it modifies an existing bridge operation regulation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Effective 9 a.m. until 10 a.m. on October 30, 2004, § 117.301 is temporarily suspended and a new § 117.T302 is added to read as follows:

§ 117.T302 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0, shall open on signal; except that from 9 a.m. until 10 a.m. on October 30, 2004, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress.

Dated: August 19, 2004.

R.F. Duncan,

Rear Admiral, U. S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04–20118 Filed 9–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AL77

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as final the proposed rule amending the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board). The final rule removes the Board's authority to develop evidence for initial consideration unless the appellant or appellant's representative waives the right to initial review by the agency of original jurisdiction of new evidence received by the Board. The final rule also redefines ''agency of original jurisdiction'' to refer to the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, depending upon the origin of the appealed decision. This rulemaking is required to simplify the appellate process and to conform to a recent decision from the United States Court of Appeals for the Federal Circuit.

DATES: *Effective date:* October 4, 2004.

Applicability date: The amendments in this final rule will apply to appeals pending before the Board on the effective date of this final rule and to all appeals for which a notice of disagreement is filed on or after the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals is the component of the Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits.

On December 11, 2003, VA published in the **Federal Register** (68 FR 69062), a notice of proposed rulemaking to remove the Board's authority to develop evidence for initial consideration. The proposed rule would require the Board, with certain exceptions, to remand an appeal to the agency of original jurisdiction (AOJ) when there is a need to obtain evidence, clarify the evidence, correct a procedural defect, or take any other action deemed essential for a proper appellate decision. The proposed rule would also provide that the Board may consider additional evidence in the first instance, without remand to the AOJ, when the appellant or appellant's representative waives this procedural right. In addition, the proposed rule would redefine ''agency of original jurisdiction'' to refer to the broad administrative body within VA that governs the office from which the decision on appeal originated. As set forth in the proposed rule, we are adopting the proposed rule as a final rule without change.

We received one comment from a veterans' service organization opposing the amendments in the proposed rule. We do not agree with the commenter's objections.

The veterans' service organization suggests that the proposed rule amending 38 CFR 20.903 and 20.1304(b)(2), insofar as it relates to the Board's consideration of medical opinions obtained by the Board from the Veterans Health Administration (VHA) pursuant to 38 CFR 20.901, exceeds the Board's authority under 38 U.S.C. 7109 and, therefore, is unlawful. This comment actually concerns an interim final rule amending 38 CFR 20.901 (specifically, section 20.901(a) authorizing Board requests for medical opinions from the VHA), which was published on July 23, 2001, in the **Federal Register** (66 FR 38158). This particular comment is more appropriately addressed at length in the final rulemaking notice amending 38 CFR 20.901, which has been published recently in the **Federal Register**.

The commenter's statements specific to the amendments finalized in this document concern 38 CFR 20.903 and 20.1304(b)(2). In 38 CFR 20.903(a), the second sentence is revised to require that a medical opinion obtained by the Board be provided to the appellant and his or her representative, if any, rather than to just the representative. With regard to 38 CFR 20.1304(b)(2), the changes are not substantive and involve removing references to ''paragraph (b) or (c)'' and replacing those references with ''paragraph (a) or (b).'' Since these changes are not relevant to the commenter's concerns, we decline to make changes based on this comment. Accordingly, the proposed rule is adopted as a final rule without change.

Unfunded Mandates

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

The Secretary hereby certifies that this final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: May 3, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR parts 19 and 20 are amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

■ 1. The authority citation for part 19 continues to read as follows:

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

Subpart A—Operation of the Board of Veterans' Appeals

■ 2. Section 19.9 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 19.9 Remand for further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge or panel of Veterans Law Judges shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(b) *Exceptions.* A remand to the agency of original jurisdiction is not necessary for the purposes of:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Consideration of an appeal, in accordance with § 20.903(b) of this chapter, with respect to law not already considered by the agency of original jurisdiction. This includes, but is not limited to, statutes, regulations, and court decisions; or

(3) Reviewing additional evidence received by the Board, if, pursuant to § 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal.

* * * * *

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.38 [Amended]

■ 3. Section 19.38 is amended by removing ''the Board and'' from the third sentence.

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

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

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

■ 5. Section 20.3 is amended by revising paragraph (a) to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.

* * * * *

■ 6. Section 20.903 is amended by:

■ a. Revising the second sentence in paragraph (a);

■ b. Removing paragraph (b);

■ c. Redesignating paragraph (c) as paragraph (b); and

■ d. Revising the first sentence in newly redesignated paragraph (b).

The revisions read as follows:

§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) * * * When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. * * *

(b) * * * If, pursuant to § 19.9(b)(2) of this chapter, the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. * * *

■ 7. Section 20.1304 is amended by:

■ a. In paragraphs (a) and (b)(1)(ii), removing ''paragraph (c)'' from each, and adding, in each place, ''paragraph (d)''.

■ b. In paragraph (b)(2), removing ''paragraph (b) or (c)'' each place it appears, and adding, in each place, ''paragraph (a) or (b)''.

■ c. Redesignating paragraph (c) as paragraph (d).

■ d. Adding new paragraph (c).

■ e. In newly designated paragraph (d), adding a new sentence immediately after ''additional evidence in rebuttal.''

The additions read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

* * * * *

(c) *Consideration of additional evidence by the Board or by the agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, or is submitted by the appellant or representative in response to a § 20.903 of this part, notification, as well as any such evidence referred to the Board by the agency of original jurisdiction under § 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review, unless this procedural right is waived by the appellant or representative, or unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal without such referral. Such a waiver must be in writing or, if a hearing on appeal is conducted, the waiver must be formally and clearly entered on the record orally at the time of the hearing. Evidence is not pertinent if it does not relate to or have a bearing on the appellate issue or issues.

(d) * * * For matters over which the Board does not have original jurisdiction, a waiver of initial agency of original jurisdiction consideration of pertinent additional evidence received by the Board must be obtained from each claimant in accordance with paragraph (c) of this section. * * *

[FR Doc. 04–19693 Filed 9–2–04; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Standards Governing the Design of Wall-Mounted Centralized Mail Receptacles

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule replaces United States Postal Service® (USPS®) Standard 4B, *Receptacles, Apartment House, Mail,* which governs the design of wall-mounted centralized mail receptacles whether utilized in commercial, residential, mixed