

policyholders do not receive any value reserved to their policies. Any reserves no longer necessary to be held for canceled policies are redirected to surplus and distributed to the remaining term policyholders as dividends.

Term capped policyholders who reach age 96 are afforded the full face value of their policies because the mortality table upon which their premiums are based (American Experience Mortality Table) effectively matures these policies at age 96. Yet, if a policyholder cancels coverage at age 95, he or she would not receive any value. In order to remedy this, we are proposing to add section 8.37 to provide cash values for these term capped policies, which is in accordance with the practices in the commercial insurance industry.

Sufficient reserves have been established, not only to fund that NSLI "V" and VSLI "RS" 5-year level premium term rates so that they do not exceed their respective renewal age 70 premium rates (term capped policies), but also to provide cash values to these term premium capped policies. As illustrative of the reserves previously established to provide for cash values, at age 85, a "V" term capped policyholder with a \$10,000 policy would accumulate \$4,786 in cash value. We also believe that "V" and "RS" policyholders whose policies are canceled should be afforded the option to receive the cash value in a lump sum or to use that value to purchase paid-up insurance. This will afford policyholders the opportunity to retain some of the life insurance coverage which they may have had since the beginning of WWII. At age 85, a "V" policyholder who has accumulated \$4,786 in cash value could purchase \$6,109 in paid-up insurance.

The Secretary of Veterans' Affairs hereby certifies that this proposed 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. Pursuant to 5 U.S.C. 605(b), this proposed rule is, therefore, exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604. The proposed regulation will affect only government life insurance policyholders. It will therefore have no significant direct impact on small entities in the terms of compliance costs, paperwork requirements or effects on competition.

The catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

List of Subjects in 38 CFR Part 8

Disability benefits, Life insurance, Loan programs—veterans, Military personnel, Veterans.

Approved: February 3, 2000.

Togo D. West, Jr.,

Secretary of Veterans' Affairs.

For the reasons set out in the preamble, 38 CFR part 8 is proposed to be amended as set forth below:

PART 8—NATIONAL SERVICE LIFE INSURANCE

1. The authority citation for part 8 continues to read as follows:

Authority: U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

2. Section 8.37 is added to read as follows:

§ 8.37 Cash value for term capped policies.

(a) *What is a term capped policy?* A term capped policy is a National Service Life Insurance policy prefixed with "V" or Veterans Special Life Insurance policy prefixed with "RS," issued on a 5-year level premium term plan in which premiums have been capped (frozen) at the renewal age 70 rate.

(b) *How can a term capped policy accrue cash value?* Normally, a policy issued on a 5-year level premium term plan does not accrue cash value (see § 8.14). However, notwithstanding any other provisions of this part, reserves have been established to provide for cash value for term capped policies.

(c) *On what basis have the reserve values been established?* Reserve values have been established based upon the 1980 Commissioners Standard Ordinary Basic Table and interest at five per centum per annum in accordance with accepted actuarial practices.

(d) *How much cash value does a term capped policy have?* The cash value for each policy will depend on the age of the insured, the type of policy, and the amount of coverage in force and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of cash values based upon a \$10,000 policy at various attained ages for a NSLI "V" policy and a VSLI "RS" policy:

Age	Cash value "V"	Cash Value "RS"
75	\$1,494	\$1,716
80	3,212	3,358
85	4,786	4,818
90	6,249	6,217
95	8,887	7,286

(e) *What can be done with this cash value?* Upon cancellation or lapse of the

policy, a policyholder may receive the cash value in a lump sum or may use the cash value to purchase paid-up insurance. If a term capped policy is kept in force, cash values will continue to grow.

(f) *How much paid-up insurance can be obtained for the cash value?* The amount of paid-up insurance that can be purchased will depend on the amount of cash value that the policy has accrued and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of paid-up insurance that could be purchased by the cash value of a "V" and "RS" \$10,000 policy at various attained ages:

Age	Paid-up "V" insurance	Paid-up "RS" insurance
75	\$2,284	\$2,625
80	4,452	4,654
85	6,109	6,149
90	7,421	7,115
95	9,331	7,650

(g) *If the policy lapses due to non-payment of the premium, does the policyholder nonetheless have a choice of receiving the cash value or paid-up insurance?* Yes, the policyholder will have that choice, along with the option to reinstate the policy (see § 8.10 for reinstatement of a policy). However, if a policyholder does not make a selection, VA will apply the cash value to purchase paid-up insurance. Paid-up insurance may be surrendered for cash at any time.

(h) *If a policyholder elects to receive either the cash surrender or paid-up insurance due to lapse or voluntary cancellation of a term capped policy, may the original term capped policy be reinstated?* Yes, the term capped policy may be reinstated but the policyholder, in addition to meeting the reinstatement requirements of term policies, must also pay the current reserve value of the reinstated policy.

(Authority: 38 U.S.C. 1906)

[FR Doc. 00–3454 Filed 2–14–00; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ58

Board of Veterans' Appeals: Rules of Practice—Subpoenas

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Board of Veterans' Appeals (Board) adjudicates appeals from denials of claims for veterans' benefits filed with the Department of Veterans Affairs (VA). This document proposes to amend the Board's Rules of Practice to clarify certain procedures relating to subpoenas.

DATES: Comments must be received on or before April 17, 2000.

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-AJ58." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 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 (0C1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202-565-5978).

SUPPLEMENTARY INFORMATION: VA has the authority to issue subpoenas to compel the attendance of witnesses and/or the production of evidence. 38 U.S.C. 5711 (authority of Secretary). This authority has been delegated to Members of the Board through Rule of Practice 711 (38 CFR 20.711), which also sets forth the relevant procedures, and generally provides that subpoenas will be issued pursuant to a motion filed with the Board, which is in turn decided by a Board Member or panel of Members.

The changes in this document relate to: (1) Where such a motion must be filed; (2) ruling on the motion; (3) service of a subpoena; (4) motions to quash or modify subpoenas; and (5) enforcing compliance with a subpoena.

Where the Motion Is Filed

Rule 711(c) would be amended to provide that motions for subpoenas must be filed at the Board's offices in Washington, DC.

When originally issued in 1992, Rule 711 permitted the Chairman of the Board and, under certain circumstances, Directors of VA field facilities to rule on motions for subpoenas. See 38 CFR 20.711(e) (1992). The Rule was amended in 1996 to transfer authority to rule on subpoena motions to Members of the Board to comply with changes in 38 U.S.C. 7102. See 61 FR 20447 (1996). However, corresponding provisions in paragraph (c) of the Rule allowing

subpoena motions to be filed with VA facility Directors were not removed. Local filing may not allow a motion to reach the Board early enough to permit timely issuance of a subpoena. VA proposes removing the provision for local filing.

Ruling on the Motion

VA proposes amending Rules 711(e) and 711(h) to provide that the issue of the costs of producing documents pursuant to a subpoena will be a matter for a motion to quash or amend, rather than a potential condition of issuing the subpoena.

Rule 711(e) now permits a Member of the Board to condition issuance of a subpoena seeking the production of tangible evidence (*subpoena duces tecum*) upon the moving party's advancement of the reasonable cost of producing the evidence. Setting a requirement for paying costs before there is any demand for reimbursement or evidence upon which reasonable costs may be determined is often premature. Accordingly, this provision would be moved to Rule 711(h), relating to motions to quash or modify a subpoena. This will provide a mechanism for getting actual cost disputes and related evidence before the Board. This procedure is similar to the practice of VA's Board of Contract Appeals. See 38 CFR 1.783(u)(4). In addition, Rule 711(e) would specify the forms to be used for issuing the subpoena, if the motion is granted.

Service of the Subpoena

VA proposes amending Rules 711(f) and 711(g) to delete the reference to "the official issuing the subpoena," since, under the Board's Rules of Practice, subpoenas are issued only by Members of the Board pursuant to a motion to the Board.

Motions to Quash or Modify Subpoenas

VA proposes amending Rule 711(h) to provide that motions to quash or modify a subpoena may be brought by either party, and to provide notice procedures and permit the submission of evidence in such cases.

Current Rule 711(h) does not provide an effective means of getting before the Board disputes between the person subpoenaed and the person who initiated the subpoena where the person who initiated the subpoena is the aggrieved party—for example, disputes about unreasonable demands for reimbursement for costs associated with honoring a subpoena *duces tecum*. Current Rule 711(h) does provide for a motion to quash or modify a subpoena, but only by the person served.

Consistent with the Board of Contract Appeals' practice, see 38 CFR 1.783(u)(4), the motion may now be brought by either party. Other revisions in this part of the Rule include new provisions requiring notice of motions to quash or modify and permitting evidence to be submitted in such proceedings.

Compliance

Proposed new paragraph (i) describes the method used to secure enforcement of the BVA's subpoenas.

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. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 20

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

Approved: February 3, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be 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).

2. Section 20.711 is amended by:

- a. Revising paragraphs (c) and (e);
- b. Revising the second sentence of paragraph (f);
- c. Revising the first sentence of paragraph (g);
- d. Revising paragraph (h); and
- e. Adding paragraph (i).

The revisions and addition read as follows:

§ 20.711 Rule 711. Subpoenas.

* * * * *

(c) *Where filed.* Motions for a subpoena must be filed with the Director of the Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

* * * * *

(e) *Ruling on motion for subpoena—(1) To whom assigned.* The ruling on the motion will be made by the Member or panel of Members to whom the case is

assigned. Where the case has not been assigned, the Chairman, or the Chairman's designee, will assign the case to a Member or panel who will then rule on the motion.

(2) *Procedure.* If the motion is denied, the Member(s) ruling on the motion will issue an order to that effect which sets forth the reasons for the denial and will send copies to the moving party and his or her representative, if any. Granting the motion will be signified by completion of a VA Form 0714, "Subpoena," if attendance of a witness is required, and/or VA Form 0713, "Subpoena Duces Tecum," if production of tangible evidence is required. The completed form shall be signed by the Member ruling on the motion, or, where applicable, by any panel Member on behalf of the panel ruling on the motion, and served in accordance with paragraph (g) of this section.

(f) * * * A subpoena for a witness will not be issued or served unless the party on whose behalf the subpoena is issued submits a check in an amount equal to the fee for one day's attendance and the mileage allowed by law, made payable to the witness, as an attachment to the motion for the subpoena. * * *

(g) * * * The Board will serve the subpoena by certified mail, return receipt requested. * * *

(h) *Motion to quash or modify subpoena*—(1) *Filing procedure.* Upon written motion of the party securing the subpoena, or of the person subpoenaed, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown. Relief may include, but is not limited to, requiring the party who secured the subpoena to advance the reasonable cost of producing books, papers, or other tangible evidence. The motion must specify the relief sought and the reasons for requesting relief. Such motions must be filed at the address specified in paragraph (c) of this section within 10 days after mailing of the subpoena or the time specified in the subpoena for compliance, whichever is less. The motion may be accompanied by such supporting evidence as the moving party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the motion, and any attachments thereto, were mailed to the party who secured the subpoena, or the person subpoenaed, as applicable;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed.

(2) *Response.* Not later than 10 days after the date that the motion was mailed to the responding party, that

party may file a response to the motion at the address specified in paragraph (c) of this section. The response may be accompanied by such supporting evidence as the responding party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the response, and any attachments thereto, were mailed to the moving party;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed. If the subpoena involves testimony or the production of tangible evidence at a hearing before the Board and less than 30 days remain before the scheduled hearing date at the time the response is received by the Board, the Board may reschedule the hearing to permit disposition of the motion.

(3) *Ruling on the motion.* The Member or panel to whom the case is assigned will issue an order disposing of the motion. Such order shall set forth the reasons for which a motion is either granted or denied. The order will be mailed to all parties to the motion. Where applicable, an order quashing a subpoena will require refund of any sum advanced for fees and mileage.

(i) *Disobedience.* In case of disobedience to a subpoena issued by the Board, the Board will take such steps as may be necessary to invoke the aid of the appropriate district court of the United States in requiring the attendance of the witness and/or the production of the tangible evidence subpoenaed. A failure to obey the order of such a court may be punished by the court as a contempt thereof.

(Authority: 38 U.S.C. 5711, 5713, 7102(a))
[FR Doc. 00-3455 Filed 2-14-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY-109-1-200007b; FRL-6533-1]

Approval and Promulgation of State Implementation Plan State: Approval of Revisions to the Kentucky State Implementation Plan;

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Air Pollution Control District of Jefferson County through the Kentucky Natural Resources and Environmental Protection Cabinet for the purpose of establishing a

federally enforceable district origin operating permit (FEDOOP) program. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 16, 2000.

ADDRESSES: All comments should be addressed to Gregory Crawford at the U.S. Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barret Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division at 404/562-9046.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: January 14, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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