

§ 18b.74

38 CFR Ch. I (7–1–10 Edition)

shall become the final decision of VA, and shall constitute “final agency action” within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedures Act), subject to the provisions of §18b.75.

(c) All final decisions shall be promptly served on all parties, and amici, if any.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986; 54 FR 34984, Aug. 23, 1989]

§ 18b.74 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, the party shall make such request in writing. The reviewing authority may grant or deny such requests in his or her discretion. If granted, the reviewing authority will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the agency hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10386, Mar. 26, 1986; 54 FR 34984, Aug. 23, 1989]

§ 18b.75 Review by the Secretary.

Within 20 days after an initial decision becomes a final decision pursuant

to §18b.73(a), or within 20 days of the mailing of a final decision referred to in §18b.73(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of intent to review the decision in whole or in part upon motion. If the Secretary grants the requested review, or serves notice of intent to review upon motion, each party to the decision shall have 20 days following notice of the Secretary's proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this section shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

[35 FR 10760, July 2, 1970, as amended at 51 FR 10387, Mar. 26, 1986]

§ 18b.76 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in §§18b.70 through 18b.76 shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under §18b.50 shall be served on amici.

POSTHEARING DEPARTMENT ACTIONS

§ 18b.77 Final Department action.

(a) The final decision of the administrative law judge or reviewing authority that a school or training establishment is not in compliance will be referred by the reviewing authority to the Secretary for approval as required by §18.10(e) of this chapter. The finding will be accompanied by letters from the Secretary to the House Veterans' Affairs Committee and the Senate Veterans Affairs Committee containing a full report on the circumstances as required by §18.8(c) of this chapter, the reasons for the proposed action and a statement that the proposed action will become the final Department action 30 days after the date of the letter.