

provision with Pub. L. 102-568. Because these amendments merely restate a statutory provision and make nonsubstantive changes, publication as a proposal for public comment is unnecessary.

Administrative Procedure Act

The substantive changes made by this final rule merely reflect a statutory change contained in Pub. L. 102-568. Accordingly, pursuant to 5 U.S.C. 553, there is a basis for dispensing with prior notice and comment on this final rule and dispensing with a 30-day delay of its effective date.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The catalog of Federal Domestic Assistance program numbers are 64.101, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: September 11, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is 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.

§ 3.55 [Amended]

2. In § 3.55(a)(2) introductory text add “by an individual who, but for the remarriage, would be considered the surviving spouse,” immediately before “shall not bar”.

§ 3.400 [Amended]

3. In § 3.400(u)(3) remove “§ 3.55(e)” and add, in its place, “§ 3.55(b)”.

4. In § 3.400(u)(4) remove “§ 3.55(e)” and add, in its place, “§ 3.55(b)”.

5. In § 3.400(v), the heading, remove “38 U.S.C. 103(d)(2)” and add, in its place, “38 U.S.C. 103(d)”.

6. In § 3.400(v)(3) remove “§ 3.55(b)” and add, in its place, “§ 3.55(a)”.

7. In § 3.400(v)(4) remove “§ 3.55(b)” and add, in its place, “§ 3.55(a)”.

8. In § 3.400(w), the heading, remove “103(d)(3)”.

9. In § 3.400(w) remove “§ 3.55(c) or (d)” and add, in its place, “§ 3.55(a)”.

[FR Doc. 95-25128 Filed 10-10-95; 8:45 am]

BILLING CODE 8320-01-P

38 CFR Part 3

RIN 2900-AH48

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning compensation and pension claims filed by veterans, surviving spouses, or parents. This changes the language for authorizing VA examinations by providing that a VA examination will be authorized where there is a well-grounded claim for disability compensation but where the medical evidence accompanying the claim is not adequate for rating purposes. This more accurately reflects statutory language and caselaw requirements concerning such VA examinations.

DATES: The effective date of this interim final rule is October 11, 1995. Comments must be received on or before December 11, 1995.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or hand-deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001. Comments should indicate that they are in response to “RIN 2900-AH48.” All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001, between the hours 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273-7210.

SUPPLEMENTARY INFORMATION: For many years VA regulations provided that a compensation claim could not be rated without a current VA examination, or a report deemed to be the equivalent of a VA examination. In general, hospital reports (government or private) were deemed to be VA examinations if

otherwise adequate for rating purposes, but private physicians' reports were not.

On July 14, 1994, VA published a final rule in the **Federal Register** (59 FR 35851) amending 38 CFR 3.326 to permit acceptance of a private physician's statement for the purpose of rating claims for increased compensation due to the increased severity of service-connected disabilities. A private physician's statement, however, was still not acceptable for rating an original compensation claim.

On November 2, 1994, the Veterans' Benefits Improvements Act of 1994, Pub. L. 103-446, was signed into law. Section 301 of Pub. L. 103-446 underscored the Secretary of Veterans Affairs' discretionary authority to accept the report of a private physician's examination that is otherwise adequate for rating purposes to establish entitlement to any compensation or pension benefit. A final rule enabling the Secretary to exercise that discretionary authority was published on May 24, 1995 in the **Federal Register** (60 FR 27409). That final rule amended 38 CFR 3.326(d) as well as §§ 3.157, 3.327, and 3.352.

Previously, paragraph (a) of § 3.326 indicated that a VA examination would be authorized where the reasonable probability of a valid claim was indicated in any compensation or pension claim filed by a veteran, surviving spouse, or parent, whether an original or reopened claim or a claim for increase. This document revises paragraph (a) to state that a VA examination will be authorized where there is a “well-grounded claim” for disability compensation or pension but where the medical evidence accompanying the claim is not adequate for rating purposes. We believe this will not cause a substantial change in the criteria for authorizing VA examinations; however, this change is made to more accurately reflect statutory language and caselaw requirements concerning such VA examinations.

The Court of Veterans Appeals has held that scheduling a VA examination may be required as part of VA's duty to assist the claimant under 38 U.S.C. 5107(a), and that the duty to assist attaches when a claim is well-grounded, i.e., when the claim is plausible, meritorious on its own, or capable of substantiation. See, e.g., *Betties v. Brown*, 6 Vet. App. 333, 336 (1993).

The amendments made by this document do not affect the provisions already in the place that require former prisoners of war to be afforded a complete examination at a VA hospital

or outpatient clinic prior to any rating action denying monetary benefits.

Also, nonsubstantive changes are made to delete provisions that no longer apply and to simply and clarify other provisions.

Under 5 U.S.C. 553 there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since the interim rule consists of VA policy and is interpretive in nature.

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 (RFA), 5 U.S.C. 601–612. The interim final rule would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the interim final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: July 31, 1995.

Jesse Brown,

Secretary, Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is 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.

2. Section 3.326 is revised to read as follows:

§ 3.326 Examinations.

For purposes of this section, the term examination includes periods of hospital observation when required by VA.

(a) Where there is a well-grounded claim for disability compensation or pension but medical evidence accompanying the claim is not adequate for rating purposes, a Department of Veterans Affairs examination will be authorized. This paragraph applies to original and reopened claims as well as

claims for increase submitted by a veteran, surviving spouse, parent, or child. Individuals for whom an examination has been scheduled are required to report for the examination.

(b) Provided that it is otherwise adequate for rating purposes, any hospital report, or any examination report, from any government or private institution may be accepted for rating a claim without further examination. However, monetary benefits to a former prisoner of war will not be denied unless the claimant has been offered a complete physical examination conducted at a Department of Veterans Affairs hospital or outpatient clinic.

(c) Provided that it is otherwise adequate for rating purposes, a statement from a private physician may be accepted for rating a claim without further examination.

(Authority: 38 U.S.C. 5107(a))

[FR Doc. 95–25129 Filed 10–10–95; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7164

[ID–943–1430–01; IDI–011668–02]

Partial Revocation of Public Land Order No. 3398; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 1.42 acres of public land withdrawn for the Bureau of Land Management as a stock driveway. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of land through public sale. This action will open the land to surface entry. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT:

Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 3398, which withdrew public land for the Bureau of Land Management as a stock driveway, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 6 N., R. 3 W.,

Sec. 9, lots 8 and 9.

The area described contains 1.42 acres in Gem County.

2. At 9 a.m. on November 13, 1995, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 13, 1995, shall be considered as simultaneously filed at that time.

Dated: September 15, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–25137 Filed 10–10–95; 8:45 am]

BILLING CODE 4310–GG–P

43 CFR Public Land Order 7165

[AK–932–1430–01; AA–65553]

Partial Revocation of Executive Order No. 4410, dated April 1, 1926; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 41.25 acres of public land withdrawn for use by the Coast Guard, Department of Transportation, for the Wrangell Narrows Lighthouse Reserve. The land is no longer needed for the purpose for which it was withdrawn. Upon revocation, the land will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record. The land has been and will remain open to location and entry under the United States mining laws for metalliferous minerals.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 4410, dated April 1, 1926, as amended, which withdrew public land for lighthouse purposes, is hereby revoked insofar as it affects the following described land: