

for submitting an application after the three-year statute of limitations has passed.

Section 52.23 Counsel

Paragraph (a) is added to inform applicants that they may be represented by counsel at their own expense but that applicants whose cases are processed under the Whistleblower Protection Act may be entitled to representation by a law specialist at a hearing convened in accordance with Subpart F. The previous text of this section appears in paragraph (b) and is amended by updating two citations and by making the Chair, rather than the Board, responsible for deciding the competence of an applicant's chosen representative.

Section 52.24 Evidence and Burden of Proof

Paragraph (a) is revised to encourage the timely submission of evidence with the initial application and to direct attention toward the new rule concerning late submissions of evidence in § 52.26. Paragraph (b) is added to inform applicants of the presumption of regularity accorded military records and of the burden of proof they must meet to be granted relief, which is the preponderance of the evidence.

Section 52.25 Access to Official Records

This section is amended to consolidate the sentences.

Section 52.26 Right to Timely Decision; Effect of Requests for Extensions, Changes in Requests for Relief, and Late Submissions of Evidence

This new section, which incorporates the provisions in old §§ 52.68 and 52.61(c), informs applicants of their right to a final decision on their applications within ten months of the completion of their applications. It also permits applicants to request extensions, submit evidence after their applications have been docketed, and alter their requests for relief without waiving their right to a timely decision. It provides that, if an applicant requests an extension or unreasonably delays responding to a request from the Board, the Board's ten-month deadline is extended by the duration of the extension or of the unreasonable delay. It further provides that, if in the determination of the Chair, an applicant has submitted significant new evidence or has significantly altered his or her request for relief after his or her application has been docketed, the application is considered newly completed and the applicant has the right to a final decision within ten months of the new date of completion.

Section 52.27 Withdrawal of Application

This section (old § 52.26) is revised to allow the Chair to permit an applicant to withdraw his or her application without Board action.

Section 52.28 Stay of Proceedings

No changes have been made to this section (old § 52.33), apart from its renumbering. It has been renumbered because it belongs better under this Subpart C—General Provisions Regarding Applications than where it was under Subpart D—Consideration of Application.

Subpart D—Consideration of Application and Administrative Closure

Section 52.31 Consideration of Application

This section is amended to show that the Chair's initial review of an application to determine whether it is complete occurs before the application is docketed.

Section 52.32 Administrative Closure

This section is renamed and expanded to clarify the circumstances under which the Chair may close a case without prejudice and without Board action. Paragraph (a) permits the Chair to close a case when he or she determines that the application was erroneously documented because it was never completed, the Board lacks authority to grant the requested relief, the applicant failed to exhaust an administrative remedy before applying to the Board, or the Coast Guard has already made the requested corrections. Paragraph (b) addresses how applicants might reapply after their cases have been administratively closed. Paragraph (c) requires the Chair to inform applicants of their right to reapply whenever he or she administratively closes a case.

Old § 52.33 Stay of Proceedings

This old section has been renumbered as § 52.28.

Subpart E—Submissions by the Coast Guard and Other Offices

This new subpart E embodies old Subpart—Miscellaneous Provisions. It has been renamed and repositioned to better reflect its contents and the order of the Board's procedures. Old subpart E is included in subpart F.

Section 52.41 Assistance

No changes have been made to this section (old § 52.81), apart from its renumbering.

Section 52.42 Views of the Coast Guard

Paragraph (a) (old § 52.82(a)) is amended to reflect the amendments to sections 52.21 and 52.32. Paragraphs (a) and (b) (old § 52.82(c)) are amended to reflect the fact that the views of the Coast Guard may be submitted in an advisory opinion by any delegate of the Commandant. Paragraph (c) (old § 52.82(e)) is amended to require the Board to consider the advisory opinion of the Coast Guard only if it is submitted within 135 days of the date the application is complete but to permit the Board to consider advisory opinions submitted after the 135-day deadline has passed. The rule facilitates timely decisions when submissions of advisory opinions by the Coast Guard are delayed to the point where little or no time remains for the Board to receive the applicant's response to the advisory opinion, issue a decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. Paragraph (d) (old § 52.82(d)) increases the time provided for the applicant's response to the advisory opinion from 15 to 30 days and allows the Chair to grant extensions of the time to respond. Paragraph (e), which is new, requires advisory opinions and applicants' briefs in response to advisory opinions to be readable, replicable, and not unduly lengthy.

Section 52.43 Requests for Further Information; Submissions of Classified, Privileged, and Sensitive Information

This section (old § 52.82(b)) has been expanded to address the Board's ability to seek information from applicants and from other Government offices, as well as from the Coast Guard. It addresses how the Board can receive and review classified, privileged, and sensitive information from the Coast Guard or another Government office while providing the applicant with a copy of any part of that information that would be released to him or her if requested by the applicant from the custodian of the information under 49 CFR parts 7 or 10.

Subpart F—Hearings

This subpart incorporates both old Subpart E—Hearings and old Subpart F—Procedure at Hearings because both concern hearings.

Section 52.51 General Provision

No changes other than renumbering and substituting the term Chair for the term Chairman have been made to this section (old § 52.41).