claimant's failure to do so may, depending on the evidence of record, result in a denial of the benefit sought.

(Authority: (38 U.S.C. 5103A(b), (f), and (g))

(3) *Obtaining records in compensation claims.* In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. The claimant's failure to do so may, depending on the evidence of record, result in a denial of the benefit sought.

(Authority: 38 U.S.C. 5103A(c), (f), and (g))

(4) *Providing medical examinations or obtaining medical opinions.* (i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability; and

(B) Establishes that the veteran suffered an event, injury or disease in service; and

(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

(ii) Paragraph (4)(i)(C) of this section could be satisfied by competent evidence showing continuity of symptoms of a disability since the veteran's release from active duty, post-service treatment for a condition, or other possible association with military service.

(iii) If new and material evidence is presented or secured, a finally adjudicated claim will be reopened and paragraph (c)(4) of this section will be applied to the reopened claim.

(Authority: 38 U.S.C. 5103A(d), (f), and (g))

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that the further assistance would substantiate the claim. Circumstances in which VA will refrain from providing assistance in obtaining evidence include, but are not limited to:

(1) An application showing the claimant is not eligible for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) An application in which the claimant asserts an inherently incredible claim or one that clearly lacks merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.

(Authority: 38 U.S.C. 5103A(a)(2))

(e) *Duty to notify claimant of inability to obtain records.* (1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. The notice must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(iv) A notice that the claimant is ultimately responsible for providing the evidence.

(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA. If the claimant does not provide the relevant records which VA requested, the claim may be denied.

(Authority: 38 U.S.C. 5103A(b)(2))

(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any.

§ 3.326 [Amended]

5. In § 3.326(a), the first sentence is amended by removing ''well-grounded''.

[FR Doc. 01–8303 Filed 4–3–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AJ97

Board of Veterans' Appeals: Appeals Regulations and Rules of Practice—Jurisdiction

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes amending the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board) to clarify that the Board may address questions related to its jurisdiction in the first instance. VA also proposes to amend the Rules of Practice to provide procedures for notifying parties to Board proceedings, and their representatives, when the Board raises jurisdictional questions on its own initiative and to give parties the opportunity to respond.

DATES: Comments must be received on or before June 4, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AJ97.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice

Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: Initial decisions on claims for veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board.

Filing an appeal with the Board is a 3-step procedure. First, the claimant who wishes to begin an appeal files a ''Notice of Disagreement'' with the VA office that made the decision with which the claimant disagrees. In response, that office sends the claimant a ''Statement of the Case'' that summarizes the evidence and the applicable law, tells the claimant what decision was reached on the disputed issues, and gives the reasons for each decision. After reviewing the Statement of the Case, the claimant must then file a formal, or ''substantive,'' appeal to complete the appeal. *See generally* 38 U.S.C. 7105 and 38 CFR part 19, subpart B, and part 20, subpart C.

In an August 1999 precedent opinion, VAOPGCPREC 9–99, VA's General Counsel held that the Board may address the question of the timeliness of a substantive appeal, regardless of whether the agency of original jurisdiction (AOJ) addressed such question, and may dismiss an appeal when it discovers in the first instance that no substantive appeal has been filed in a case certified to it for appellate review, or that the substantive appeal was not timely filed. The opinion noted, however, that the Board's dismissal of an appeal under those circumstances raises the possibility that a claimant will be prejudiced by not having been afforded the benefit of all procedural safeguards, such as the right to notice, the right to a hearing, and the right to submit evidence in support of a claim. Thus, it found that, if the Board intends to dismiss an appeal on this basis, it should afford the claimant adequate procedural protections regarding notice and the opportunity to be heard.

Furthermore, in a case discussing the Board's jurisdiction in another context, the United States Court of Appeals for the Federal Circuit stated that ''* * * it is well-established judicial doctrine that any statutory tribunal must ensure that it has jurisdiction over each case *before* adjudicating the merits, that a potential jurisdictional defect may be raised by the court or tribunal, *sua sponte* or by any party, at any stage in the proceedings, and, once apparent, must be adjudicated.'' *Barnett* v. *Brown,* 83 F.3d 1380, 1383 (Fed. Cir. 1996) (citations omitted, emphasis in the original).

This document proposes amending 38 CFR 20.101 to make it clear that the Board may address jurisdictional questions in the first instance. It would also make it clear that the Board may dismiss an appeal when it determines that it does not have jurisdiction, regardless of the AOJ's failure to adjudicate the jurisdictional question. This document also proposes to include in that section a requirement that the Board ensure that no prejudice to a claimant will result from the Board's sua sponte consideration of a jurisdictional question. Specifically, this document proposes to amend that section to provide for procedural safeguards, including notice and the opportunity to submit additional evidence and argument on the relevant jurisdictional questions and to address such questions at a hearing, before the Board dismisses an appeal based on jurisdictional defects. (Other regulations provide procedures for addressing questions related to the Board's jurisdiction when such questions are raised before or by the AOJ. See 38 CFR 19.27, 19.28, 19.33, 19.34). This document also proposes to amend that section to make it clear that certain restrictions in 38 CFR 19.9 and 20.1304 do not apply when the Board considers jurisdictional questions in the first instance. In addition, this document proposes to amend 38 CFR 19.35 to make it clear that certification of an appeal to the Board follows the filing of a timely Substantive Appeal. Finally, 38 CFR 20.203 would be removed, inasmuch as its subject matter would be included in revised § 20.101.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would 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, inasmuch as this rule applies to individual claimants for veterans' benefits and does not affect such entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

List of Subjects

38 CFR Part 19

Administrative practice and procedure; Claims; Veterans; Authority delegations (government agencies).

38 CFR Part 20

Administrative practice and procedure; Claims; Lawyers; Legal services; Veterans; Authority delegations (government agencies).

Approved: February 14, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes amending 38 CFR parts 19 and 20 as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 19.35 is amended by revising the first sentence to read as follows:

§ 19.35 Certification of appeals.

Following receipt of a timely Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals.

* * *

* * * * *

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

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

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

4. Section 20.101 is amended by:

A. Revising paragraph (c).

B. Adding paragraphs (d) and (e).

C. Revising the authority at the end of the section.

The revision and additions read as follows:

§ 20.101 Rule 101. Jurisdiction of the board.

* * * * *

(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 case. Jurisdictional questions which a claimant may appeal,

include, but are not limited to, questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal.

(d) *Authority to determine jurisdiction.* The Board may address questions pertaining to its jurisdictional authority to review a particular case, including, but not limited to, determining whether Notices of Disagreement and Substantive Appeals are adequate and timely, at any stage in a proceeding before it, regardless of whether the agency of original jurisdiction addressed such question(s). When the Board, on its own initiative, raises a question as to a potential jurisdictional defect, all parties to the proceeding and their representative(s), if any, will be given notice of the potential jurisdictional defect(s) and granted a period of 60 days following the date on which such notice is mailed to present written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral argument on the jurisdictional question(s). The date of mailing of the notice will be presumed to be the same as the date stamped on the letter of notification. The Board may dismiss any case over which it determines it does not have jurisdiction.

(e) *Application of 38 CFR 19.9 and 20.1304.* The provisions of § 19.9 of this chapter requiring remand in certain instances shall not apply to proceedings to determine the Board's own jurisdiction. However, the Board may remand a case to an agency of original jurisdiction in order to obtain assistance in securing evidence of jurisdictional facts. The time restrictions on requesting a hearing and submitting additional evidence in § 20.1304 of this part do not apply to a hearing requested, or evidence submitted, under paragraph (d) of this section.

(Authority: 38 U.S.C. 511(a), 7104, 7105, 7108)

§ 20.203 [Removed and Reserved]

5. Section 20.203 is removed and reserved.

[FR Doc. 01–8302 Filed 4–3–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 115–1115b; FRL–6961–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of consolidating the particulate matter emissions rules. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by May 4, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: January 17, 2001.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 01–8126 Filed 4–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[FRL–6961–7]

RIN 2040–AC90

Reopening of Comment Period for the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period on proposed rule.

SUMMARY: On December 27, 2000 (65 FR 81963), EPA proposed revisions to the effluent limitations guidelines and standards for the iron and steel industry. The comment period closed on March 26, 2001. This action announces that EPA will reopen the comment period on the proposed rule until April 25, 2001.

DATES: Comments will be accepted through April 25, 2001.

ADDRESSES: Send written comments to Mr. George Jett at the following address: Office of Water, Engineering and Analysis Division (4303), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Please submit any references cited in your comments.

Comments may also be sent via e-mail to *jett.george@epa.gov.* Electronic comments must specify docket number W–00–25 and must be submitted as an ASCII, Word, or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments on this action may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

FOR FURTHER INFORMATION CONTACT: Mr. George Jett at (202) 260–7151 or Mr. Kevin Tingley at (202) 260–9843.

SUPPLEMENTARY INFORMATION: If you already submitted comments to EPA in response to the proposed revisions to the effluent limitations guidelines and standards for the iron and steel industry (i.e., the documents published December 27, 2000, or February 14,