

expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

### Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01-001 to read as follows:

#### § 165.T01-001 Safety Zone: Shlofmitz Batmitzvah Fireworks, Hudson River, Manhattan, New York

(a) *Location.* The following area is a safety zone: all waters of the Hudson River within a 360 yard radius of the fireworks barge in approximate position 40°44'49"N 074°01'02"W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective period.* This section is effective from 8:00 p.m. until 9:30 p.m. on Saturday, March 20, 1999. There is no rain date for this event.

#### (c) Regulations.

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: January 27, 1999.

**R.E. Bennis,**

*Captain, U.S. Coast Guard,*

*Captain of the Port, New York.*

[FR Doc. 99-3513 Filed 2-11-99; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 20

RIN 2900-AJ75

### Board of Veterans' Appeals: Rules of Practice—Notification of Representatives in Connection With Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Interim final rule.

**SUMMARY:** This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) relating to challenges to Board decisions on the grounds of "clear and unmistakable error" (CUE). The amendment provides for notification of the party's representative and an opportunity for a response when the Board receives a request for CUE review.

**DATES:** *Effective Date:* This amendment is effective February 12, 1999. Comments must be submitted by March 15, 1999.

**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-AJ75." 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, Department of Veterans Affairs, 810 Vermont Avenue,

NW, Washington, DC 20420, (202) 565-5978.

**SUPPLEMENTARY INFORMATION:** The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 60 Board members, who decide 35,000 to 40,000 such appeals per year.

On January 13, 1999, the Department of Veterans Affairs (VA) published a final rule in the **Federal Register**, 64 FR 2134, implementing the provisions of section 1(b) of Pub. L. No. 105-111 (Nov. 21, 1997), which permits challenges to decisions of the Board on the grounds of "clear and unmistakable error" (CUE).

Historically, 90 percent of appellants at the Board are represented. Approximately 75 percent of all appellants are represented by "recognized organizations"—e.g., The American Legion, Disabled American Veterans, Veterans of Foreign Wars of the United States—with offices at the Board's principal offices in Washington, DC. Even though CUE motions under our rules relate, by definition, to prior Board decisions and therefore are likely to be made by represented parties, we believe that not all represented parties will consult with their representatives prior to filing such a motion. Further, we are concerned that not all such parties will take the time, or have the expertise, to familiarize themselves thoroughly with the rules relating to these motions.

Familiarity with the CUE rules is important because of the finality of a Board decision on a CUE motion. As published, the new rules relating to CUE motions incorporate the jurisprudence of the Court of Veterans Appeals. One of the most important aspects is that there is only one challenge on the grounds of CUE available with respect to a particular Board decision on a particular issue: Once the Board has ruled and once the appellate procedures have run their course, a request for revision of the same decision on the grounds of CUE will no longer be considered. *Russell v. Principi*, 3 Vet. App. 310, 315 (1992); 38 CFR 20.1409(c); see also *Allin v. Brown*, 10 Vet. App. 55, 57 (1997) (where court previously determined that there was no CUE in 1971 regional office decision, the question is no longer open for review).

A party's consultation with his or her representative is important because of the finality of a Board decision on a CUE motion. A representative can help in two ways: first, to make the best possible argument to the Board on a

CUE motion; and, second, to advise the party that, under the circumstances, it might be better to withdraw the motion until he or she has had a chance to put together a better argument.

Accordingly, to encourage representatives' participation in CUE motions, we have amended Rule 1405 (relating to disposition of CUE motions) to provide that, when the Board receives a CUE motion from a party, and that party's file reveals that he or she is represented—by an attorney, an agent, an individual or a recognized organization—the Board will take steps to notify the representative that the motion has been filed. Specifically, the Board will provide a copy of the motion to the representative before assigning the motion to a Member or panel. The representative will have 30 days to file any relevant response, including a request that the representative be permitted to review the claims file prior to filing a further response.

We believe that 30 days is sufficient time for an attorney or other representative to contact the party and determine what, if any, additional steps may be necessary. Since a request for CUE review may be withdrawn at any time prior to the issuance of a decision on the motion without prejudice to refile, 38 CFR 20.1404(f), if a representative believed that more time was necessary, withdrawing the motion is a viable alternative. Particularly in light of this alternative, we do not believe that it is necessary or useful to the orderly administration of justice to permit potentially unlimited extensions of time on these motions.

Notwithstanding our concern with a timely response, we understand that a representative may wish to review the record—i.e., the claims file—prior to making a recommendation to the moving party. Accordingly, Rule 1405(a)(2) provides that, if the representative makes an appropriate request prior to the expiration of time allowed, the Board will make arrangements for the representative to review the claims file prior to filing a further response, and permit the representative a reasonable time after making the file available to file a further response.

This interim final rule concerns rules of agency procedure and practice. Further, it provides additional process favorable to affected individuals. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

The Secretary hereby certifies that this rule does 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 affects individuals and does not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

#### List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans, Authority delegations (government agencies).

Approved: February 5, 1999

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is 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. In subpart O, § 20.1405(a) is revised to read as follows:

##### § 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment; notification of representative.*—(1) *General.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this title (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(2) *Notification of representative.* When the Board receives a motion under this subpart from an individual whose claims file indicates that he or she is represented, the Board shall provide a copy of the motion to the representative before assigning the motion to a Member or panel. Within 30 days after the date on which the Board provides a copy of the motion to the representative, the representative may file a relevant response, including a request to review the claims file prior to filing a further response. Upon request made within the time allowed under this paragraph, the Board shall arrange for the representative to have the

opportunity to review the claims file, and shall permit the representative a reasonable time after making the file available to file a further response.

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[IA, KS, NE–066–1066; FRL–6223–9]

#### Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Iowa, Kansas, and Nebraska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** The EPA is revising the format of 40 CFR part 52 for materials submitted by the states of Iowa, Kansas, and Nebraska that are incorporated by reference into their State Implementation Plans (SIP). The regulations affected by this format change have all been previously submitted by the state agencies and approved by the EPA.

This format revision will affect the "Identification of Plan" sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Region VII Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by the EPA or state-submitted materials not subject to incorporation by reference (IBR) review remain unchanged.

**EFFECTIVE DATE:** This action is effective February 12, 1999.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, S.W., Room M1500, Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward West, Regional SIP Coordinator