

Further, this rule deals with appeals before the Board, rather than with claims at regional offices. The rule simply recognizes that it would be worthwhile to give the possibility of priority to appellants who statistically may not be with us much longer. Finally, the Secretary has approved this amendment. Any conflict between the proposed rule and the priorities of the Secretary has been resolved. No changes have been made based on this comment.

3. *The inequality of allowing one case to be advanced over another.* One commenter asserted that all veterans' claims should be processed quickly, and that no claim should be advanced on the docket over another. Another commenter argued that the proposed rule fails to take into consideration the negative effect of advancing one case over another. The commenter felt allowing one claim to advance over another was fundamentally unfair.

As noted above, 38 U.S.C. 7107 provides us with the statutory authority to advance a case on the Board's docket. Further, the number of exceptions to the general rule of "first come, first served" has been kept to a minimum. By defining "advanced age" as 75 or more years old, the narrow application of the advance on docket exception remains intact. We therefore make no change based on these comments.

A need for clarification of the proposed rule has become apparent. As proposed, the rule could be interpreted to require the Board to advance a case on the docket if the appellant has reached "advanced age," in the absence of a motion of a party to the case or the party's representative. VA does not intend such an interpretation. Rather, VA intends to permit the Board to advance such a case on the motion of the Chairman or Vice Chairman, but not require the Board to advance the case in the absence of a motion of a party to the case or the party's representative. Accordingly, we have added a sentence to § 20.900(c) to clarify that intent. The resulting paragraph (c) is so long that, for clarity and readability, we have divided it into three paragraphs separately addressing grounds for advancement on the docket, the requirements for a motion to advance, and disposition of such motions. If a party to the case moves for advancement and sufficient cause is shown, the Board will advance the case on the docket.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule revised as described.

## Administrative Procedure Act

This final rule is effective on the date of publication. The 30-day delayed effective date required under the Administrative Procedure Act (APA) is inapplicable pursuant to 5 U.S.C. 553(d)(1), which excepts from the delayed-effective-date requirement a substantive rule that "grants or recognizes an exemption or relieves a restriction." The amendment adopted in this final rule permits a case to be advanced on the Board's docket because of an appellant's advanced age, which grants an exception from the rule that normally requires the Board to consider and decide appeals in the order in which they were filed. Consequently, the amendment in this final rule meets the requirements for exception set forth in the APA.

## Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202) requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

## Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

## Paperwork Reduction Act

The Secretary hereby certifies that this final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

## List of Subjects in 38 CFR Part 20

Administrative practice and procedure; Claims; Veterans.

Dated: Approved: July 2, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble 33 CFR part 20 is amended as set forth below.

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

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

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

### Subpart J—Action by the Board

■ 2. Section 20.900(c) is revised to read as follows:

#### § 20.900 Rule 900. Order of consideration of appeals.

\* \* \* \* \*

(c) *Advancement on the docket.* (1) *Grounds for advancement.* A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. "Other sufficient cause" shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case or the advanced age of the appellant. For purposes of this Rule, "advanced age" is defined as 75 or more years of age. This paragraph does not require the Board to advance a case on the docket in the absence of a motion of a party to the case or the party's representative.

(2) *Requirements for motions.* Motions for advancement on the docket must be in writing and must identify the specific reason(s) why advancement on the docket is sought, 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 (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(3) *Disposition of motions.* If a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. 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