

the proposed removal of Rule 903(b). A cross-reference is being added to the first sentence to make reference to § 19.9(b)(2) as the source of the Board's authority to consider, in the first instance, law not already considered by the AOJ.

#### Comment Period

Section 6(a)(1) of Executive Order 12866 indicates that, in most cases, a comment period for proposed regulations should be "not less than 60 days." However, for this rulemaking we have provided a comment period of 30 days for the following reasons. First, this rulemaking primarily concerns rules of agency procedure or practice, which are not subject to the Administrative Procedure Act's general requirement of publication for notice and comment. Second, prompt issuance of the proposed amendments is necessary to remove those provisions of our current rules regarding the development of claims on appeal that were invalidated by the United States Court of Appeal for the Federal Circuit in *Disabled American Veterans v. Secretary of Veterans Affairs*, 9 327 F. 3d 1339 (Fed. Cir. 2003). Third, and finally, the proposed amendments facilitate the processing of claims remanded from the Board by providing flexibility to VBA in deciding where those remands can best be handled. In that regard, it is important for the final rule to be published expeditiously in order to ensure the efficient and effective processing of appeals under valid regulations.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, 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 proposed rule would have no consequential effect on State, local, or tribal governments, or the private sector.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

#### Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of 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. This proposed rule would affect only VA beneficiaries and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: October 30, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR parts 19 and 20 are proposed to be amended 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), unless otherwise noted.

#### Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.9 is amended by revising paragraphs (a) and (b) to read as follows:

##### § 19.9 Remand for further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge or panel of Veterans Law Judges shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(b) *Exceptions.* A remand to the agency of original jurisdiction is not necessary for the purposes of:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Consideration of an appeal, in accordance with § 20.903(b) of this chapter, with respect to law not already considered by the agency of original jurisdiction. This includes, but is not limited to, statutes, regulations, and court decisions; or

(3) Reviewing additional evidence received by the Board, if, pursuant to

§ 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal.

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#### Subpart B—Appeals Processing by Agency of Original Jurisdiction

##### § 19.38 [Amended]

3. Section 19.38 is amended by removing "the Board and" from the third sentence.

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

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

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

5. Section 20.3 is amended by revising paragraph (a) to read as follows:

##### § 20.3 Rule 3. Definitions.

\* \* \* \* \*

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.

\* \* \* \* \*

6. Section 20.903 is amended by:

- Revising the second sentence in paragraph (a);
- Removing paragraph (b);
- Redesignating paragraph (c) as paragraph (b); and
- Revising the first sentence in newly redesignated paragraph (b).

The revisions read as follows:

##### § 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) \* \* \* When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. \* \* \*

(b) \* \* \* If, pursuant to § 19.9(b)(2) of this chapter, the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. \* \* \*