committed to ensuring that rural areas will have access to affordable, reliable, advanced telecommunications services, comparable to those available throughout the rest of the United States, to provide a healthy, safe and prosperous place to live and work.

While the Agency is proud of the results it has achieved in Rural America with the Telecommunications Loan Program, it believes that the overall effectiveness of the program can be improved by modifying the existing rules. The change to the current regulation will permit additional financially sound borrowers, who clearly meet the intent of the Telecommunications Loan Program, to be eligible to participate in the program.

Discussion of Changes

Facilities financed by the Loan Program are typically constructed over a five year period (Forecast Period). The feasibility studies used to demonstrate that an applicant is eligible for a loan and can repay it assumes this Forecast Period. The feasibility study is also used to forecast the applicant's Times Interest Earned Ratio or TIER. The TIER is one measure of an applicant's ability to repay the loan. Currently, the regulation states that applicants must maintain a TIER of at least 1.0 during the Forecast Period. At the end of the Forecast Period, the applicant shall be required to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.0 and not greater than 1.5.

The requirement that an applicant maintain a TIER of at least 1.0 during the Forecast Period, arbitrarily and unfairly disqualifies some applicants from the Loan Program. During the Forecast Period as an applicant constructs facilities, there is always a delay from the time that the construction is initiated to the time that construction is completed and revenues increase based upon the new subscribers connected and new services offered. During this period, it would not be unusual for the applicant's TIER to be less than 1.0. This occurrence is not generally an indicator that the applicant is in financial difficulty, but a direct result of the time lag associated with construction of facilities. In addition, the current provision effectively disqualifies any start up or new entity from qualifying for the Loan Program. In many cases these newer entities, and the rural residents they serve, are the ones that stand to benefit the greatest from the program.

This change would not constitute a loan security risk as an applicant's financial performance is continuously monitored and the advance of loan funds can be suspended should the situation warrant such action. In addition, the applicant would still be required to maintain the projected TIER at the end of the Forecast Period.

List of Subjects in 7 CFR 1735

Loan programs—communications, Rural Areas, Telecommunications and Telephone.

■ For reasons set forth in the preamble, the Agency amends Chapter XVII of title 7 of the Code of Federal Regulations by revising part 1735 as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

■ 1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.*, and 6941 *et seq.*

■ 2. In § 1735.22, paragraph (g) is revised to read as follows:

§ 1735.22 Loan Security.

Subpart B—Loan Purposes

* * * * *

(g) For Loans approved after December 22, 2008, the borrower shall be required to maintain a TIER, at the end of the Forecast Period, at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, which shall be at least 1.0 and not greater than 1.5.

* * * * *

Dated: September 8, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–26318 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900–AM77

Board of Veterans' Appeals: Expedited Claims Adjudication Initiative—Pilot Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is launching an initiative for accelerated claims and appeals processing at four VA facilities, based on voluntary participation by eligible claimants. The purpose of this initiative is to determine whether VA can expedite the processing of claims and appeals by obtaining claimants' waivers of certain statutory and regulatory response periods, and by utilizing the Board of Veterans' Appeals' (Board or BVA) statutory authority to pre-screen cases. VA's responsibility to fully develop and decide cases in a fair, accurate, and non-adversarial manner remains unchanged under this initiative. If this initiative is successful at the four trial sites, the data obtained may provide a basis for expanding some, or all, of the program nationwide, and ultimately help accelerate the processing of all claims and appeals. The parameters of the initiative are set forth in these regulations.

DATES: *Effective Date:* The final rule is effective December 5, 2008.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Principal Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–8078. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 16, 2008 (73 FR 20571), VA proposed to launch an initiative for accelerated claims and appeals processing at four VA facilities. This initiative would establish a 2-year pilot program known as the Expedited Claims Adjudication (ECA) Initiative (Initiative). The goal of the Initiative would be to determine whether VA can expedite the claims and appeals process by obtaining claimants' waivers of certain statutory and regulatory response periods, and by pre-screening cases at the Board to determine the adequacy of the record for appellate review. As proposed, participation in the Initiative would be strictly voluntary, and open to claimants residing in the jurisdiction of one of the four trial sites. Additionally, claimants would be required to be represented by a recognized Veterans Service Organization (VSO) or an accredited agent or attorney at the time of electing to participate in the Initiative. The ECA Initiative would be predicated on the claimant agreeing, at the beginning of the claims process, to waive certain identified statutory and regulatory time limits and processing actions, which would be carefully outlined in an ECA Initiative Agreement and Waiver of Rights (ECA Agreement). ECA participation would be effectuated only if *both* the claimant and his or her representative sign the ECA Agreement, certifying that the claimant has consulted with his or her representative

to determine if participation in the Initiative is in his or her best interest.

A claimant's decision to participate in the ECA would be revocable at any time in the VA claims or appeals process, with no penalty. Rather, as outlined in the notice of proposed rulemaking, upon express or implied revocation of ECA participation, the claimant's case would continue to be processed, from that point forward, using ordinary and established procedures under current statutes and regulations governing claims adjudication. In other words, the claimant's case would essentially continue from the same point in the adjudication process that it was when it left the ECA.

The public comment period ended on June 16, 2008. VA received comments from one individual and from three organizations. For the most part, the comments expressed general disagreement with the basic structure and purpose of the ECA, and raised concerns about the impact the ECA would have on VA's workload, particularly accuracy and quality in decision-making. More specifically, the commenters expressed the following concerns: (1) The effect of the Initiative on decision quality; (2) whether the Board has authority to decide ECA claims out of docket order; (3) time limits under the Initiative; (4) disagreement with the good cause exception in the Initiative; (5) VA's data collection under the Initiative; (6) a challenge to the purpose of the ECA; and, (7) concern over the impact of the ECA on the workload at one of the trial sites. We will address each of these topics in turn. Based on the rationale described in this document and in the notice of proposed rulemaking, VA adopts the proposed rule as revised in this document.

A. Decision Quality

An underlying theme throughout the four comments was that the ECA would degrade decision quality and accuracy. One commenter stated that the Initiative ''appears to elevate speed of adjudication above adequate evidence development and accuracy of decision-making.'' The commenter stated that the Initiative ''does violence'' to the historical non-adversarial and informal nature of the VA adjudication system. The commenter stated the belief that the Initiative would not lead to any improvement to the adjudication system as a whole. Rather, the commenter is ''convinced that the changes the Initiative proposes will cause the creation of inadequately developed records in claims, which will result in inaccurate decisions denying benefits'' and ultimately lead to increased remands in the system to ''undertake corrective development in covered claims.''

Similarly, another commenter expressed hesitancy to support the ECA ''without a guarantee that the quality of the decision rendered will be better than that of a claim adjudicated in the normal manner or that there would be a significant improvement in claims processing time.'' The commenter noted the absence of a quality assurance component for the ECA. The commenter recommended ''that VA devote its time to improving the quality of its adjudications rather than creating ways to circumvent procedural protections.''

We agree that all claimants in the VA adjudication system are entitled to accurate and legally correct decisions based on a fully-developed evidentiary record. We respectfully disagree, however, with the commenters' characterization of the Initiative as promoting speed of adjudication over adequate evidentiary development and administrative efficiency over accuracy. We also disagree with the suggestion that the Initiative would do ''violence'' to the current system. Rather, we believe that this Initiative is a constructive attempt to improve efficiency and timeliness in the VA claims adjudication system.

As discussed in the notice of proposed rulemaking, the essential premise on which the Initiative is based is that there are many procedural rights built into the current VA claims adjudication and appeals process that unnecessarily lengthen the amount of time it takes to process an initial claim or appeal while cases sit without any action occurring while waiting for a statutory or regulatory response period to end. By greatly reducing the amount of time that a case sits without any action occurring while waiting for one of these response periods to run, it is the goal of this 2-year Initiative to provide a model to streamline the claims adjudication and appeals process system wide. Contrarily, it is not the goal of the Initiative to avoid VA's responsibilities to fully and adequately develop and decide cases in a fair and accurate manner, or to change in any other manner the non-adversarial and informal nature of the VA adjudication system.

With respect to evidentiary development, we emphasize that the Initiative leaves intact VA's duty to notify claimants of the information and evidence necessary to substantiate their claims under 38 U.S.C. 5103(a) and 38 CFR 3.159(b)(1), as well as VA's duty to assist claimants in obtaining evidence necessary to substantiate their claims under 38 U.S.C. 5103A and 38 CFR 3.159(c). ECA participants will continue to be provided a notice letter that informs them of the information and evidence needed to substantiate their claim(s) and outlines the claimant's and VA's responsibilities for obtaining such evidence. *See* 38 U.S.C. 5103(a) and 38 CFR 3.159(b)(1). The Initiative also leaves unaltered VA's duty to make reasonable efforts to obtain relevant evidence identified by a claimant, and leaves unchanged VA's duty to provide claimants with a medical examination or obtain a medical opinion when necessary to decide a claim. *See, e.g.*, 38 CFR 3.159(c)(4), 3.326, 3.327. These notice and development requirements are implicitly referenced under § 20.1500(c), which states that any matter not otherwise covered by this subpart will be governed by existing rules.

As the Initiative leaves intact VA's duties to notify and assist, we cannot agree with the commenters' suggestion that the Initiative contains no provision that would ensure that VA adjudicators have a complete and fully developed evidentiary record in covered claims. To the contrary, VA's obligation to adequately develop claims under the Veterans Claims Assistance Act of 2000 (VCAA), *see* 38 U.S.C. 5103 and 5103A, applies to both ECA participants and non-ECA participants alike. Under the ECA Initiative, VA's responsibilities with respect to both obtaining and analyzing identified evidence remain unchanged. Thus, ECA participants run no additional risk of inadequate evidentiary development as compared to other claimants in the VA system.

We also do not agree with the suggestion that the Initiative sacrifices accuracy for speed. It remains VA's goal to provide all claimants, including ECA participants, with high-quality, legally-correct decisions in all claims. No provision in the ECA Initiative runs counter to this goal. Although the Initiative shortens various statutory and regulatory response times to be observed by participants, it does not diminish VA's duty to fully develop the record as mandated by the VCAA, and accurately decide a claim taking into consideration all relevant facts and applicable law. While one of the commenters is correct that quality assurance is not specifically addressed in the proposed regulations, it is not necessary to include such regulations as both the Veterans Benefits Administration (VBA) and the Board already have robust and established quality assurance programs in place that will be equally applicable to ECA cases. Therefore, for the above reasons, we

make no change to the proposed rule based on the concerns raised regarding decision quality and record development.

B. Docket Order

One commenter expressed concern that the Initiative makes no provision for the Board to issue expedited decisions in appeals of covered claims. The commenter suggested that VA adopt a regulation authorizing the Board to ''consider and decide covered claims of participating claimants out of docket order and as soon as practicable upon their transfer to the Board.'' Unless the Board adopts such a provision, the commenter stated, the Initiative will not be successful as claimants will not want to participate in a program that does not ensure faster processing time by the Board. The commenter recognized that, as we explained in the notice of proposed rulemaking, the Board is required by statute to consider appeals in docket order, subject to certain enumerated exceptions. *See* 38 U.S.C. 7107(a) (providing that ''each case received pursuant to an application for review on appeal shall be considered and decided in regular order according to its place on the docket''). The commenter presented two recommendations for the Board to deal with this statutory requirement. First, the commenter proposed that ''VA must ask Congress to enact legislation to authorize the Board to issue expedited decisions in appeals of covered claims.'' Second, the commenter suggested that the Board, pursuant to either 38 U.S.C. 7107 or 38 U.S.C. 501(a), may already have authority to decide ECA appeals out of docket order.

With respect to the commenter's suggestion that VA ask Congress to enact legislation authorizing the Board to decide ECA appeals out of docket order, it was our goal in creating the Initiative to work within the existing statutory framework. While there may be a number of suggested legislative amendments which, if enacted, could potentially improve the VA claims adjudication system, such pursuits are not within the ambit of this rulemaking action or the ECA Initiative. Therefore, we make no changes to the proposed rule based on this suggestion.

We also respectfully disagree with the commenter's suggestion that VA already has the authority to decide ECA cases out of docket order. The commenter specifically argues that ECA cases could be advanced on the Board's docket pursuant to 38 U.S.C. 7107(a)(2). That statutory provision allows the Board to advance a case on its docket ''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 ''for other sufficient cause shown.'' The commenter suggests that the need for expeditious adjudication of ECA appeals constitutes ''other sufficient cause'' for allowing the Board to advance ECA cases on its docket.

We do not agree with the commenter that the need for expeditious adjudication of appeals under the Initiative constitutes ''other sufficient cause'' for advancing ECA cases on the docket, as that phrase is used in 38 U.S.C. 7107(a)(2)(C). Consistent with the limited bases for granting a motion to advance as provided in section 7107(a)(2), the Board has narrowly construed ''other sufficient cause'' as being limited to situations involving either administrative error on the part of VA that resulted in significant delay in docketing the case, or where the appellant is of advanced age (75 or older). *See* 38 CFR 20.900(c).

Any appeal that is advanced on the Board's docket ''goes to the head of the line'' and necessarily delays the consideration of all other pending appeals. For every case advanced on the Board's docket, another appellant whose case has not been advanced must wait longer for his or her decision than otherwise would have been necessary. Decisions to grant motions for advancement on the docket are carefully considered on their individual merits. Although it is important that ECA appeals are decided as quickly as possible, we simply do not believe that the policy concerns inherent in advancing ECA cases are tantamount to those involved in cases where advancement has traditionally been allowed. The ECA Initiative is a 2-year pilot program, which, if successful, may provide a basis for expanding some, or all, of the program nationwide. If and when that occurs, it may be appropriate to reconsider the issue of what would be required to properly permit the advance docketing of ECA appeals. In the meantime, although ECA cases will not be automatically advanced on the Board's docket, nothing in the Initiative precludes participants from filing motions for advancement on the docket where such action is otherwise warranted under 38 U.S.C. 7107(a)(2) and 38 CFR 20.900(c), such as where an appellant is at least 75 years of age or suffers from serious illness or severe financial hardship.

Finally, while ECA cases will not be automatically advanced on the Board's docket, it still is anticipated that the Board's use of its screening authority under 38 U.S.C. 7107(f) will result in cases being finally decided by the Board in a faster manner. Once an appeal reaches its place on the docket, the Board often discovers that additional development is required or that questions remain regarding representation, hearing requests, or waivers of Board review of evidence in the first instance. Substantial delay can result while the Board resolves such matters, particularly where the Board has to remand for additional development. Such delays can often add months or years to the appellate process. By screening ECA cases at the Board under 38 U.S.C. 7107(f), the Board is authorized to take action pursuant to 38 CFR 19.9 including: soliciting a waiver from the participant permitting the Board to review new evidence obtained by VA in the first instance; seeking clarification on matters such as representation and hearing requests; and, where necessary, remanding for further development. The Board's screening efforts in this regard will help to ensure that such matters are resolved *before* an ECA appeal reaches its place on the docket. Thus, when an appeal reaches its place on the docket, the Board should be able to make a final decision on the merits without additional delay, such as would be caused by remanding for further development at that time.

As to the concern raised that claimants will not want to participate in the ECA program unless the Board adopts a provision for advancing such cases on its docket, we simply reiterate that, by pre-screening appeals, cases should be finally decided by the Board more expeditiously than without such early intervention. Moreover, it is noted that, based on longstanding past practice, a majority of cases are resolved before they reach the Board. Most cases processed under the ECA will likewise be resolved at the Agency of Original Jurisdiction (AOJ) level. For those cases that do reach the Board, an earlier docket number will be assigned by virtue of the case having been more quickly processed by the AOJ. For all of the reasons outlined above, we make no change to the proposed rules based on the comments regarding docket order.

C. Time Limits

1. Time Limits on VA

One commenter expressed concern that under the Initiative, ''participating claimants agree to act within certain time-limits, while the VA, except for one instance, does not.'' The commenter stated that, if one of the goals of the Initiative is to ''help accelerate the processing of all claims and appeals,''

VA will help to achieve this goal if it imposes additional time limits on itself under the Initiative. The commenter submits that ''VA must impose time-limits on the four selected VA regional offices and the Board to take necessary action,'' and several specific time limits were suggested. We reject this comment for the following reasons.

While the Initiative places only one time limit on VA, *see* 38 CFR 20.1504(b), this was done to ensure that VA adjudicators are afforded adequate time to gather evidence identified by participants, obtain necessary examinations and medical opinions, and conduct hearings when requested without arbitrary time limits. As the commenter correctly notes, inadequate development can lead to inaccurate decisions, which unfairly deny benefits to deserving claimants. It is therefore critical that all claims processed under the Initiative have fully-developed records including all relevant evidence identified by the participant and any necessary examination reports or medical opinions. While it is certainly helpful for claimants to obtain and submit evidence on their own behalf, the minimal obligation is for a claimant to identify the location of pertinent records and authorize VA to obtain them. In obtaining records from various government and private sources, delays may be experienced in obtaining a response. Given that VA has no control over non-VA organizations and individuals, it is simply not practicable to establish fixed periods of time within which VA must act in this regard, except as otherwise provided in the ECA regulations. In fact, upon further reflection, VA has determined that a limited exception to the time period imposed upon VA in § 20.1504(b) is necessary to ensure fairness and full compliance with the duty to assist. This exception would cover the circumstance when, after issuance of the Statement of the Case (SOC), VA is put on notice of a change in circumstances, such as a worsening of the claimant's condition or the location of previously unobtained relevant evidence. In order to ensure full compliance with the duty to assist under the VCAA, *see* 38 U.S.C. 5103A, VA may have an obligation to order a new examination for the claimant or to obtain copies of the relevant records. However, due to the time required to schedule and conduct a new examination or locate and obtain new records, these actions may make it challenging, if not impossible, for VA to comply with the time limit in § 20.1504(b), which requires VA to certify and transfer the appellate record to the Board no later than 60 days from the date of filing the Substantive Appeal. Consequently, out of fairness to the claimant, we are amending § 20.1504(b) to create an exception to the 60-day time period for certification when VA is required under 38 U.S.C. 5103A and 38 CFR 3.159(c) to provide assistance in obtaining evidence after issuance of the SOC.

The ECA Initiative does contain distinct time periods for claimants to take certain actions, which we believe are reasonable. Claimants are in the unique position of knowing the dates and places where they received medical treatment relevant to their claims. When the claimant adequately notifies VA of relevant evidence and authorizes VA to obtain the evidence, VA then has a duty to assist the claimant in obtaining this evidence. The sooner that the claimant provides VA with this information and authorization, the more complete the record will be at the beginning of the claims process. This is a significant feature of the ECA Initiative—to develop a complete record as early in the process as possible, so that informed and correct decisions may be made.

Although we refrain from establishing any fixed time limits on VA beyond the one outlined in § 20.1504(b), we want to make clear this does not mean that VA intends to unnecessarily delay action on ECA claims. To the contrary, it is our stated intention to develop and adjudicate ECA claims as quickly as possible by greatly reducing the amount of time that a case sits without any action occurring while waiting for a statutory or regulatory response period to end. Further, we also reject the commenter's suggestion that we impose additional time limits on VA because such action is beyond the scope of this rulemaking and the ECA Initiative. The purpose of the ECA is to evaluate whether claims processing can be expedited by claimants' voluntary waiver of certain existing statutory and regulatory response periods and pre-screening of cases by the Board. It is not the goal of the Initiative to study the feasibility of imposing rating deadlines on VA. Accordingly, for the above reasons, we make no change based on the comments received, but we make one change to the time limit in § 20.1504(b), as discussed.

2. Time Limits on Claimants

One commenter stated that the reduced time limits under the Initiative for claimants are likely to result in inadequate records and inaccurate decisions. The commenter noted that several of the time limits to be observed by participants under the Initiative are unduly strict and ''unreasonable,'' particularly the period participants have to respond to a VCAA notice letter and to subsequent VA requests for information and evidence. The commenter stated that claimants and their representatives often have to wait ''weeks or months'' to receive requested treatment records from medical-care providers, and that such a wait would likely result in participants missing the aforementioned deadlines. The commenter also noted that claimants' medical conditions often worsen over time and that treatment records reflecting such increase in symptomatology may not be available until after the VCAA notice response period expires.

Additionally, the commenter stated that evidence submitted after the deadlines in § 20.1504(a)(1) and (2) would not be able to be considered by VA, resulting in unfair denials of worthy claims. Further, the commenter added that ''there is no provision in the VA's proposed regulations that will permit the claimant to submit * * * newly obtained evidence or information to VA since motions for an extension of time to submit necessary information must be filed with VA before the applicable time period runs.'' Finally, the commenter stated that given the difficulties in obtaining medical evidence, VA should not ''penalize'' participating claimants for circumstances outside of their control.

Although in the notice of proposed rulemaking we stated that ECA participants agree to waive the 1-year period provided under 38 U.S.C. 5103(b)(1) and 38 CFR 3.159(b)(1), we wish to correct that statement. There is no such waiver under the ECA. Rather, an ECA participant must, within 30 days, respond to VA's VCAA notice concerning the information and evidence necessary to substantiate a claim. An ECA participant may respond to VA's notice by providing information or evidence in the claimant's possession, identifying necessary evidence that the claimant requires VA's assistance to obtain, or notifying VA that no additional evidence exists. *See* 38 CFR 20.1503(d) (Upon executing the Agreement and Waiver of Rights, the participant will identify all relevant evidence in support of his or her claim(s), including any VA records, non-VA Federal records, and any private records, provide the evidence, or notify VA that such evidence does not exist, within the time prescribed in § 20.1504(a)(1)). If the participant does not respond to VA's notice within 30 days, the implied revocation provisions of § 20.1509(c) apply and the claim will

be decided using ordinary, non-ECA procedures. However, if the participant responds within 30 days to VA's notice of the information and evidence necessary to substantiate the claim, VA will make reasonable efforts to obtain the evidence the participant has authorized the Department to obtain and adjudicate the claim. 38 U.S.C. 5103A; 38 CFR 3.159(c).

Section 3.159(b)(1) of title 38, Code of Federal Regulations, does not require a claimant to respond to VA's notice within 30 days, although VA may decide the claim if the claimant does not respond. It is our experience that often a claimant does not respond to the notice, VA decides the claim, and then the claimant submits relevant evidence. The ECA is designed to short-circuit this time-consuming adjudication process by requiring a claimant to affirmatively advise VA of the existence of relevant evidence, provide VA with such evidence, or advise VA that no other relevant evidence exists or is available, so that, to the fullest extent possible, all available evidence can be compiled before a claim is adjudicated. In order to clarify our intent, we are revising proposed §§ 20.1503(d) and 20.1504(a)(1) and (2) to explain what type of response is required from an ECA participant within the specified periods.

An ECA participant, nonetheless, has, as provided in 38 U.S.C. 5103(b)(1) and 38 CFR 3.159(b)(1), 1 year from the date of the section 5103(a)—notice in which to submit the information and evidence that VA has notified the participant that the participant must provide. *See* 38 CFR 20.1500(c) (any matter not otherwise covered by this subpart will be governed by existing rules in this title). If evidence is received by VA after the SOC is issued, the evidence will not be subject to another AOJ adjudication, but instead may be considered by the Board in the first instance. *See* 38 CFR 20.1508(b).

We are making one additional change to proposed § 20.1504(a)(1) by making the response period 30 days rather than 60 days. This revision to proposed § 20.1504(a)(1) will make it conform to the response period already contained in 38 CFR 3.159(b)(1), as revised by 73 FR 23353, 23356, on April 30, 2008.

In addition, we point out that several of the Initiative's provisions specifically contemplate a participant submitting, and VA considering, evidence after the initial 30-day VCAA notice response period has expired. For example, § 20.1508(b)(2) provides that, if new evidence is submitted by a participant or representative following the issuance of an SOC, the participant will be deemed to have waived AOJ review of such evidence so that the evidence may be considered by the Board in the first instance. Moreover, § 20.1504(a)(6)(iii) allows participants 30 days to submit evidence or argument after their appeals have been certified and transferred to the Board. Any evidence submitted under this provision would necessarily be filed after the 30-day VCAA response period has elapsed.

While participants and their representatives should be as thorough as possible in responding to VCAA notice letters or follow-up information requests, evidence submitted or identified after the expiration of the 30-day response periods will still be considered by the AOJ or the Board, provided such submission is allowed under other provisions of law. The remainder of the comments expressing concern that the ECA will result in inadequate records and inaccurate decisions are rejected for the reasons discussed above.

D. Good Cause Exception

One commenter stated that the ''good cause'' exception for each of the enumerated time limits is unduly strict and should be liberalized to ensure the success of the Initiative. The commenter's primary concern focused on the use of the good cause exception as it relates to the 60-day time period in proposed § 20.1504(a)(1) (now changed to 30-days in the final rule) for responding to a VCAA notice letter under the Initiative. The comment appears to be based on the assumption that VA will not consider evidence submitted after the VCAA notice response period has expired. As explained in section C.2 above, ECA participants do not waive the 1-year period prescribed in section 5103(a). An ECA participant is not required to submit all evidence relating to their claim within 30 days of the date of VA's section-5103(a) notice. Rather, as explained above, what we intend is that an ECA participant will be required to respond to VA's notice either by providing the evidence requested, identifying evidence relevant to substantiating the claim and authorizing VA to obtain the evidence, or notifying VA that no such evidence exists.

ECA participants are not necessarily required to *submit* any evidence at all within the response period in § 20.1504(a)(1) or (2), though they are free to do so. All a participant has to do to comply with the notice response period(s) is to affirmatively *respond* by identifying the relevant evidence then in existence and authorizing VA to obtain such evidence or notifying VA that no such evidence exists. *See* 38 CFR 20.1503(d). It is then *VA's* responsibility to make reasonable attempts to obtain relevant evidence identified by the ECA participant, including any private evidence that the claimant adequately identifies and authorizes VA to obtain. 38 U.S.C. 5103A(b). Therefore, because a sufficient response to a VA request for information and evidence only requires the identification of relevant information or evidence, if any, within the allowed response period, along with providing VA with authorization to obtain the same, we disagree with the commenter's suggestion that the good cause exception as provided for in § 20.1509(e), as it applies to responding to VA's section-5103(a) notice, is inadequate as drafted.

Because participants are not barred from submitting additional evidence following the expiration of the response periods set forth in § 20.1504(a)(1) and (a)(2), an extension motion is not required to submit evidence after those periods have expired. An extension motion, as described in § 20.1509(e), is *only* needed if the participant wishes to extend a time limit in subpart P, most of which consist of response times. *See* 38 CFR 20.1504(a).

Finally, it is noted that the commenter seems to take an unduly restrictive interpretation of the situations for which a motion for extension of time may be granted pursuant to § 20.1509(e). While examples are provided of situations in which good cause may be found, such as ''illness of the participant or the representative of such severity that precludes action during the period,'' the proposed regulation specifically states that the examples of good cause provided ''include, but are not limited to,'' the enumerated examples. Accordingly, provided that a participant makes a timely request for an extension of time with adequate showing of good cause, the participant may obtain an extension of time. Accordingly, for all of these reasons, we make no change to the proposed rule based on this comment.

E. Data Collection

One commenter expressed concern regarding VA's data collection activities under the Initiative. The commenter stated that it is ''essential that good work load data and other management data be collected * * * and that this information be used internally and made available publicly so that the Initiative's new procedures can be carefully evaluated on an ongoing basis.'' The commenter suggested several pieces of information that

should be tracked, including ''the number of claimants that volunteer for the program, how long each stays in the program, if they are voluntarily or involuntarily dismissed from the program, and what results are reached.'' The commenter also suggested that data collected at participating VA regional offices be compared to that obtained at a control group of non-participating offices.

While we wholeheartedly agree with the commenter that comprehensive data collection will be critical to accurately evaluate the success of the Initiative, the description of such data collection efforts is not necessary or appropriate for inclusion in this rulemaking action. Suffice it to say, we plan to gather a wide variety of information throughout the course of the Initiative to ensure that all aspects of the pilot program are carefully reviewed and evaluated. As the commenter suggests, the information we intend to track includes, among many other things, the number of participants, the number of instances of revocation of participation, processing times, and the ultimate disposition of ECA claims. We plan on tracking customer satisfaction with the ECA to help assess the strengths and weaknesses of the Initiative. Moreover, we intend to compare all data collected regarding ECA participants with data from claimants who did not elect ECA participation. All data collected and reports generated as part of the Initiative will be obtainable by the public in the same manner and means as other VA data and reports. Accordingly, we make no change to the proposed rule based on this comment.

F. The Need for the ECA

One commenter questioned the need for the ECA, pointing out that there was no discernable advantage that claimants would receive from participation in the ECA, ''other than that which would be expected to naturally flow from submitting procedural documents and evidence as soon as practicable.'' The commenter suggested ''that the RO speed up the certification and transfer time to the BVA, unilaterally, and encourage claimants to unilaterally proceed with their appeal as quickly as possible, without the necessity of waiving procedural defects and without the need for rule changes.'' For all of the many reasons already discussed above, as well as in the notice of proposed rulemaking, VA respectfully disagrees with the assertion that claimants will not benefit from participating in the ECA. Moreover, because the Initiative is specifically designed as a 2-year pilot project at a limited number of VA facilities, the data collected during this period of time will enable a more fully informed assessment of the success and weaknesses of the Initiative to be made, including whether it should be further expanded.

In addition, it is noted that participation in the ECA will be entirely voluntary. Accordingly, any claimant who does not feel comfortable participating in the program, or does not feel that participation would be advantageous, is free to proceed under the existing VA claims adjudication and appeals process. Further, any ECA participant will be able to opt out of the Initiative at anytime without any negative consequences for doing so. Instead, the claim or appeal will simply be returned to the normal claims adjudication and appeals process at the point at which the participant withdrew from the program. Thus, participation could never be disadvantageous to a claimant.

Finally, as correctly noted by another commenter, the ECA Initiative does not change VA's basic obligation to assure that the varying parts of its benefits programs ''work together to give prompt, efficient, fair, and accurate service to disabled veterans and other claimants for VA benefits.'' We agree with this proposition. As discussed at length above, the Initiative leaves intact VA's duties to notify claimants of the information and evidence needed to substantiate their claim, and VA's duty to assist claimants in obtaining relevant evidence, including securing a VA examination when required by existing law. At every point in the Initiative, the paternalistic and non-adversarial nature of the VA claims adjudication system is preserved. Thus, for all of the above reasons, we make no changes based on these comments.

G. The Impact of the ECA on Workload at Trial Sites

Finally, one commenter expressed concern that the ECA Initiative would have an adverse impact on the overall workload at the Philadelphia regional office, which is one of the trial sites. He noted that Philadelphia currently handles many cases that are ''brokered'' from the Boston regional office, and stated that the addition of ECA cases to Philadelphia's workload will negatively impact the processing of the brokered cases. The commenter also raised some general concerns with VBA's case brokering process that are beyond the scope of this rulemaking action and will not be further addressed here.

We respectfully disagree with the commenter's concerns. To be eligible to participate in the Initiative, a claimant must reside within the jurisdiction of one of the four participating VA regional offices (the jurisdiction of each of the four participating regional offices is specifically outlined in § 20.1501(e)). As a result of this requirement, the Philadelphia regional office would only be allowed to handle ECA claims from participants who already reside within the jurisdiction of that office. Such claims would already have been the responsibility of the Philadelphia regional office, regardless of a claimant's decision to participate in the Initiative. Because ECA participants are taken from the same pool of claimants already being served by the four respective participating regional offices, the Initiative simply will not increase the number of claims handled by each office, and therefore will not have an impact on the overall workload of any of the test sites, including the Philadelphia regional office. Moreover, even in the unlikely event that Philadelphia's workload did increase, VBA would be free, at the discretion of management, to reduce or discontinue the brokering of cases to that office and instead broker Boston cases to another facility. We make no changes to the proposed rule based on these comments.

H. Technical Amendments; Pilot Site Change

In addition to the revisions discussed above, we are making three minor technical changes to the proposed rule, and one change regarding the pilot sites. First, we are changing the language in § 20.1500(d) to more clearly set forth the effective date of the Initiative. Second, we are making a minor revision to § 20.1501(d) to clarify that representatives of ECA participants must be accredited by VA. *See* 38 CFR 14.631. Third, we are adding a cross-reference and brief discussion to § 20.1508(b)(1) to more clearly indicate that an implied revocation from the Initiative will occur if a participant does not agree to waive initial consideration by the agency of original jurisdiction of any new evidence obtained by VA following the issuance of a Statement of the Case. *See* 38 CFR 20.1509(c)(2).

In addition to the foregoing, we are changing one of the four pilot sites due to increased workload that has arisen at the St. Paul regional office since publication of the NPRM. The St. Paul, Minnesota regional office will no longer be involved in the ECA pilot program. Rather, the regional office in Lincoln, Nebraska, will be one of the four pilot sites. The jurisdiction of the Lincoln regional office extends to the entire State of Nebraska.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this 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. It will not affect any small organizations or small governmental jurisdictions, and will not have a significant economic impact on these small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirement of 5 U.S.C. 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866, as it raises novel legal or policy issues arising out of legal mandates.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any 1 year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116, Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: August 20, 2008.

James B. Peake,

Secretary of Veterans Affairs.

■ For the reasons set forth in the Preamble, VA amends 38 CFR parts 3 and 20 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, Subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Add § 3.161 to read as follows:

§ 3.161 Expedited Claims Adjudication Initiative—Pilot Program.

Rules pertaining to the Expedited Claims Adjudication Initiative Pilot Program are set forth in part 20, subpart P, of this chapter.

(Authority: 38 U.S.C. 501(a))

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

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

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

■ 4. Add subpart P to read as follows:

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

Sec.

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

§ 20.1500 Rule 1500 Expedited Claims Adjudication Initiative.

(a) *Purpose.* The Expedited Claims Adjudication Initiative is a pilot program designed to streamline the claims adjudication and appeals process. This subpart establishes procedures governing this Initiative.

(b) *Outline of Initiative.* This Initiative allows eligible claimants to voluntarily participate in an alternative claims

adjudication program as set forth in this subpart, which is predicated on the claimant's waiver of certain identified statutory and regulatory time limits, procedural rights, and processing issues that may arise.

(c) *Scope.* Except as specifically provided in this subpart, claims processed under this Initiative will be adjudicated according to the procedures outlined in part 3 of this chapter, and appeals will be processed according to the Appeals Regulations and Rules of Practice, as outlined in parts 19 and 20 of this chapter. Any matter not otherwise covered by this subpart will be governed by existing rules in this title.

(d) *Duration.* The Secretary will accept an executed Agreement and Waiver of Rights as provided in § 20.1503 of this part for a period not to exceed 2 years from December 5, 2008.

(Authority: 38 U.S.C. 501(a))

§ 20.1501 Rule 1501. Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Initiative* means the Expedited Claims Adjudication Initiative as promulgated by this subpart.

(b) *Participant* means any eligible claimant who elects to participate in the Initiative by executing, with his or her representative, an Expedited Claims Adjudication Initiative Agreement and Waiver of Rights as provided in § 20.1503 of this part.

(c) *Covered claim or covered claims* means any claim or claims, as described in § 20.1502(c) of this part, that a participant elects to have processed under the rules governing the Initiative, including any downstream element of the claim(s), such as assignment of a disability rating and effective date, and any claim that is inextricably intertwined with a covered claim.

(d) *Representative* means an accredited representative of a recognized Veterans Service Organization or an accredited attorney or agent, as set forth in part 14 of this chapter, for whom a claimant has properly executed and filed a VA Form 21–22, ''Appointment of Veterans Service Organization as Claimant's Representative,'' or a VA Form 21–22a, ''Appointment of Individual as Claimant's Representative,'' as required by § 14.631 of this chapter.

(e) *Participating VA regional office* means one of the following four VA regional offices: Nashville, Tennessee; Lincoln, Nebraska; Seattle, Washington; and Philadelphia, Pennsylvania. The jurisdiction of the Nashville, Lincoln, and Seattle regional offices extends to residents of Tennessee, Nebraska, and Washington, respectively. The jurisdiction of the Philadelphia regional office extends to residents of the 40 easternmost counties of Pennsylvania and residents of the seven southernmost counties of New Jersey. For purposes of this Initiative only, the jurisdiction of these regional offices extends only to a covered claim, as described in § 20.1502(c) of this part.

(Authority: 38 U.S.C. 501(a))

§ 20.1502 Rule 1502. Eligibility.

To participate in the Initiative, a claimant must:

(a) At the time the Agreement and Waiver of Rights is executed, have a representative, as defined in § 20.1501(d) of this part;

(b) Reside within the jurisdiction of a participating VA regional office, as defined in § 20.1501(e) of this part; and

(c) File one of the following types of claims for VA disability compensation as outlined in parts 3 and 4 of this chapter at a participating VA regional office:

(1) Original claim;

(2) Claim for an increased rating;

(3) Claim to reopen a previously-denied claim based on the submission of new and material evidence as provided in § 3.156 of this chapter; or

(4) Requests for revision of a decision of an agency of original jurisdiction under § 3.105 of this chapter based on clear and unmistakable error.

(Authority: 38 U.S.C. 501(a))

§ 20.1503 Rule 1503. Election, identification of evidence, and representation.

(a) *When and how election made.* Upon the filing of a claim described in § 20.1502(c) of this part, VA will promptly notify the claimant in writing of the opportunity to participate in the Initiative and provide the claimant with an Agreement and Waiver of Rights. A claimant may elect to participate in the Initiative by filing an executed Agreement and Waiver of Rights as provided in paragraphs (b) and (c) of this section within 30 days of the date of the notice of the opportunity to participate in the Initiative. An election to participate in the Initiative can be revoked at any time in accordance with § 20.1509 of this part.

(b) *Execution of agreement.* To participate in the Initiative, a claimant and his or her representative must execute an Agreement and Waiver of Rights on a form prescribed by the Secretary. The claimant will specifically identify in the Agreement and Waiver of Rights all claims he or she wishes to have processed under the Initiative.

(c) *Where to file.* The executed Agreement and Waiver of Rights must be filed with the participating VA regional office that has jurisdiction over the claim.

(d) *Identification of relevant evidence.* Upon executing the Agreement and Waiver of Rights, the participant will respond, within the time period prescribed in § 20.1504(a)(1), to VA notice regarding the information and evidence necessary to substantiate the claim by identifying all relevant evidence in support of his or her claim(s), providing the requested evidence, or notifying VA that no such evidence exists. Relevant evidence may include any VA records, non-VA Federal records (such as Social Security disability records), and any private records (such as treatment records from a family physician). If the participant requires assistance from VA in obtaining any identified records, the participant will provide VA, upon request, the appropriate release form so VA may attempt to promptly obtain the records on behalf of the participant. VA must receive the necessary information and evidence requested from the participant within 1 year of the date of the notice, in accordance with § 3.159(b)(1) of this chapter.

(e) *Effect of change in representation on the election.* If a participant changes or terminates representation after having made a valid election to participate in the Initiative, participation in the Initiative will continue under the terms of the signed Agreement and Waiver of Rights, unless the participant indicates, in writing, pursuant to § 20.1509(b) of this part, that he or she wishes to revoke participation.

(Authority: 38 U.S.C. 501(a))

§ 20.1504 Rule 1504. Time limits.

The following time limits will be applicable to all covered claims:

(a) *Time limits to be observed by the participant.* The participant will comply with the following time limits for all covered claims:

(1) *Response to initial notice letter.* The time limit for responding to the notification regarding the information and medical or lay evidence necessary to substantiate a claim in the manner required by § 20.1503(d) will be 30 days.

(2) *Subsequent requests by VA for additional information and evidence.* The time limit for responding to any subsequent request by VA for additional information or evidence, either by notifying VA of the existence of such information or evidence, providing such evidence, or notifying VA that no such evidence exists, will be 30 days.

(3) *VA request for waiver.* The time limit for responding to a VA request for waiver as set forth in § 20.1508 of this part, will be 30 days.

(4) *Notice of Disagreement.* The time limit for filing a Notice of Disagreement pursuant to § 20.302(a) of this part will be 60 days.

(5) *Substantive Appeal.* The time limit for filing a Substantive Appeal pursuant to § 20.302(b) of this part will be 30 days.

(6) *Following certification of appeal to the Board.* Following the issuance of notification that the appeal has been certified and transferred to the Board, the time limit for taking the following actions pursuant to § 20.1304 of this part will be 30 days:

(i) Request a hearing before the Board,

(ii) Request a change in representation, or

(iii) Submit additional evidence or argument.

(b) *Time limit to be observed by the participating VA regional office.* The participating VA regional office shall certify covered claims and transfer the appellate record to the Board as set forth in §§ 19.35 and 19.36 of this chapter within 30 days of the receipt of the Substantive Appeal, or within 30 days of receipt of any additional submissions following the Substantive Appeal, but no later than 60 days from the receipt of the Substantive Appeal. However, if, after issuance of the Statement of the Case, additional assistance in obtaining evidence is required in order to comply with § 3.159(c) of this chapter, the participating VA regional office shall certify covered claims and transfer the appellate record to the Board within 60 days after the requisite action is completed.

(Authority: 38 U.S.C. 501(a) and 5103A)

§ 20.1505 Rule 1505. Review of initial benefits claim decision.

If a participant files a Notice of Disagreement as to a covered claim, the decision of the participating VA regional office will be reviewed by a Decision Review Officer under the provisions set forth in § 3.2600 of this chapter.

(Authority: 38 U.S.C. 501(a))

§ 20.1506 Rule 1506. Board review of cases.

(a) The Board will screen cases that are certified and transferred to the Board under the Initiative to determine whether the record is adequate for decisional purposes. If the Board determines that the record is inadequate, the Board will take appropriate action pursuant to § 19.9 of this chapter.

(b) A case screened by the Board for purposes of determining the adequacy of the record will be decided in docket order and will not be advanced on the Board's docket except as provided in § 20.900(c) of this part.

(Authority: 38 U.S.C. 7107(a), (f))

§ 20.1507 Rule 1507. Hearings.

(a) *Before the participating VA regional office.* Upon request, a participant is entitled to a hearing by a Decision Review Officer before the participating VA regional office as provided in §§ 3.103(c) and 3.2600(c) of this chapter, subject to the following limitations:

(1) No hearing will be conducted prior to the initial adjudication of the claim by the participating VA regional office.

(2) Only one hearing on a claim will be conducted at the participating VA regional office and the hearing will be conducted by a Decision Review Officer in accordance with § 3.2600 of this chapter.

(b) *Before the Board.* Upon request, a participant is entitled to a hearing before the Board as provided in §§ 20.700 through 20.717, and 20.1304, subject to the following limitations:

(1) Only one hearing before the Board will be conducted.

(2) After consultation with the participant and his or her representative, the Board will determine whether the hearing will be conducted in person in Washington, DC, at the participating VA regional office with jurisdiction over the claim, or by electronic equipment as set forth in § 20.700(e) of this part. The Board's determination will be based primarily on the type and place of hearing which will allow for scheduling at the earliest possible date. An in-person hearing will be conducted in Washington, DC, only if geographically convenient for the participant and his or her representative, or if the participant agrees to travel to Washington, DC, at his or her own expense.

(Authority: 38 U.S.C. 501(a))

§ 20.1508 Rule 1508. Waiver.

(a) *General.* When requested by VA, a participant will waive, in writing, identified procedural processing issues and actions relating to covered claims. VA will provide the participant with a clear explanation, in writing, as to what rights he or she may be waiving. If a hearing on appeal is conducted, the waiver may be formally and clearly entered on the record at the time of hearing. A response to a written waiver request from VA must be filed within the 30-day period prescribed in § 20.1504(a)(3) of this part. Such waiver is not required for matters that have already been waived by virtue of electing participation in the Initiative.

(b) *Evidence obtained or submitted after the Statement of the Case.*

(1) *Evidence obtained by VA.* If new evidence is obtained by VA following issuance of a Statement of the Case under §§ 19.29 and 19.30 of this chapter, and the claim(s) is not otherwise granted in full based on this new evidence, VA will provide a copy of such evidence to the participant and representative, and request a waiver of review by the agency of original jurisdiction of such evidence and issuance of a Supplemental Statement of the Case pursuant to the provisions set forth in § 20.1304(c) of this part. A response to a written waiver request from VA must be filed within the 30-day period prescribed in § 20.1504(a)(3) of this part. The failure of the participant to agree to a waiver of initial consideration by the agency of original jurisdiction of any evidence obtained by VA will constitute an implied revocation of participation in the Initiative, as provided by § 20.1509(c)(2).

(2) *Evidence submitted by participant or representative.* If new evidence is submitted by the participant or representative following issuance of a Statement of the Case under §§ 19.29 and 19.30 of this chapter, the participant, by virtue of executing a valid Agreement and Waiver of Rights, is deemed to have knowingly and voluntarily waived agency of original jurisdiction review of such evidence and issuance of a Supplemental Statement of the Case, which permits the Board to review such evidence in the first instance.

(Authority: 38 U.S.C. 501(a))

§ 20.1509 Rule 1509. Compliance and revocation of participation.

(a) Unless the participant revokes his or her participation in the Initiative as provided in paragraphs (b), (c) or (d) of this section, all covered claims will continue to be processed by VA or the Board in accordance with the provisions of this subpart until a final decision of the agency of original jurisdiction or the Board has been issued.

(b) *Express revocation.* A participant may revoke participation in the Initiative at any time by submitting a revocation request in writing. The revocation request must be filed with the participating VA regional office unless the case has been certified and

transferred to the Board, in which case the revocation request should be filed with the Board. As of the date of receipt of the revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative.

(c) *Implied revocation.* The failure of a participant to meet the terms of these rules, as outlined in the executed Agreement and Waiver of Rights, will have the same result as if the participant had expressly revoked his or her participation in the Initiative. As of the date of the action constituting such implied revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative. Grounds for implied revocation of participation include, but are not limited to:

(1) The failure of the participant or representative, as appropriate, to comply with any of the time limits set forth in § 20.1504(a) of this part;

(2) The failure to waive initial consideration by the agency of original jurisdiction of any evidence obtained by VA that was not considered in the Statement of the Case;

(3) A request by a participant or representative for an extension of any of the time limits set forth in § 20.1504(a) of this part, unless a motion for good cause is granted, as described by paragraph (e) of this section; and

(4) Any other failure on the part of the participant to comply with the terms of the Agreement and Waiver of Rights, as determined by VA.

(d) *Death of participant.* If a participant dies while his or her claim is being processed, participation in the Initiative will be deemed revoked.

(e) *Extensions.* Extensions of any of the time limits described in this subpart may only be granted when the participant demonstrates on motion that there is good cause for the extension request. At no time may time periods be extended beyond those provided by law to all claimants and appellants. Examples of good cause include, but are not limited to, illness of the participant or the representative of such severity that precludes action during the period; death of an individual representative; illness or incapacity of an individual representative that renders it impractical for a participant to continue with him or her as representative; or withdrawal of an individual representative. Motions for extensions must be filed prior to the expiration of the time period for which a motion is being requested. Motions must be in writing, and filed with the participating VA regional office that has jurisdiction over the claim, unless the case has been certified and transferred to the Board, in which case the motion must be filed with the Board. Motions must include the name of the participant, the applicable Department of Veterans Affairs file number; and an explanation as to why the extension request is being made.

(Authority: 38 U.S.C. 501(a))

§ 20.1510 Rule 1510. Termination of the Initiative.

VA may terminate the Initiative at any time. In the event of such termination, VA will notify participants and their representatives in writing and inform them that any covered claims will be processed from the date of termination in the same manner as if the participant had not elected to participate in the Initiative.

(Authority: 38 U.S.C. 501(a))

[FR Doc. E8–26310 Filed 11–4–08; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2008–0495; FRL–8737–9]

Withdrawal of the Federal Water Quality Standards Use Designations for Soda Creek and Portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Withdrawal of direct final rule.

SUMMARY: EPA is promulgating the withdrawal of the Federal water quality standards designating cold water biota uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho. EPA published a direct final rule with a parallel proposal for this action on August 19, 2008. EPA is withdrawing the direct final rule prior to its effective date because EPA received comments that could be viewed as adverse. The Federal water quality standards designating cold water biota uses are no longer necessary since EPA approved Idaho's adopted uses that result in protection for cold water biota. EPA is also promulgating the withdrawal of the water quality standards variance provision applicable to these uses, because this provision is no longer necessary given the withdrawal of the Federal water quality standards designating these uses.

DATES: Effective November 5, 2008, EPA withdraws the direct final rule published at 73 FR 48300, on August 19, 2008. The effective date of this final rule is December 5, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2008–0495. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed on the Web site, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at two docket facilities. The OW Docket Center is open from 8:30 until 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, and 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Publicly available docket materials are also available in hard copy at U.S. EPA, Region 10, and 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (206) 553–1834.

FOR FURTHER INFORMATION CONTACT: Danielle Salvaterra, U.S. EPA Headquarters, Office of Water, Mailcode: 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–1631; fax number: 202–566–0409; e-mail address: *salvaterra.danielle@epa.gov* or Lisa Macchio, U.S. EPA, Region 10, Mailcode: OWW–131, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; telephone number: 206–553–1834; fax number: 206–553–0165; e-mail address: *macchio.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is promulgating the withdrawal of the Federal water quality standards designating cold water biota uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho. EPA published the proposal for this final rulemaking on August 19, 2008. EPA is taking further action to withdraw a direct final rule that EPA published on