

litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (32)(e) of Commandant Instruction M16475.IC, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

**List of Subjects in 33 CFR Part 117**

Bridges, Regulations.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.1051(d) is amended by temporarily adding paragraph (4) as follows:

**§ 117.1051 Lake Washington Ship Canal.**

\* \* \* \* \*

(d) \* \* \*

(4) From 5 a.m. on September 4, 2001, to 8 p.m. September 30, 2002, the Ballard Bridge, mile 1.1, need not open both draw leaves for the passage of vessels, including those engaged in towing operations, except at 5 a.m., 11 a.m., and 7 p.m. if at least five hours notice is given or at any time for vessels of 480 gross tons or more if at least one-week notice is provided, other than 7 a.m. to 9 p.m. and 4 p.m. to 6 p.m. Monday through Friday, except federal holidays.

\* \* \* \* \*

Dated: June 5, 2001.

**Erroll Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 01-17107 Filed 7-9-01; 8:45 am]

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 20**

**RIN 2900-AK74**

**Board of Veterans' Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on the Grounds of Clear and Unmistakable Error**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) to provide that, when a motion to revise a Board decision on the grounds of clear and unmistakable error (CUE) fails to provide specific allegations of error, the Board will dismiss the motion without prejudice to refiling. This amendment is made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

**DATES:** *Effective Date:* This interim final rule is effective July 10, 2001. Comments must be received on or before September 10, 2001.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900-AK74." All comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Acting Vice Chairman, Board of Veterans' Appeals (O1C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

**SUPPLEMENTARY INFORMATION:** The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's 57

Members decide about 35,000 to 40,000 cases per year.

In 1999, the Department of Veterans Affairs (VA) published rules implementing the provisions of section 1(b) of Pub. L. No. 105-111 (Nov. 21, 1997), which permit challenges to Board decisions on the grounds of "clear and unmistakable error" (CUE). 64 FR 2134 (Jan. 13, 1999). Those regulations were challenged in the U.S. Court of Appeals for the Federal Circuit. On December 8, 2000, that court upheld all of the challenged regulations with the exception of Rule 1404(b) (38 CFR 20.1404(b)). To the extent that Rule 1404(b) provided that a CUE motion which failed to specifically allege error would be denied, rather than dismissed without prejudice to refiling, the court stated:

We hold that CUE Rule 1404(b) (codified at 38 CFR 20.1404(b)) is invalid because, in conjunction with the CUE Rule 1409(c) (codified at 38 CFR 20.1409(c)), it operates to prevent Board review of any CUE claim that is the subject of a motion that is denied for failure to comply with the pleading requirements of Rule 1404(b). That is contrary to the requirement of 38 U.S.C. 7111(e) that a CUE claim "shall be decided by the Board on the merits."

*Disabled American Veterans v. Gober*, 234 F.3d 682, 704 (Fed. Cir. 2000). See also *id.* at 698-99 (discussion of Rule 1404(b)).

Based on that holding, this document amends Rule 1404(b) to provide that the Board will dismiss such motions without prejudice to refiling. The document also makes conforming changes to Rule 1409(b) (38 CFR 1409(b)) to provide that the dismissal without prejudice of a CUE motion is not a final decision of the Board.

This interim final rule concerns rules of agency procedure and practice. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this interim 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 interim 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; Authority delegations (government agencies).

Approved: June 29, 2001.

**Anthony J. Principi,**

*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) and as noted in specific sections.

2. In § 20.1404, paragraph (b) is revised amended to read as follows:

##### § 20.1404. Rule 1404. Filing and pleading requirements; withdrawals.

\* \* \* \* \*

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refileing under this subpart.

\* \* \* \* \*

3. In § 20.1409, paragraph (b) is revised amended to read as follows:

##### § 20.1409. Rule 1409. Finality and appeal.

\* \* \* \* \*

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part), Rule 1404(b) (§ 20.1404(b)), or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

\* \* \* \* \*

[FR Doc. 01-17137 Filed 7-9-01; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[TX 28-1-7382a; FRL-7008-3]

#### Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** In this direct final action, the EPA is approving the Texas State Implementation Plan (SIP) for the Houston/Galveston Ozone Nonattainment Area (HGA) Vehicle Miles Traveled (VMT) Offset Plan as part of the State's effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State demonstrated that emissions from increases in VMT or numbers of vehicle trips within HGA will not rise above an established ceiling by 2007; thereby not requiring additional transportation control measure (TCM) offsets to prevent an increase in VMT above the ceiling. This action replaces the October 21, 1997 proposed disapproval of the HGA VMT Offset SIP revision previously submitted on August 16, 1994. This action is being taken under sections 110 and 182 of the Federal Clean Air Act, as amended (the Act).

**DATES:** This direct final rule is effective on September 10, 2001, without further notice, unless EPA receives adverse comment by August 9, 2001. If significant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2377. Copies of the relevant material for this notice are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202-2377.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brooke M. Ivener, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7362.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Contents

1. Background
2. State Submittals
3. Analysis of 1997 VMT Plan
4. Comments on the Proposed Disapproval Action

Throughout this document "we," "us," and "our" means EPA.

##### 1. Background

###### What Is a VMT SIP?

Section 182(d)(1)(A) of the Act requires states containing ozone nonattainment areas classified as severe, pursuant to section 181(a) of the Act, to adopt transportation control strategies and TCMs to offset increases in emissions resulting from growth in VMT or numbers of vehicle trips and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's Reasonable Further Progress milestones (section 182(b)(1) and (c)(2)(B)) and attainment demonstration requirements (section 182(c)(2)(A)). Our interpretation of section 182(d)(1)(A) is discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498, the General Preamble). Section 182(d)(1)(A) of the Act requires that states submit the VMT Offset SIP by November 15, 1992, for any severe and above ozone nonattainment area. Texas has one severe ozone nonattainment area, the HGA area, with an attainment deadline of 2007.

##### 2. State Submittals

###### Previous Submittals

On November 13, 1992, the State submitted a committal SIP to EPA for VMT Offset for the HGA nonattainment area. The submittal committed to submitting subsequent SIPs in 1993 and 1994 to parallel development of the 15 percent Rate of Progress (ROP) SIP revision, and to parallel the Post 1996 ROP SIP revision and the demonstration of attainment SIP revision, both due November 1994. On November 12, 1993, and November 6, 1994, the State of Texas submitted revisions to the SIP for the VMT Offset Plan to fulfill the committal SIP requirement. On October 21, 1997, EPA proposed disapproval of the 1993 and 1994 VMT Offset SIP submittals (62 FR 54598). These submittals were no longer accurate since the calculated vehicle emissions relied