

methods by which adequate levels of safety are to be obtained.

(g) *Enforcement.* Violations of this section should be reported to the Captain of the Port, Savannah, at (912) 652-4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the provisions of this section.

Dated: July 3, 2002.

**J.S. Carmichael,**

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

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3 and 13

RIN 2900-AL10

#### Adjudication; Fiduciary Activities— Nomenclature Changes

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) regulations by making nonsubstantive changes. VA is amending its adjudication and fiduciary regulations to replace the titles of Adjudication Division, Adjudication Officer, Veterans Services Division, and Veterans Services Officer, with Veterans Service Center, and Veterans Service Center Manager. Other, nonsubstantive changes are also made. These changes are made for clarity and accuracy.

**DATES:** *Effective Date:* July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Randy A. McKeivitt, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7138.

**SUPPLEMENTARY INFORMATION:** VA is amending its adjudication and fiduciary regulations to reflect the reorganization of the Adjudication and Veterans Services Divisions into Veterans Service Centers and to reflect the elimination of the positions of the Adjudication Officer and the Veterans Services Officer and the creation of the position of the Veterans Service Center Manager. Other nonsubstantive changes are made for clarity.

#### Administrative Procedure Act

This final rule consists of nonsubstantive changes and, therefore,

is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

#### 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 final rule would have no consequential effect on State, local, or tribal governments.

#### 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 regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This rule merely consists of nonsubstantive changes. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

#### List of Subjects

##### 38 CFR Part 3

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

##### 38 CFR Part 13

Surety bonds, Trusts and trustees, Veterans.

Approved: July 3, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR parts 3 and 13 are amended 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.

## PART 3—[AMENDED]

2. Part 3 is amended by:

A. Revising all references to “Adjudication Officer”, except for in § 3.2600(a), or all references to “Veterans Services Officer” or “Veterans’ Services Officer” to read “Veterans Service Center Manager”.

B. Revising all references to “Adjudication Division” to read “Veterans Service Center”.

3. Section 3.353(b)(2) is revised to read as follows:

#### § 3.353 Determinations of incompetency and competency.

\* \* \* \* \*

(b) \* \* \*

(2) Where the beneficiary is rated incompetent, the Veterans Service Center Manager will develop information as to the beneficiary’s social, economic and industrial adjustment; appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter; select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary’s spouse to receive payments as provided in § 13.57 of this chapter; and authorize disbursement of the benefit.

\* \* \* \* \*

#### § 3.850 [Amended]

4. Section 3.850(d), is amended by removing misspelled word “Government”, and adding, in its place, “Government”.

#### § 3.2600 [Amended]

5. Section 3.2600(a) is amended by removing “an Adjudication Officer, Veterans Service Center Manager,” and adding, in its place, “a Veterans Service Center Manager”.

## PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

6. The authority citation for part 13 continues to read as follows:

**Authority:** 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

## PART 13—[AMENDED]

7. Part 13 is amended by:

A. Revising all references to “Adjudication Officer”, or all references to “Veterans Services Officer” to read “Veterans Service Center Manager”.

B. Revising all references to “Veterans Services Officers” to read “Veterans Service Center Managers”.

C. Revising all references to "Veterans Services Officer's" to read "Veterans Service Center Manager's".

D. In § 13.2(a), removing "Office of the Veterans Services Division", and adding, in its place, "Veterans Service Center".

E. In § 13.56(b), removing misspelled word "mange", and adding, in its place, "manage".

F. In § 13.71(a)(3) and (b), removing "to the Adjudication Division" wherever it appears.

G. Revising § 13.108.

The revision reads as follows:

**§ 13.108 Estate equals or exceeds statutory limit; 38 U.S.C. 5503(b)(1).**

(a) *Discontinuance of payments.*

When a veteran, who is rated incompetent by VA and has no spouse or child, is receiving hospital treatment, or domiciliary care, or institutional care by the United States or any political subdivision, with or without charge, and the veteran's estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, the Veterans Service Center Manager will discontinue VA payments, other than insurance, under the provision of § 3.557 of this chapter. In those cases in which the payments have been discontinued, the Veterans Service Center Manager will resume payments when the estate has been reduced to one half the amount specified in § 3.557(b)(4) of this chapter.

(b) *Waiver of discontinuance of payments.* The Veterans Service Center Manager will determine when discontinuance should be waived. Waiver of discontinuance of payments under this paragraph may be granted more than once in any calendar year, but will not exceed a total of 60 days in any calendar year.

(1) The Veterans Service Center Manager may authorize waiver of discontinuance of payments when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority:) 38 U.S.C. 5503(b)(1)(A))

(c) *Apportionment award to dependent parent for care and maintenance.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate equals or exceeds the amount specified in § 3.557(b)(4) of this chapter, an apportionment of the award otherwise payable may be made to a dependent parent based on actual need

as determined by the Veterans Service Center Manager. So much of any monthly remainder of the discontinued payments as equals the amount charged for his or her current care and maintenance in the institution in which treatment or care is furnished may be paid to the institution. This amount may not be more than the amount determined by the Veterans Service Center Manager to be the proper charge as fixed by statute or administrative regulation. The Veterans Service Center Manager will determine the amount of either award.

(Authority: 38 U.S.C. 5503(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

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

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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:** Final rule.

**SUMMARY:** This document affirms an amendment to 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 was made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

**DATES:** *Effective Date:* July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), 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 denial of claims for

veterans' benefits. Among other remedies, appellants may challenge final Board decisions on the grounds that they were the product of clear and unmistakable error (CUE). 38 U.S.C. 7111; 38 CFR 20.1400-20.1411.

On July 10, 2001, VA published in the **Federal Register** at 66 FR 35902 an interim final rule relating to CUE motions. Essentially, that rule modified 38 CFR 20.1404 to provide that, where the motion does not meet the pleading requirements set forth in VA rules, the motion will be dismissed without prejudice to refiling.

We provided a 60-day comment period that ended on September 10, 2000. We received no comments. Based on the rationale set forth in the interim final rule, we adopt those changes as a final rule.

### Administrative Procedure Act

This document without any changes affirm amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

### 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 final rule would have no consequential effect on State, local, or tribal governments.

### 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 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 (RFA), 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.

### List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.