

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: October 19, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Dated: October 19, 2001.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK25

Written and Oral Information or Statements Affecting Entitlement to Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to eliminate the requirement that beneficiaries advise VA of changes affecting entitlement to benefits *in writing*. This allows VA to increase or decrease benefit payments based on information submitted orally or by e-mail, facsimile, or other electronic means and makes it easier for beneficiaries to submit information that they must provide. This document also amends our notice requirements to allow VA to reduce or terminate benefit payments based on information reported orally without issuing a 60-day advance notice, but only under certain conditions that ensure that claimants are not deprived of benefits without adequate notice. This will reduce the amounts of any overpayments created by these actions.

DATES: Effective Date: December 10, 2001.

FOR FURTHER INFORMATION CONTACT:

Donald England, Chief, Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 20, 2001, we published in the **Federal Register** (66 FR 20220–23) a proposed rule to amend the adjudication regulations to permit contemporaneous notice of benefit reductions based on orally-provided evidence of changes in income, marital status or the number of

dependents, affecting their entitlement to benefits, and to establish safeguards to ensure that VA adjusts benefit payments based only on information provided by the beneficiary (or his or her fiduciary) and that the information provided is documented for VA records.

We requested interested persons to submit comments on or before June 19, 2001. We received no comments. Based on the rationale set forth in the proposed rule and in this document, we are adopting the proposed rule as a final rule without substantive change, except that we are adding statements explaining that the information collections are approved by the Office of Management and Budget (OMB) under control number 2900–0624.

Paperwork Reduction Act

VA submitted the information collection provisions contained in this final rule to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The action concerning information collection is to change the allowable means of collection of information. We requested interested parties to submit comments on the collection of information provisions to OMB by June 19, 2001. No comments were submitted. OMB has approved the information collection provisions under control number 2900–0624.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Executive Order 12866

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

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 amendment would not directly affect any small entities. Only individuals could be directly affected. 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, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: September 13, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

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 3.103 is amended by:

A. Revising paragraph (b)(2) heading and revising paragraphs (b)(3) introductory text and (b)(3)(i).

B. Removing “is” from paragraphs (b)(3)(ii), (b)(3)(iv), (b)(3)(v) and (b)(3)(vi).

C. Removing the comma at the end of paragraphs (b)(3)(ii), (b)(3)(iii) and (b)(3)(iv), and adding, in its place, a period.

D. Removing “, or” at the end of paragraph (b)(3)(v) and adding, in its place, a period.

E. Adding paragraph (b)(4).

F. Revising the authority citation at the end of the section.

The addition and revisions read as follows:

§ 3.103 Procedural due process and appellate rights.

* * * * *

(b) * * *
(2) *Advance notice and opportunity for hearing.* * * *

(3) *Exceptions.* In lieu of advance notice and opportunity for a hearing, VA will send a written notice to the beneficiary or his or her fiduciary at the same time it takes an adverse action under the following circumstances:

(i) An adverse action based solely on factual and unambiguous information or statements as to income, net worth, or dependency or marital status that the beneficiary or his or her fiduciary provided to VA in writing or orally (under the procedures set forth in § 3.217(b)), with knowledge or notice that such information would be used to calculate benefit amounts.

* * * * *

(4) *Restoration of benefits.* VA will restore retroactively benefits that were reduced, terminated, or otherwise

adversely affected based on oral information or statements if within 30 days of the date on which VA issues the notification of adverse action the beneficiary or his or her fiduciary asserts that the adverse action was based upon information or statements that were inaccurate or upon information that was not provided by the beneficiary or his or her fiduciary. This will not preclude VA from taking subsequent action that adversely affects benefits.

Authority: 38 U.S.C. 501, 1115, 1506, 5104.

3. In § 3.204(a)(1), the word "written" is removed; and the information collection requirements parenthetical is added immediately preceding the authority citation at the end of the section to read as follows:

§ 3.204 Evidence of dependents and age.

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(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0624.)

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4. A new § 3.217 is added preceding the undesignated center heading "Dependency, Income and Estate":

§ 3.217 Submission of statements or information affecting entitlement to benefits.

(a) For purposes of this part, unless specifically provided otherwise, the submission of information or a statement that affects entitlement to benefits by e-mail, facsimile, or other written electronic means, will satisfy a requirement or authorization that the statement or information be submitted in writing.

Note to paragraph (a): Section 3.217(a) merely concerns the submission of information or a statement in writing. Other requirements specified in this part, such as a requirement to use a specific form, to provide specific information, to provide a signature, or to provide a certified statement, must still be met.

(b) For purposes of this part, unless specifically provided otherwise, VA may take action affecting entitlement to benefits based on oral or written information or statements provided to VA by a beneficiary or his or her fiduciary. However, VA may not take action based on oral information or statements unless the VA employee receiving the information meets the following conditions:

(1) During the conversation in which the information or statement is provided, the VA employee:

(i) Identifies himself or herself as a VA employee who is authorized to receive the information or statement (these are VA employees authorized to

take actions under §§ 2.3 or 3.100 of this chapter);

(ii) Verifies the identity of the provider as either the beneficiary or his or her fiduciary by obtaining specific information about the beneficiary that can be verified from the beneficiary's VA records, such as Social Security number, date of birth, branch of military service, dates of military service, or other information; and

(iii) Informs the provider that the information or statement will be used for the purpose of calculating benefit amounts; and

(2) During or following the conversation in which the information or statement is provided, the VA employee documents in the beneficiary's VA records the specific information or statement provided, the date such information or statement was provided, the identity of the provider, the steps taken to verify the identity of the provider as being either the beneficiary or his or her fiduciary, and that he or she informed the provider that the information would be used for the purpose of calculating benefit amounts.

Authority: 38 U.S.C. 501, 1115, 1506, 5104.

5. Section § 3.256(a) introductory text is amended by removing "in writing"; and the information collection requirements parenthetical at the end of the section is revised to read as follows:

§ 3.256 Eligibility reporting requirements.

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(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0101 and 2900-0624.)

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6. Section § 3.277(b) introductory text is amended by removing "in writing"; and the information collection requirements parenthetical at the end of the section is revised to read as follows:

§ 3.277 Eligibility reporting requirements.

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(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0101 and 2900-0624.)

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BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AK98

Extension of the Presumptive Period for Compensation for Gulf War Veterans' Undiagnosed Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by Persian Gulf War veterans. This amendment is necessary to extend the period within which such disabilities must become manifest to a compensable degree in order for entitlement for compensation to be established. The intended effect of this amendment is to ensure that veterans with compensable disabilities due to undiagnosed illnesses that may be related to active service in the Southwest Asia theater of operations during the Persian Gulf War may qualify for benefits.

DATES: Effective date: November 9, 2001. Comment date: Comments must be received by VA on or before January 8, 2002.

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 electronic mail (e-mail) comments to

OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AK98." All written 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 p.m., Monday through Friday (except holidays).

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: In response to the needs and concerns of veterans of the Persian Gulf War (Gulf War), Congress enacted the "Persian Gulf War Veterans" Benefits Act," Title I of the "Veterans" Benefits Improvements Act of 1994," Pub. L.