

	Rat- ing		Rat- ing		Rat- ing
Evidence of increased intracranial pressure (such as visual field defect), arthropathy, glucose intolerance, and either hypertension or cardiomegaly	100	Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated	100	NOTE: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
Arthropathy, glucose intolerance, and hypertension	60	Requiring insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated	60		
Enlargement of acral parts or overgrowth of long bones, and enlarged sella turcica	30	Requiring insulin, restricted diet, and regulation of activities	40		
7909 Diabetes insipidus		Requiring insulin and restricted diet, or; oral hypoglycemic agent and restricted diet	20		
Polyuria with near-continuous thirst, and more than two documented episodes of dehydration requiring parenteral hydration in the past year	100	Manageable by restricted diet only ...	10		
Polyuria with near-continuous thirst, and one or two documented episodes of dehydration requiring parenteral hydration in the past year	60	NOTE (1): Evaluate compensable complications of diabetes separately unless they are part of the criteria used to support a 100 percent evaluation. Noncompensable complications are considered part of the diabetic process under diagnostic code 7913.	60		
Polyuria with near-continuous thirst, and one or more episodes of dehydration in the past year not requiring parenteral hydration	40	NOTE (2): When diabetes mellitus has been conclusively diagnosed, do not request a glucose tolerance test solely for rating purposes.	100		
Polyuria with near-continuous thirst	20	7914 Neoplasm, malignant, any specified part of the endocrine system			
7911 Addison's disease (Adrenal Cortical Hypofunction)		NOTE: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.			
Four or more crises during the past year	60	7915 Neoplasm, benign, any specified part of the endocrine system rate as residuals of endocrine dysfunction.			
Three crises during the past year, or; five or more episodes during the past year	40	7916 Hyperpituitarism (prolactin secreting pituitary dysfunction)			
One or two crises during the past year, or; two to four episodes during the past year, or; weakness and fatigability, or; corticosteroid therapy required for control	20	7917 Hyperaldosteronism (benign or malignant)			
NOTE (1): An Addisonian "crisis" consists of the rapid onset of peripheral vascular collapse (with acute hypotension and shock), with findings that may include: anorexia; nausea; vomiting; dehydration; profound weakness; pain in abdomen, legs, and back; fever; apathy, and depressed mentation with possible progression to coma, renal shutdown, and death.		7918 Pheochromocytoma (benign or malignant)			
NOTE (2): An Addisonian "episode," for VA purposes, is a less acute and less severe event than an Addisonian crisis and may consist of anorexia, nausea, vomiting, diarrhea, dehydration, weakness, malaise, orthostatic hypotension, or hypoglycemia, but no peripheral vascular collapse.		NOTE: Evaluate diagnostic codes 7916, 7917, and 7918 as malignant or benign neoplasm as appropriate.			
NOTE (3): Tuberculous Addison's disease will be evaluated as active or inactive tuberculosis. If inactive, these evaluations are not to be combined with the graduated ratings of 50 percent or 30 percent for non-pulmonary tuberculosis specified under § 4.88b. Assign the higher rating.		7919 C-cell hyperplasia of the thyroid			
7912 Pluriglandular syndrome					
Evaluate according to major manifestations.					
7913 Diabetes mellitus					

[FR Doc. 96-11281 Filed 5-6-96; 8:45 am]

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Board of Veterans' Appeals**38 CFR Parts 19 and 20****RIN 2900-AH16****Appeals Regulations, Rules of Practice: Single Member and Panel Decisions; Reconsiderations; Order of Consideration****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

SUMMARY: This document amends the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals. The amendments incorporate recent statutory changes (including provisions to allow matters to be decided by individual Board members), set forth procedures regarding reconsideration of decisions, change office names and designations due to administrative changes within the Board, and make other nonsubstantive changes.

DATES: Effective Date: This final rule is effective May 7, 1996.

Applicability Dates: The incorporation of statutory provisions and statutory interpretations contained in this final rule will be applied retroactively from the effective dates of the statutory provisions. For more information concerning the application of the provisions of this final rule, see the **SUPPLEMENTARY INFORMATION** section.

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

SUPPLEMENTARY INFORMATION: This document amends the Appeals Regulations, 38 CFR Part 19, and the Rules of Practice, 38 CFR Part 20, of the

Board of Veterans' Appeals (Board). The Board adjudicates appeals of denials of claims for veterans' benefits.

Public Law 103-271

In large part, the amendments made by this document reflect statutory changes made by Public Law 103-271.

Changes are made to §§ 19.3, 19.9, 19.11, 19.12, 19.76, 20.3, 20.102, 20.401, 20.606, 20.700, 20.702 through 20.705, 20.707 through 20.708, 20.711, 20.714 through 20.717, 20.901, 20.1003, and 20.1100, to reflect that, under Public Law 103-271, the Board's Chairman may assign matters, including hearings, to individual Board members or to panels of three or more members.

Changes are made to §§ 19.3, 19.11, 20.102, 20.608, 20.707, 20.711, 20.717, and 20.1304 to reflect that, under Public Law 103-271, a proceeding may not be assigned to the Chairman as an individual member but that the Chairman may participate in a proceeding assigned to a panel, or in a reconsideration assigned to a panel, and to reflect how a reconsideration panel is to be constituted.

Changes are made to §§ 19.11 and 20.707 to reflect that, under Public Law 103-271, reconsideration of a matter heard by a single member shall be referred to a panel of not less than three Board members, that reconsideration of a matter heard by a panel of members shall be referred to an enlarged panel, and that a reconsideration panel may not include any member who made the decision that is being reconsidered.

Changes are made to §§ 19.75 and 20.704 to reflect that, under Public Law 103-271, hearings at a facility within the area served by a VA regional office shall be scheduled to be held in the order in which requested, but may be scheduled earlier if the appellant is seriously ill or under severe financial hardship.

Changes are made to § 20.3 to reflect that, under Public Law 103-271, in lieu of a personal hearing, an appellant may participate in a Board hearing through picture or through voice transmission, by electronic or other means, with the Board member or members at the Board's principal location.

Miscellaneous

In addition, definitions of "electronic hearing" and "presiding member" have been added to § 20.3 to reflect the Board's interpretation of Public Law 103-271 and, in § 20.900, paragraph (b) has been revised and paragraph (d) added to reflect the Board's interpretation of the requirement, established by Public Law 103-446, Section 302, that cases remanded by the

Court of Veterans Appeals be treated expeditiously.

Further, § 19.11(b) has been amended to provide that reconsideration panels are to be enlarged in increments of three as necessary to obtain a majority decision. This constitutes the policy for the Board to use in implementing the provisions of Public Law 103-271.

Finally, Parts 19 and 20 are amended to update current titles and designations within the Board, and to make other nonsubstantive changes.

This final rule consists of incorporation of statutory provisions, interpretive rules, rules of agency procedure or practice, and nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602, since it does not contain any substantive provisions. This final rule would not cause a significant effect on any entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Incorporation of statutory provisions and statutory interpretations made by this final rule will be applied retroactively from the effective dates of the statutory provisions. The dates of application for such changes and for certain of the nonsubstantive changes made for clarity, to correct typographical errors, or to reflect statutory recodification changes are as follows:

July 1, 1994: §§ 19.3(a) and (b); 19.4; 19.9; 19.11; 19.12(b); 19.75; 19.76; 20.3(h) and (n); 20.102(c) and (d); 20.401(b); 20.606(a), (b), and (d); 20.608(b)(2); 20.700(b) and (d); 20.702(a), (c), (d), and (e); 20.704(a), (c), (d), (e), and (f); 20.705(b); 20.707; 20.708; 20.711(e) and (h); 20.714(a)(4); 20.715; 20.716; 20.717(d); 20.901(e); 20.1003; 20.1100(a); and 20.1304(b).

November 2, 1994: § 20.900(b) and (d).

List of Subjects

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

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

Approved: April 30, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, title 38 of the Code of Federal Regulations, parts 19 and 20, are amended under the authority of Public Law 103-271, 108 Stat. 740, and Public Law 103-446, 108 Stat. 4645, as set forth below:

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)

Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.2 is revised to read as follows:

§ 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. 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(a))

3. Section 19.3 is revised to read as follows:

§ 19.3 Assignment of proceedings.

(a) *Assignment.* The Chairman may assign a proceeding instituted before the Board, including any motion, to an individual Member or to a panel of three or more Members for adjudication or other appropriate action. The Chairman may participate in a proceeding assigned to a panel of Members.

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

(b) *Inability to serve.* If a Member is unable to participate in the disposition of a proceeding or motion to which the Member has been assigned, the Chairman may assign the proceeding or motion to another Member or substitute another Member (in the case of a proceeding or motion assigned to a panel).

Authority: 38 U.S.C. 7101(a), 7102)

§ 19.4 [Amended]

In § 19.4 the authority citation is revised to read as follows:

(Authority: 38 U.S.C. 7102, 7104, 7107)

5. Section 19.7 is amended by adding a new paragraph (c) to read as follows:

§ 19.7 The decision.

* * * * *

(c) A decision by a panel of Members will be by a majority vote of the panel Members.

6. Section 19.9 is revised to read as follows:

§ 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 Member or panel of Members 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))

7. Section 19.11 is revised to read as follows:

§ 19.11 Reconsideration panel.

(a) *Assignment of Members.* When a motion for reconsideration is allowed, the Chairman will assign a panel of three or more Members of the Board, which may include the Chairman, to conduct the reconsideration.

(b) *Number of Members constituting a reconsideration panel.* In the case of a matter originally heard by a single Member of the Board, the case shall be referred to a panel of three Members of the Board. In the case of a matter originally heard by a panel of Members of the Board, the case shall be referred to an enlarged panel, consisting of three or more Members than the original panel. In order to obtain a majority opinion, the number of Members assigned to a reconsideration panel may be increased in successive increments of three.

(c) *Members included in the reconsideration panel.* The reconsideration panel may not include any Member who participated in the decision that is being reconsidered. Additional Members will be assigned in accordance with paragraph (b) of this section.

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

8. Section 19.12(b) is revised to read as follows:

§ 19.12 Disqualification of Members.

* * * * *

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Any Member of the Board who made the decision on an administrative appeal will disqualify himself or herself from acting on a subsequent appeal by the claimant on the same issue.

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

* * * * *

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.30 [Amended]

9. In § 19.30 paragraph (b), is amended by removing “VA Form 1–9” and adding, in its place, “VA Form 9”.

§ 19.31 [Amended]

10. In § 19.31, the last sentence is removed.

§ 19.35 [Amended]

11. Section 19.35 is amended by removing “VA Form 1–8” and adding, in its place, “VA Form 8”.

Subpart C—Administrative Appeals

12. Section 19.51(a)(1) is revised to read as follows:

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

* * * * *

(a) *Central Office—(1) Officials.* The Under Secretary for Benefits or a service director of the Veterans Benefits Administration, the Under Secretary for Health or a service director of the Veterans Health Administration, and the General Counsel.

* * * * *

13. The heading for Subpart D is revised to read as follows:

Subpart D—Hearings Before the Board of Veterans' Appeals at Department of Veterans Affairs Field Facilities

14. Section 19.75 is revised to read as follows:

§ 19.75 Hearing docket.

Hearings on appeal held at Department of Veterans Affairs field facilities will be scheduled for each area served by a regional office in the order in which requests for such hearings within that area are received by the Department except when a motion to advance the case on the hearing docket is granted under Rule of Practice 704(f) (38 CFR 20.704(f)).

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

15. Section 19.76 is revised to read as follows:

§ 19.76 Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility 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 hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility with good cause. The right to notice at least 60 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.

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

§ 19.77 [Removed and revised]

16. Section 19.77 is removed, and revised.

Subpart E—Simultaneously Contested Claims

17. Section 19.101 is amended by removing “VA Form 1–9” and adding, in its place, “VA Form 9”.

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

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

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

Subpart A—General

19. Section 20.3 is amended by redesignating paragraphs (h), (i), (j), (k), (l), (m), and (n) as (i), (j), (k), (l), (m), (o), and (p) respectively, and adding new paragraphs (h) and (n) to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(h) *Electronic hearing* means a hearing on appeal in which an appellant or a representative participates, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Member or Members sitting at the Board's principal location in Washington, DC.

* * * * *

(n) *Presiding Member* means that Member of the Board who presides over a hearing, whether conducted as a single Member or panel hearing.

* * * * *

Subpart B—The Board

20. In § 20.102 paragraph (d) is removed, and paragraph (c) is revised to read as follows:

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

* * * * *

(c) The authority exercised by the Chairman of the Board of Veterans'

Appeals described in Rules 2 and 606(e) (§§ 20.2, and 20.606(e) of this part), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

* * * * *

Subpart C—Commencement and Perfection of Appeal

§ 20.202 [Amended]

21. Section 20.202 is amended by removing “VA Form 1–9” and adding, in its place, “VA Form 9”.

Subpart E—Administrative Appeals

22. In § 20.401, paragraph (b) is revised to read as follows:

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on 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 the Chairman will assign the proceeding to a Member or panel of Members of the Board who did not make 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.

* * * * *

Subpart G—Representation

§ 20.603 [Amended]

23. Section 20.603(a) is amended by removing “VA Form 2–22a” and adding, in its place, “VA Form 22a”.

§ 20.604 [Amended]

24. Section 20.604(a) is amended by removing “VA Form 2–22a” and adding, in its place, “VA Form 22a”.

§ 20.605 [Amended]

25. Section 20.605(c) is amended by removing “VA Form 2–22a” and adding, in its place, “VA Form 22a”.

§ 20.606 [Amended]

26. In § 20.606, paragraph (a) is amended by removing “before traveling Sections of the Board”. Paragraph (b) is amended by removing “Chief, Hearing Section (014B)” and adding, in its place, “Director, Administrative Service (014)”; and by removing “appeals before traveling Sections of the Board” and adding, in its place, “hearings before a

Member or Members of the Board at Department of Veterans field facilities”; and by removing “traveling Section” and adding, in its place, “hearing”. Paragraph (d) is amended by removing “Chief of Hearing Section” and adding, in its place, “Director of the Administrative Service”; and by removing “proceedings before traveling Sections” and adding, in its place, “hearings before a Member or Members”; and by revising the phrase “not more than 10 days prior to the scheduled hearing date” to read, “not less than 10 days prior to the scheduled hearing date,” and reinserting it directly after the first appearance of “attorney-at-law” in the second sentence; and removing “traveling Section” in the third sentence and adding, in its place, “hearing”.

§ 20.608 [Amended]

27. In § 20.608, paragraph (b)(2), the last sentence is removed.

28. The heading for Subpart H is revised to read as follows:

Subpart H—Hearings on Appeal

29. In § 20.700, paragraph (b) is amended in the third sentence by removing “personal”, and by removing “of the hearing panel involved” in the last sentence and adding, in its place, “assigned to conduct the hearing”; paragraph (d) is amended in the second sentence by removing “a Board of Veterans' Appeals hearing panel” and adding, in its place, “the Board of Veterans Appeals”, and by removing “panel members” in the third sentence and adding, in its place, “Member or Members to whom the appeal has been assigned for a determination”; a new paragraph (e) is added; and the authority citation is revised to read as follows.

§ 20.700 Rule 700. General.

* * * * *

(e) *Electronic hearings.* When suitable facilities and equipment are available, an appellant may be scheduled for an electronic hearing. Any such hearing will be in lieu of a hearing held by personally appearing before a Member or panel of Members of the Board and shall be conducted in the same manner as, and considered the equivalent of, such a hearing. If an appellant declines to participate in an electronic hearing, the appellant's opportunity to participate in a hearing before the Board shall not be affected.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§ 20.701 [Amended]

30. In § 20.701, the authority citation is revised to read as follows:

(Authority: 38 U.S.C. 7102, 7105, 7107)

31. Section 20.702 is amended by revising the last sentence in paragraph (c)(1), the last two sentences in paragraph (c)(2), the fourth and last sentences in paragraph (d), the last sentence in paragraph (e), and the authority citations for paragraphs (a) through (e) to read as follows:

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.

(a) * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(b) * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(c) *Requests for changes in hearing dates.* (1) * * * 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: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(2) * * * 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 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: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(d) *Failure to appear for a scheduled hearing.* * * * In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. * * * 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 assigned to conduct the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(e) *Withdrawal of hearing requests.* * * * 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: Director, Administrative Service (014), Board of

Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

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

32. Section 20.703 is revised to read as follows:

§ 20.703 Rule 703. When right arises to hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility.

A hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility is a "hearing on appeal." Accordingly, there is no right to such a hearing until 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 filed 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), 7107)

33. In § 20.704, the section heading; paragraphs (a), (c), (d), and (e); and the authority citation are revised and paragraph (f) is added to read as follows:

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

(a) *General.* Hearings are conducted by a Member or Members 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 in the order in which requests for such hearings within that area were received by the agency of original jurisdiction, except as provided in paragraph (f). Requests for such hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

* * * * *

(c) *Requests for changes in hearing dates.* Requests for a change in a 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 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. 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 hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available 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 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 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: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Whether good cause for such failure to appear and the impossibility of timely

requesting postponement have been established will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility 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 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. Notices of withdrawal must be submitted to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under paragraph (a) upon written motion of the appellant or the representative showing that the appellant is seriously ill or under severe financial hardship. The motion must be filed with the Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Member assigned as the presiding Member for the hearing.

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

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

34. Section 20.705(b) and the authority citation are revised to read as follows:

§ 20.705 Rule 705. Where hearings are conducted.

* * * * *

(b) At a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§ 20.706 [Amended]

35. In § 20.706, the authority citation is revised to read as follows:

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

36. Section 20.707 is revised to read as follows:

§ 20.707 Rule 707. Designation of Member or Members to conduct the hearing.

The Member or panel to whom a proceeding is assigned under § 19.3 of this part shall conduct any hearing before the Board in connection with that proceeding. Where a proceeding has been assigned to a panel, the Chairman,

or the Chairman's designee, shall designate one of the Members as the presiding Member. The Member or Members who conduct the hearing shall participate in making the final determination of the claim, subject to the exception in § 19.11(c) of this part (relating to reconsideration of a decision).

(Authority: 38 U.S.C. 7102, 7107)

37. Section 20.708 is revised to read as follows:

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing 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 the Board at Washington, DC, arrangements for a prehearing conference must be made through: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before the Board at Department of Veterans Affairs field facilities 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, 7105(a), 7107)

§ 20.709 [Amended]

38. Section 20.709 is amended by revising the authority citation to read as follows:

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

39. Section 20.710 is amended by revising the authority citation to read as follows:

§ 20.710 Rule 710. Witnesses at hearings.

* * * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

40. Section 20.711 is amended by revising paragraphs (e) and (h) and the authority citation to read as follows:

§ 20.711 Rule 711. Subpoenas.

* * * * *

(e) *Ruling on motion for subpoena.* Where the Chairman has assigned the appeal to a Member or panel, the ruling on the motion will be made by that Member or panel. Where the appeal has not been assigned, the Chairman will assign the matter for the purpose of

ruling on the motion. Where the moving party seeks production of documents or other tangible evidence, the Member or panel may condition the granting of the motion upon the advancement by the moving party of the reasonable cost of producing the books, paper, documents, or other tangible evidence requested.

* * * * *

(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 Board not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the Member or panel authorizing the subpoena, who will inform all interested parties of the ruling in writing. The quashing of any subpoena will be conditional upon the return of the check for fees and mileage to the party on whose behalf the subpoena was issued.

(Authority: 38 U.S.C. 5711, 7102(a), 7107)

41. In § 20.714, paragraph (a) introductory text is amended by revising the first sentence; paragraph (a)(1) is amended by removing "of the hearing panel" in the second sentence, and by removing "Chief, Hearing Section (014B)" in the last sentence and adding, in its place, "Director, Administrative Service (014); and paragraph (a)(4) introductory text and the authority citation at the end of the section are revised to read as follows:

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before a Member or panel of Members of the Board, whether held in Washington, DC, or at a Department of Veterans Affairs field facility, will be recorded on audio tape. * * *

* * * * *

(4) With respect to hearings conducted by a Member or Members of the Board at a Department of Veterans Affairs field facility: * * *

* * * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

42. In § 20.715 the last two sentences and the authority citation are revised to read as follows:

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

* * * In the case of hearings held before the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Director of the Administrative Service (014), Board of

Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before the Board at Department of Veterans Affairs field facilities, 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, 7105(a), 7107)

43. In § 20.716 the last two sentences and the authority citation are revised to read as follows:

§ 20.716 Rule 716. Correction of hearing transcripts.

* * * In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be made by the presiding Member of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

44. Section 20.717, paragraph (c) is amended by removing "Chief, Hearing Section (0141F)" and adding, in its place, "Director, Administrative Service (014); and by revising paragraph (d) and the authority citation to read as follows:

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

* * * * *

(d) *Ruling on motion for a new hearing.* The ruling on the motion for a new hearing will be made by the Member who presided over the hearing. If the presiding Member is no longer available, the ruling on the motion may be made by the Member or Members to whom the case has been assigned for a determination. In cases in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the Chairman will assign the matter in accordance with § 19.3 of this title. 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, 7105(a), 7107)

Subpart J—Action by the Board

45. Section 20.900 is amended by revising paragraph (b) and the authority citation, and by adding a new paragraph (d) to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket, except as provided in paragraphs (c) and (d).

* * * * *

(d) *Consideration of appeals remanded by the United States Court of Veterans Appeals.* A case remanded by the United States Court of Veterans Appeals for additional development or other appropriate action will be treated expeditiously by the Board without regard to its place on the Board's docket.

(Authority: 38 U.S.C. 7107, Pub. Law No. 103-446 § 302)

46. Section 20.901(e) is revised to read as follows:

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

* * * * *

(e) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7104(c), 7109)

Subpart K—Reconsideration

47. Section 20.1003 is revised to read as follows:

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant requests a hearing before the Board. The hearing will be held by a Member or Members assigned to the reconsideration panel. A 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 a Member or panel of 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.

(Authority: 38 U.S.C. 7102, 7103, 7105(a))

Subpart L—Finality

48. In section 20.1100(a), the last sentence is amended by removing "Section" and adding, in its place, "Panel"; and the first sentence is revised to read as follows:

§ 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* All decisions of the Board will be stamped with the date of mailing on the face of the decision. * * *

* * * * *

Subpart N—Miscellaneous**§ 20.1304 [Amended]**

49. In § 20.1304 paragraph (b) is amended by removing the next-to-the-last sentence reading "The ruling on the motion will be by the Chairman."

[FR Doc. 96-11279 Filed 5-6-96; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 095-0008a; FRL-5464-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan (SIP). The revision concerns a new rule from the Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of oxides of nitrogen (NO_x), oxides of sulfur (SO_x), and volatile organic compounds (VOCs). This rule controls NO_x, SO_x, and VOC emissions from flare and thermal oxidizer stacks at oil and gas production industries. Thus, EPA is finalizing the approval of this rule into the California SIP under provisions of the Federal Clean Air Act, as amended in 1990 (CAA or the Act) regarding EPA action on SIP submittals.

DATES: This action is effective on July 8, 1996 unless adverse or critical comments are received by June 6, 1996. If the effective date is delayed, a timely

notice will be published in the Federal Register.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Casitilian Drive, B-23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION:**Applicability**

The rule being approved into the California SIP is SBCAPCD Rule 359, Flares and Thermal Oxidizers. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

Background

Rule 359 was originally adopted as part of SBCAPCD's 1991 Air Quality Attainment Plan in response to the California Clean Air Act and is not required by any specific provision of the CAA. However, SBCAPCD Rule 359 is consistent with the goals of the CAA and EPA policy. In addition, Rule 359 furthers the goals of the Act by strengthening the SIP. Section 110(a) of the CAA contains general requirements for states to submit enforceable emissions limitations and other control measures as may be necessary or appropriate to achieve the goals of the Act. Rule 359 meets these requirements by controlling NO_x, SO_x, and VOC emissions from flare and thermal oxidizer stacks at oil and gas production facilities.

The State of California submitted many rules for incorporation into its SIP on July 13, 1994, including the rule being acted on in this notice. This notice addresses EPA's direct-final action for SBCAPCD Rule 359, Flares