved in the appeal which warrants such an opinion.

(Authority: 38 U.S.C. 5107(a), 7102(c), 7104(c), 7109)

§ 20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.

When an opinion is requested by the Board pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the appellant if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(Authority: 38 U.S.C. 7109(c))

§ 20.904 Rule 904. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans' Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans' Appeals personnel.

(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(3) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(Authority: 38 U.S.C. 7104(a))

§§ 20.905–20.999 [Reserved]

Subpart K—Reconsideration

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans' Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned; or

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.

(Authority: 38 U.S.C. 7103, 7104)

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans' Appeals decision, or decisions, involved more than one issue on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans' Appeals decision may be filed at any time. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments or evidence. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with § 19.11 of this chapter.

(Authority: 38 U.S.C. 7103, 7108)

§ 20.1002 Rule 1002. [Reserved]

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant desires to appear in person. A personal hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with Rule 700(d) (§ 20.700(d) of this part.). Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member of the hearing panel involved.

(Authority: 38 U.S.C. 7102, 7103, 7104(a), 7105(a))

§§ 20.1004–20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* All decisions of the Board are by majority decision and will be stamped with the date of mailing on the face of the decision. Unless the Chairman of the Board orders reconsideration, and with the exception of matters listed in paragraph (b) of this section, all Board decisions are final on the date stamped on the face of the decision. With the exception of matters listed in paragraph (b) of this section, the decision rendered by the reconsideration Section in an appeal in which the Chairman has ordered reconsideration is final.

(b) *Exceptions.* Final Board decisions are not subject to review except as provided in 38 U.S.C. 1975 and 1984 and 38 U.S.C. chapters 37 and 72. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(Authority: 38 U.S.C. 511(a), 7103, 7104(a))

§ 20.1101 Rule 1101. [Reserved]

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans' Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(Authority: 38 U.S.C. 7103)

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§ 20.302 of this part).

(Authority: 38 U.S.C. 7105)

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans' Appeals, such determination is subsumed by the final appellate decision.

(Authority: 38 U.S.C. 7104(a))

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 5108, 7104)

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1318 and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without

regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 7104(b))

§§ 20.1107-20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under § 1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 7107)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000-20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000-20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 7103, 7108)

§§ 20.1202-20.1299 [Reserved]

Subpart N—Miscellaneous

Cross-Reference: In cases involving access to patient information relating to a Department of Veterans Affairs program for, or the treatment of, drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.1300 Rule 1300. Access to Board records.

(a) *Removal of records.* No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies to or

transmit copies for other official purposes.

(Authority: 38 U.S.C. 5701)

(b) *Release of information.*

Information requested from records, including copies of such records in the custody of the Board of Veterans' Appeals, may be furnished to a requester only when permitted by law and in accordance with Department of Veterans Affairs regulations.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 5701)

(c) *Fees.* The fees to be charged and collected for the release of information and for any copies will be in accordance with §§ 1.526, 1.555, and 1.577 of this chapter.

(Authority: 38 U.S.C. 5702(b))

(d) *Waiver of fees.* When information is requested from records certified to and in the custody of the Board, the required fee may be waived if such information is requested in connection with the requestor's pending appeal.

(Authority: 38 U.S.C. 5702(b))

(e) *Review of records.* Information in the records may be reviewed by Board of Veterans' Appeals employees who have a need to do so in the performance of their duties.

(Authority: 5 U.S.C. 552a(b)(1))

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans' Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 7105(d)(2))

(b) *Index to decisions.* The appellate decisions of the Board of Veterans' Appeals have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which is published quarterly in microfiche form with an annual cumulation, is available

for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written will depend upon the age of the decision. Decisions archived prior to late 1989 will have a number such as 82-07-0001. Decisions archived at a later date will have a number such as BVA-90-12345. This number must be used when requesting a paper copy of that decision. These requests must be directed to the Appellate Index and Retrieval Staff (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Microfiche copies of BVA Index I-01-1 can be obtained from Promisel and Korn, Inc., 7201 Wisconsin Avenue, suite 480, Bethesda, MD 20814.

(Authority: 5 U.S.C. 552(a)(2))

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

When an appeal is pending before the Board of Veterans' Appeals at the time of the appellant's death, the Board may complete its action on the issues properly before it without application from the survivors.

(Authority: 38 U.S.C. 7104(a))

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Although the Board strives for consistency in issuing its decisions, previously issued Board decisions will be considered binding only with regard to the specific case decided. Prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, but each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(Authority: 38 U.S.C. 7104(a))

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 90 days following the mailing of notice to them that an appeal has been certified to the Board for appellate

review and that the appellate record has been transferred to the Board, or until the date the appellate decision is promulgated by the Board of Veterans' Appeals, whichever comes first, during which they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence.* Following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record

to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in

representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(c) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, as well as any such evidence referred to the Board by the originating agency under § 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence which directly affects payment, or potential payment, of the benefit sought is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 7104, 7105, 7105A)

APPENDIX A TO PART 20—Cross-References

Sec.	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	Statement of policy.
20.100	38 CFR 20.306	Rule 306. Legal holidays.
20.200	38 CFR 20.201	Rule 201. Notice of Disagreement.
	38 CFR 20.202	Rule 202. Substantive Appeal.
	38 CFR 20.300-20.306	See re filing Notices of Disagreement and Substantive Appeals.
20.202	38 CFR 19.29	Statement of the Case.
	38 CFR 19.31	Supplemental Statement of the Case.
20.301	38 CFR 20.500	Rule 500. Who can file an appeal in simultaneously contested claims.
	38 CFR 20.602	Rule 602. Representation by recognized organizations.

APPENDIX A TO PART 20—Cross-References—Continued

Sec.	Cross-reference	Title of cross-referenced material or comment
	38 CFR 20.603	Rule 603. Representation by attorneys-at-law.
	38 CFR 20.604	Rule 604. Representation by agents.
	38 CFR 20.605	Rule 605. Other persons as representative.
20.302	38 CFR 20.501	Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
20.303	38 CFR 20.304	Rule 304. Filing additional evidence does not extend time limit for appeal.
	38 CFR 20.503	Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.
20.305	38 CFR 20.306	Rule 306. Legal holidays.
20.400	38 CFR 19.50-19.53	See also re administrative appeals.
20.401	38 CFR 19.50-19.53	See also re administrative appeals.
	38 CFR 20.302-20.306	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.501	38 CFR 20.305	Rule 305. Computation of time limit for filing.
	38 CFR 20.306	Rule 306. Legal holidays.
	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.502	38 CFR 20.305	Rule 305. Computation of time limit for filing.
	38 CFR 20.306	Rule 306. Legal holidays.
	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.503	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.504	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.600	38 CFR 14.626 et seq	See also re representation.
	38 CFR 20.602	Rule 602. Representation by recognized organizations.
	38 CFR 20.603	Rule 603. Representation by attorneys-at-law.
	38 CFR 20.604	Rule 604. Representation by agents.
	38 CFR 20.605	Rule 605. Other persons as representative.
20.602	38 CFR 14.628	Recognition of organizations.
	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.
	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
20.603	38 CFR 14.629	Requirements for accreditation of representatives, agents, and attorneys.
	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.606	Rule 606. Legal interns, law students and paralegals.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.
	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
20.604	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.
	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
20.605	38 CFR 14.630	Authorization for a particular claim.
	38 CFR 14.631	Powers of attorney.
	38 CFR 20.100	Rule 100. Name, business hours, and mailing address of the Board.
	38 CFR 20.607	Rule 607. Revocation of a representative's authority to act.
	38 CFR 20.608	Rule 608. Withdrawal of services by a representative.
	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
20.606	38 CFR 20.603	Rule 603. Representation by attorneys-at-law.
20.607	38 CFR 14.631(d)	See also re revocation of powers of attorney.
20.609	38 CFR 14.629	Requirements for accreditation of representatives, agents, and attorneys.
	38 CFR 20.603	Rule 603. Representation by attorneys-at-law.
	38 CFR 20.604	Rule 604. Representation by agents.
	38 CFR 20.606	Rule 606. Legal interns, law students and paralegals.
	38 CFR 20.610	Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
20.610	38 CFR 20.609	Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.
20.611	38 CFR 1.525(d), 14.631(e)	See also re continuation of authority conferred by powers of attorney upon the death of a claimant.
20.701	38 CFR 20.710	Rule 710. Witnesses at hearings.
20.702	38 CFR 20.704	Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs facilities.
	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
20.703	38 CFR 20.201	Rule 201. Notice of Disagreement.

APPENDIX A TO PART 20—Cross-References—Continued

Sec.	Cross-reference	Title of cross-referenced material or comment
20.704	38 CFR 20.702	<i>Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.</i>
20.706	38 CFR 20.700(c)	See also re the presiding Member's role in the conduct of hearings.
	38 CFR 20.706	<i>Rule 706. Prehearing conference.</i>
	38 CFR 20.709	<i>Rule 709. Procurement of additional evidence following a hearing.</i>
20.707	38 CFR 19.11	<i>Reconsideration Section.</i>
20.708	38 CFR 20.606(d)	See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.
20.709	38 CFR 19.37	<i>Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.</i>
	38 CFR 20.1304	<i>Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.</i>
20.710	38 CFR 20.711	<i>Rule 711. Subpoenas.</i>
20.711	38 CFR 2.1	See for further information on subpoenas, including action to be taken in the event of noncompliance.
20.713	38 CFR 20.702	<i>Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.</i>
	38 CFR 20.704	<i>Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs facilities.</i>
20.715	38 CFR 20.706	<i>Rule 706. Functions of the presiding Member.</i>
20.800	38 CFR 20.304	<i>Rule 304. Filing additional evidence does not extend time limit for appeal.</i>
	38 CFR 20.709	<i>Rule 709. Procurement of additional evidence following a hearing.</i>
	38 CFR 20.1304	<i>Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.</i>
20.901	38 CFR 14.507	See re opinions of the General Counsel of the Department of Veterans Affairs.
20.903	38 CFR 20.305	<i>Rule 305. Computation of time limit for filing.</i>
	38 CFR 20.306	<i>Rule 306. Legal holidays.</i>
20.1003	38 CFR 20.700(b)	See re submission of written brief and of oral argument on audio cassette.
20.1105	38 CFR 3.156	<i>New and material evidence.</i>
	38 CFR 3.160(e)	<i>Reopened claim.</i>
	38 CFR 20.1304(b)(1)	See re request for a personal hearing or submission of additional evidence more than 60 days after a case has been certified to the Board of Veterans' Appeals as possible basis for a reopened claim.
20.1106	38 CFR 3.22(a)(2)	See re correction of a rating, after a veteran's death, based on clear and unmistakable error, in cases involving claims for benefits under the provisions of 38 U.S.C. 1318.
20.1300	38 CFR 1.500-1.527	See re the release of information from Department of Veterans Affairs claimant records.
	38 CFR 1.550-1.559	See re the release of information from Department of Veterans Affairs records other than claimant records.
	38 CFR 1.575-1.584	See re safeguarding personal information in Department of Veterans Affairs records.
	38 CFR 20.1301	<i>Rule 1301. Disclosure of information.</i>
20.1301	38 CFR 1.577	<i>Access to records.</i>
20.1302	38 CFR 20.611	<i>Rule 611. Continuation of representation following death of a claimant or appellant.</i>
20.1304	38 CFR 3.103(c), 20.700-20.717	See also re hearings.
	38 CFR 3.156	<i>New and material evidence.</i>
	38 CFR 3.160(e)	<i>Reopened claim.</i>
	38 CFR 20.305	<i>Rule 305. Computation of time limit for filing.</i>
	38 CFR 20.306	<i>Rule 306. Legal holidays.</i>

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