that other factors—such as the lack of boater education in recognizing lighting configurations; no licensing requirement for recreational boaters; boating while intoxicated; and the lack of compliance with existing lighting requirements—are responsible for the problems. Therefore, no rulemaking is necessary, and the Coast Guard is terminating further action under docket number 95–037.

Dated: June 24, 1997

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–17471 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

Board of Veterans' Appeals

38 CFR Part 19

RIN 2900–AI50

Appeals Regulations: Remand for Further Development

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to change the appeals regulations of the Board of Veterans' Appeals (Board) of the Department of Veterans Affairs (VA). The regulations would be changed regarding the circumstances in which the Board must remand a case to the VA field facility with original jurisdiction in the case. The changes are proposed to help avoid unnecessary remands.

DATES: Comments must be received on or before August 4, 1997.

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. Comments should indicate that they are submitted in response to ''RIN 2900–AI72.'' All written comments received will be available for public inspection at the above address 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, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. The appeals come to the Board from ''agencies of original jurisdiction'' (AOJs), typically one of VA's 58 regional offices.

The provisions of 38 CFR 19.9 require the Board to remand a case to the AOJ if ''it [were] determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision.'' The current rule appears to be unsatisfactory in two ways.

First, § 19.9 only imposes the requirement for a remand; it does not except specific kinds of evidentiary development we intended the Board to carry out without remand to an AOJ. Those specific kinds of evidentiary development are (1) Board requests for opinions from the VA Under Secretary for Health, the Armed Forces Institute of Pathology, the VA General Counsel, and independent medical experts under 38 CFR 20.901, see *Austin* v. *Brown,* 6 Vet. App. 547, 553–54 (1994), and (2) Board supplementation of the record with recognized medical treatises in accordance with *Colvin* v. *Derwinski,* 1 Vet. App. 171, 175 (1991). Proposed § 19.9(b) would except from the remand requirement each of these kinds of evidentiary development, as well as matters over which the Board has original jurisdiction.

Second, by requiring a remand to correct a procedural defect whose correction is essential for a proper appellate decision, § 19.9 causes unnecessary remands because some procedural defects cannot be corrected by an AOJ or can be corrected more efficiently by the Board itself. For example, if an appellant's desires concerning a hearing are unclear, the Board can clarify them as easily as can an AOJ. A remand merely for clarification of an appellant's hearing desires would be time-consuming, and premature if the appellant wanted a hearing before the Board. Therefore, it is proposed to amend § 19.9(a) to not require a remand to clarify procedural matters before the Board, such as an appellant's request for a hearing before the Board.

Avoiding unnecessary remands helps the Board reduce its response time on appeals. A remand by the Board is in the nature of a preliminary order, not a final Board decision, 38 CFR 20.1100(b); *Zevalkink* v. *Brown,* 6 Vet. App. 483, 488 (1994), and results in at least one additional adjudication at the AOJ, 38 CFR 19.38. If that additional adjudication does not result in the granting of all benefits sought, the case must be returned to the Board for a final decision. *Id.* In any event, a remand necessarily extends the time an appellant must wait for a final decision on his or her claim. In addition, because the majority of remands eventually return to the Board for adjudication, remands increase the Board's response time on appeals in general.

Remands for technical reasons that do not affect an appellant's right to due process—such as the choice of representative, clarification of the issues on appeal, or requests for hearings before the Board—do not produce evidence which can result in a grant of benefits by the AOJ. Particularly when such clarification could be easily undertaken by the Board, those remands result only in a return of the case to the Board with procedural clarification, needless delay for the individual appellant and additional delay for all appellants. The purpose of this proposal to change § 19.9 is to reduce unnecessary remands, while protecting appellants' right to have any evidence considered in the first instance by the AOJ.

Proposed § 19.9 would require the Board to remand a case to the AOJ when additional evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, but would specify that the Board need not remand a case to clarify procedural matters before the Board, such as the choice of representative, the issues on appeal, or requests for hearings before the Board.

The proposed rule would not apply to requests for medical or legal opinions under 38 CFR 20.901, which continue to be exceptions to the general rule requiring remand to the AOJ if new evidence is properly before the Board. See *Austin* v. *Brown,* 6 Vet. App. 547, 553–54 (1994) (§ 20.901 ''appear[s] to be the exclusive regulatory exception to the general rule of mandatory remand under § 19.9''). The rule also would not apply to matters in which the Board has original jurisdiction under 38 CFR 20.609 (relating to representatives' fees) and § 20.610 (relating to representatives' expenses), since those cases, by their terms, do not involve adjudications by AOJs.

VA routinely provides for a 60-day comment period for proposed rules. However, the comment period for this document is shortened to 30 days. We believe that VA should consider the issues raised by this document on an expedited basis since it appears that adoption of the proposal would help avoid unnecessary remands.

The Secretary hereby certifies that the adoption of the 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's processing of claims and will 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 analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: June 25, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 19 is 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).

2. In subpart A, § 19.9 is revised to read as follows:

§ 19.9 Remand for further development.

(a) *General.* If 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. A remand is not required to clarify procedural matters before the Board, including appellant's choice of representative before the Board, the issues on appeal, and requests for hearings before the Board.

(b) *Scope.* This section does not apply to:

(1) The Board's requests for opinions under Rule 901 (§ 20.901 of this chapter);

(2) The Board's supplementation of the record with recognized medical treatises; and

(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (§§ 20.609 and 20.610 of this chapter).

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a))

[FR Doc. 97–17414 Filed 7–2–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5852–8]

Operating Permits Program; Notice to Defer Comments on Draft Part 70 Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to defer comments.

SUMMARY: Today's document advises the public to defer comment on draft revisions to the operating permits regulations in part 70 of chapter I, title 40, of the Code of Federal Regulations and an accompanying memorandum of options. The draft regulatory revisions and accompanying memorandum were made available for public review on May 14, 1997. Availability of the draft revisions and a 30-day comment period was announced in the **Federal Register** on June 3, 1997. The regulatory revisions will be revised and reissued for review with a new comment period.

DATES: As specified in the June 3, 1997 notice, if comments on the May 14, 1997 draft part 70 revisions are submitted, they must still be received by July 3, 1997. However, a new draft will be issued at a future date with an accompanying 30-day period for review and comment.

ADDRESSES: The current draft part 70 revisions and accompanying memorandum are available in EPA's Air Docket number A–93–50 as items VI–A–1, VI–A–2, and VI–A–3. The future revised draft will also be placed in this docket and will be announced in a future notice of availability in the **Federal Register**. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday. A reasonable fee may be charged for copying. The address of the EPA air docket is: U.S. EPA, Air Docket Office (6102), Attention: Docket Number A–93–50, Room M–1500, Waterside Mall, 401 M Street Southwest, Washington, DC 20460.

The current draft regulatory revisions and accompanying memorandum (and the future revised draft) may also be downloaded from the Internet at: http://134.67.104.12/html/caaa/t5pg.htm or http://ttnwww.rtpnc.epa.gov.

FOR FURTHER INFORMATION CONTACT: Ray Vogel (telephone 919–541–3153) or Roger Powell (telephone 919–541–5331), U.S. EPA, Information Transfer and Program Integration Division (MD–12), Research Triangle Park, North Carolina 27711. Internet addresses are: vogel.ray@epamail.epa.gov and powell.roger@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On June 3, 1997, EPA announced in the **Federal Register** (62 FR 30289) availability for public review of a May 14, 1997 draft regulatory revisions package that, when published, will promulgate revisions to the part 70 operating permit regulations. The May 14, 1997 draft was made available on EPA's Technology Transfer Network computer bulletin board and was placed in the Agency's air docket number A–93–50. The EPA also made available a memorandum of options relating to ''minor permit revisions'' that are under consideration for the final revisions. The public was asked to submit comments on these draft regulatory revisions and the additional options by July 3, 1997. Today's notice defers comment on the draft part 70 regulatory revisions until a future draft is made available for review and comment.

Since May 14, 1997, the Agency has continued to address issues associated with the draft part 70 permit revisions and the accompanying options. When these issues are adequately addressed, the Agency will revise the draft part 70 regulations and provide an opportunity for public comment. Consequently, EPA advises the public to forgo comment on the May 14, 1997 draft revisions and accompanying options and wait until the revised draft provisions are made available for public review. The comment period for the revised draft will be published in a future **Federal Register** notice.

Dated: June 18, 1997.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–17477 Filed 7–2–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket No. MC–94–22; FHWA–97–2252]

RIN 2125–AC–71

Safety Fitness Procedure; Safety Ratings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Proposed rule; additional comments.