

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Parts 1 and 2**

RIN 2900-AM73

**Transfer of Duties of Former VA Board of Contract Appeals****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

**SUMMARY:** This document removes provisions in Department of Veterans Affairs (VA) regulations concerning VA's former Board of Contract Appeals and provides authority for other hearing officials to hear certain salary offset matters that formerly could be heard by officials of that Board. A new Civilian Board of Contract Appeals was established within the General Services Administration (GSA) to hear and decide contract disputes between certain Government contractors and Executive agencies. The Board of Contract Appeals that existed at VA was terminated and its cases under the Contract Disputes Act of 1978 were transferred to the new Civilian Board of Contract Appeals. These amendments are necessary due to section 847 of the National Defense Authorization Act for Fiscal Year 2006.

**DATES:** *Effective Date:* November 21, 2007.

**FOR FURTHER INFORMATION CONTACT:** William F. Russo, Director, Regulations Management (00REG), Office of Regulation Policy and Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202-273-9515. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** VA's former Board of Contract Appeals had been established under regulations promulgated pursuant to the Contract Disputes Act of 1978, as amended, 41 U.S.C. 601-613, to resolve disputes between VA and its contractors concerning final decisions by VA's contracting officers. VA vested certain other responsibilities in the Chairman and other personnel of the Board of Contract Appeals, consistent with the Contract Disputes Act, as amended.

On January 6, 2006, Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006, was enacted. Effective January 6, 2007, section 847 of that law terminated, among other civilian Boards of Contract Appeals, VA's Board of Contract Appeals and transferred its cases to a new Civilian Board of Contract Appeals vested with authority to, among other things, resolve disputes over decisions of VA

contracting officers and its contractors. The new Civilian Board of Contract Appeals, which is part of GSA, published rules of procedure in an interim rule on July 5, 2007, in the **Federal Register** (72 FR 36794).

VA is removing all provisions currently in our regulations in 38 CFR concerning VA's former Board of Contract Appeals and delegations of authority to its officials, to reflect the termination of VA's former Board of Contract Appeals under the provisions of section 847 and the transfer from VA of certain responsibilities concerning access to that Board's orders.

In 38 CFR 1.552, "Public access to information that affects the public when not published in the **Federal Register** as constructive notice," paragraph (a) currently includes provisions stating that "[a]ll final orders in such actions as entertained by the Contract Appeals Board \* \* \* will be kept currently indexed by the office of primary program responsibility or the Manager, Administrative Services, as determined by the Secretary or designee." Paragraph (b) currently states that "[t]he voting records of the Contract Appeals Board will be maintained in a public reading facility in the Office of the Board in Central Office and made available to the public upon request."

GSA now maintains copies of decisions of the former VA Board of Contract Appeals and these are available on GSA's Web site. Since passage of the Contract Disputes Act of 1978, VA's Board of Contract Appeals (the term which replaced "Contract Appeals Board") had not maintained any voting records. The voting records referred to in § 1.552(b) are stored by the National Archives and Records Administration. This final rule is therefore amending § 1.552 to remove the references to VA's former responsibilities concerning public access to those orders and voting records.

This final rule also amends VA's regulations on administrative wage garnishment (AWG) in 38 CFR 1.923 and Federal salary offset in § 1.983 to remove references to Board of Contract Appeals Administrative Judges or Hearing Examiners as hearing officials in AWG and Federal salary offset proceedings.

In accordance with 31 U.S.C. 3720D and 31 CFR 285.11, VA published the AWG regulation at § 1.923. Paragraph (c) of § 1.923 currently states that the hearing official involved in the AWG proceedings may be any VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official. We are amending § 1.923(c) to remove the reference to the

VA Board of Contract Appeals Administrative Judge or Hearing Examiner.

This final rule also amends 38 CFR 1.983, one of VA's regulations pertaining to Federal salary offset. VA published Federal salary offset regulations at 38 CFR 1.980 through 1.995 in accordance with 5 U.S.C. 5514 and OPM government-wide regulations found at 5 CFR part 550, subpart K. 38 CFR 1.983(b)(8) currently states that a Board of Contract Appeals Administrative Judge or Hearing Examiner shall conduct salary offset hearings for VA employees. Section 1.983(b)(8) goes on to state that a VA Board of Contract Appeals Administrative Judge or Hearing Examiner may also conduct hearings for non-VA employees. VA is in this final rule revising § 1.983(b)(8). The changes remove the references to VA Board of Contract Appeals Administrative Judges or Hearing Examiners as hearing officials. The new provisions concerning who can serve as hearing officials are in accord with 5 U.S.C. 5514(a)(2)(D), which provides that an employee is entitled to a hearing on the existence or amount of the debt, as well as the offset schedule, and that such hearing must be conducted by either an administrative law judge or someone not under the supervision or control of the head of the creditor agency. Therefore, the references to Board of Contract Appeals Administrative Judges or Hearing Examiners are being replaced with references to a VA administrative law judge or a hearing official from an agency other than VA.

**Administrative Procedure Act**

This final rule concerns agency organization, procedure, and practice. The rule merely concerns delegations of authority to agency officers or employees and the removal of procedural provisions concerning the former VA Board of Contract Appeals to reflect the statutory transfer of its functions outside VA. Accordingly, the prior notice and comment and delayed effective date provisions of 5 U.S.C. 553 do not apply to this rule.

**Paperwork Reduction Act of 1995**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

**Regulatory Flexibility Act**

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule because a

notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs 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. This final rule would not directly affect any small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the regulatory flexibility analysis requirements of sections 603 and 604.

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, codified at 2 U.S.C. 1532, requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for this final rule.

#### List of Subjects

##### 38 CFR Part 1

Administrative practice and procedure, Government employees.

##### 38 CFR Part 2

Authority delegations (Government agencies).

Approved: November 14, 2007.

**Gordon H. Mansfield,**

*Acting Secretary of Veterans Affairs.*

■ For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR parts 1 and 2 as follows:

#### PART 1—GENERAL PROVISIONS

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

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

##### § 1.552 [Amended]

■ 2. Amend § 1.552 by:

■ a. In paragraph (a), removing "All final orders in such actions as entertained by the Contract Appeals Board, those" and adding, in its place, "Those".

■ b. Removing paragraph (b).

■ c. Redesignating paragraphs (c) and (d) as new paragraphs (b) and (c), respectively.

##### §§ 1.780 through 1.783 [Removed]

■ 3. Remove the undesignated center heading immediately preceding § 1.780 and remove and reserve §§ 1.780 through 1.783.

##### § 1.923 [Amended]

■ 4. In § 1.923, amend the introductory text of paragraph (c) by removing "VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other".

■ 5. Revise § 1.983(b)(8) to read as follows:

##### § 1.983 Notice requirements before salary offset of debts not involving benefits under the laws administered by VA.

\* \* \* \* \*

(b) \* \* \*

(8) The VA employee's right to request an oral or paper hearing on the Secretary or appropriate designee's determination of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed by the

Secretary. The hearing official for the hearing requested by a VA employee must be either a VA administrative law judge or a hearing official from an agency other than VA. Any VA hearing official may conduct an oral or paper hearing at the request of a non-VA employee on the determination by an appropriately designated official of the employing agency of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a hearing request is filed by the non-VA employee as prescribed by the employing agency.

\* \* \* \* \*

#### PART 2—DELEGATIONS OF AUTHORITY

■ 6. The authority citation for part 2 continues to read as follows:

**Authority:** 5 U.S.C. 302, 552(a); 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections.

##### § 2.4 [Amended]

■ 7. Amend § 2.4 by removing "the Chairman, Board of Contract Appeals;".

■ 8. Amend § 2.5 by:

■ a. Removing paragraph (b).

■ b. Redesignating paragraph (c) as new paragraph (b).

■ c. Revising the authority citation.

The revision reads as follows:

##### § 2.5 Delegation of authority to certify copies of documents, records, or papers in Department of Veterans Affairs files.

\* \* \* \* \*

(Authority: 38 U.S.C. 302, 501, 512).

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R01-OAR-2006-0704; A-1-FRL-8492-1]

##### Approval and Promulgation of Air Quality Implementation Plans; Maine; Emission Statements Reporting and Definitions

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions update Maine's criteria pollutant emissions reporting program and list of terms and associated definitions used in Maine's air pollution