

**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefits Administration**

October 3, 2006

Director (00/21)  
VA Regional Offices

In Reply Refer To: 211D

Fast Letter 06-19

SUBJ: Final Rule: Veterans Benefits Act of 2003 and Veterans Benefits Improvement Act of 2004

**Purpose**

A final rulemaking amending the Department of Veterans Affairs adjudication regulations to incorporate certain provisions from the Veterans Benefits Act of 2003 and the Veterans Benefits Improvement Act of 2004 was published in the Federal Register on August 8, 2006 at 71 FR 44915.

Guidance to the field about the Veterans Benefits Act of 2003 was previously provided in Fast Letter 04-01. Guidance about the Veterans Benefits Improvement Act of 2004 was provided in Fast Letter 05-02.

**Background**

The Veterans Benefits Act of 2003 and the Veterans Benefits Improvement Act of 2004, Public Law 108-183 and Public Law 108-454 respectively, added and revised sections of title 38 of the United States Code (U.S.C.), which addresses veterans benefits law. This rulemaking implements those laws by amending VA regulations as further described below.

**§ 3.10**

The Veterans Benefits Improvement Act of 2004 provides for a \$250 increase in the monthly rate of dependency and indemnity compensation to which a

surviving spouse with one or more children below the age of 18 is otherwise entitled. The increased rate is payable for the two-year period beginning on the date on which entitlement to dependency and indemnity compensation commenced. The increase ceases the first month after the month in which all children of the surviving spouse have attained the age of 18. This document amends § 3.10(e) by adding § 3.10(e)(4) to reflect the statutory change. The increase in dependency and indemnity compensation under section 1311(e) is applicable to payments beginning January 1, 2005.

#### 38 CFR 3.1, 3.152, 3.153, and 3.714

The Veterans Benefits Act of 2003 replaced references to the Secretary of Health and Human Services with references to the Commissioner of Social Security, and striking "Department of Health and Human Services" and inserting "Social Security Administration" each time it appears in the provisions. This document amends 38 CFR 3.152(a), 3.153, and 3.714(f) to reflect the statutory changes.

In a similar manner, this document amends 38 CFR 3.1(g)(4), to reflect that the Coast Guard is now under the jurisdiction of the Secretary of Homeland Security, not the Secretary of Transportation.

#### 38 CFR 3.272

The Veterans Benefits Improvement Act of 2004 excluded lump-sum proceeds of a life insurance policy on a veteran from consideration as income for pension purposes. VA's regulation regarding exclusions from income for pension purposes is 38 CFR 3.272. This document amends § 3.272 by adding § 3.272(x) to reflect the statutory changes. New § 3.272(x) is applicable for periods on or after December 10, 2004.

#### 38 CFR 3.309

The Veterans Benefits Improvement Act of 2004 defined a "radiation-risk activity" to include service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000, codified as amended at 42 U.S.C. 7348l (14). This document amends § 3.309(d)(3)(ii) to reflect the statutory change. The amendment is effective as of March 26, 2002.

### 38 CFR 3.362 and 3.800

The Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1151(b) by adding that, where a judgment, settlement, or compromise of a claim specifically designates a portion of the award for the type of benefits provided under chapter 21 or 39 of title 38, United States Code, and VA later awards chapter 21 or 39 benefits, VA may reduce the amount of the chapter 21 or 39 benefits payable by the amount of benefits specifically designated for these purposes in the judgment, settlement, or compromise. Section 1151(b)(2) applies to a judgment, settlement, or compromise that became final on or after December 10, 2004. Section 1151(b)(2) also states that, if the amount received as a result of the judgment, settlement, or compromise is greater than the amount of the chapter 21 or 39 benefits, the excess amount received will be offset against benefits otherwise payable under 38 U.S.C. chapter 11. This document amends 38 CFR 3.362 and 38 CFR 3.800 to reflect the statutory changes. We will amend 38 CFR 3.362 and 3.800 to reflect new 38 U.S.C. 1151(b)(2) and (c)(1) regarding chapter 21 benefits in the separate rulemaking described further below.

### 38 CFR 3.400

The Veterans Benefits Improvement Act of 2004 removed the effective date restriction for death pension, which required an application to be received within 45 days from the date of death for an effective date for an award of death pension to be the first day of the month in which the death occurred. The amendment allows the effective date for an award of death pension to be governed by the same rule as the effective date for an award of death compensation or dependency and indemnity compensation, which is that, if an application for death pension is received within one year from the date of death, the effective date of an award shall be the first day of the month in which the death occurred. This document amends § 3.400(c)(3) to reflect the statutory change. The amendment is applicable to claims filed on or after December 10, 2004.

### 38 CFR 3.715

The Veterans Benefits Improvement Act of 2004 provided that a radiation-exposed veteran's receipt of a payment under the Radiation Exposure Compensation Act of 1990 as amended (42 U.S.C. 2210 note) (RECA) does not deprive such a veteran of receipt of VA compensation. The Veterans Benefits Improvement Act of 2004 additionally provided that a person's receipt of a RECA

payment does not deprive the person of receipt of dependency and indemnity compensation. However, there is an offset of RECA payments against VA compensation and dependency and indemnity compensation. The statutory changes are applicable to compensation and dependency and indemnity compensation payments for months beginning after March 26, 2002. This document amends § 3.715 by adding paragraph (a)(1), which states that a RECA payment to a "radiation-exposed veteran," as defined in 38 CFR § 3.309 (d)(3), does not bar payment of VA compensation to the veteran for months beginning after March 26, 2002. New § 3.715(b) provides that a person's receipt of a RECA payment does not bar the person's receipt of dependency and indemnity compensation for months beginning after March 26, 2002. Also, § 3.715(c) states: "Notwithstanding paragraph (a) or (b), the amount of a RECA payment will be deducted from the amount of compensation payable pursuant to § 3.309(d) or the amount of dependency and indemnity compensation payable."

We have made one further amendment to 38 CFR 3.715 to correct an inconsistency with RECA, as amended. Currently, 38 CFR 3.715 is broader than RECA. The RECA statute provides that RECA payments satisfy all further claims against the United States, including claims for VA compensation, arising out of exposure to radiation covered by that Act. Section 3.715, however, currently precludes payment of compensation for disability, no matter what the cause of the disease. We are therefore amending § 3.715 to make the regulation consistent with statute by adding paragraph (a)(2) to provide that payment of VA compensation to a veteran who is not a radiation-exposed veteran is barred only if the veteran's disability resulted from a disease that is attributable to exposure to radiation for which payments have been received under RECA.

### 38 CFR 3.808

The Veterans Benefits Improvement Act of 2004 states that a qualifying additional disability under 38 U.S.C. 1151 shall be treated as if it were a service-connected disability for purposes of entitlement to chapter 21 (specially adapted housing) and chapter 39 benefits (automobiles and adaptive equipment). This is an expansion of the benefits to which persons receiving compensation under section 1151 are entitled. This document therefore amends § 3.808 to reflect the statutory change. While the format of the current regulation is being amended for ease of use, we are making no substantive change to the content of the regulation, other than implementation of the statutory change. This statutory amendment to 38 U.S.C. 1151 is applicable with respect to eligibility for these benefits and services on or after December 10, 2004.

However, we are not amending 38 CFR 3.809, Specially adapted housing under 38 U.S.C. 2101(a), and 3.809a, Special home adaptation grants under 38 U.S.C. 2101(b), to reflect new 38 U.S.C. 1151(c)(1). We have decided to promulgate a separate rulemaking that will amend 38 CFR 3.809 and 3.809a to implement this provision of the Veterans Benefits Improvement Act of 2004, as well as a separate provision the 2004 Act, which provides the eligibility criteria for chapter 21 benefits. In that rulemaking, we will also amend relevant regulations in part 36 of title 38, Code of Federal Regulations, to reflect these statutory amendments.

### 38 CFR 3.903

The Veterans Benefits Act of 2003 added certain offenses under title 18, United States Code, for which an individual forfeits his or her right to gratuitous benefits under the laws administered by the Secretary of Veterans Affairs. This document amends § 3.903(a) to reflect the statutory change by adding 18 U.S.C. 175, 229, 831, 1091, 2332a, and 2332b to the current list of 18 U.S.C. sections cited in the regulation. This new provision applies to claims filed on or after December 17, 2003.

### 38 CFR 3.1600 and 3.1604

The Veterans Benefits Act of 2003 allowed States to receive a plot or interment allowance for the interment, in a state cemetery or portion thereof used solely for the burial of veterans, of any veteran eligible for burial in a national cemetery. This rulemaking amends § 3.1600(a) and (f) and 3.1604(c) and (d)(1)(i) and (5) to provide, in accordance with the statutory amendments, that States may be paid a plot or interment allowance on behalf of veterans buried in a state veterans' cemetery who were eligible for burial in a national cemetery and that the allowance is payable to States in addition to burial or funeral expenses to which they are eligible. The amendments to 38 CFR 3.1600 and 3.1604 are applicable to claims for an allowance filed on or after December 16, 2003.

Enclosed is a copy of the Federal Register publication, which contains the text of the regulatory amendment. If you have questions concerning this regulatory amendment or this letter, please contact C&P's Regulations Staff.

/S/

Renée L. Szybala  
Director

Compensation & Pension Service

Enclosure

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FEDERAL REGISTER

Vol. 71, No. 152

Rules and Regulations

DEPARTMENT OF VETERANS AFFAIRS (VA)

**38 CFR Part 3**

**RIN 2900-AM27**

**Veterans Benefits Act of 2003 and Veterans Benefits Improvement Act of 2004**

71 FR 44915

**DATE:** Tuesday, August 8, 2006

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations to incorporate certain provisions from the Veterans Benefits Act of 2003 and the Veterans Benefits Improvement Act of 2004. Specifically, this document amends VA's adjudication regulations regarding plot or interment allowance eligibility, forfeiture of benefits, dependency and indemnity compensation payments, the Radiation Exposure Compensation Act of 1990, as amended, exclusions from income for pension purposes, benefits for persons disabled by treatment or vocational rehabilitation provided by VA, effective date of death pension, and diseases subject to presumptive service connection. This document also amends VA's adjudication regulations to reflect the establishment of the Social Security Administration as an independent agency and that the Coast Guard is now under the jurisdiction of the Secretary of Homeland Security.

These amendments are necessary to conform the regulations to the statutory amendments.

**EFFECTIVE DATE:** *Effective Date:* August 8, 2006.

*Applicability Dates:* In accordance with statutory provisions, the following amendments in this final rule will be applied as follows. The amendment to 38 CFR 3.309 is applicable to payments for periods beginning on or after March 26, 2002. The amendment to 38 CFR 3.715 is applicable to compensation and dependency and indemnity compensation payments for months beginning April 1, 2002. The amendment to 38 CFR 3.1(g)(4) is applicable March 1, 2003. The amendments to 38 CFR 3.152, 3.153, and 3.714 are applicable December 16, 2003. The amendments to 38 CFR 3.1600 and 3.1604 are applicable to claims filed on or after December 16, 2003. The amendment to 38 CFR 3.903 is applicable to claims filed on or after December 17, 2003. The amendment to 38 CFR 3.272 is applicable for periods on or after December 10, 2004. The amendments to 38 CFR 3.362 and 3.800 are applicable in the case of a judgment, settlement, or compromise covered by 38 U.S.C. 1151(b)(1) that becomes final on or after December 10, 2004. The amendment to 38 CFR 3.400 is applicable to claims filed on or after December 10, 2004. The amendment to 38 CFR 3.808 is applicable to benefits awarded pursuant to these regulations by VA on or after December 10, 2004. The amendment to 38 CFR 3.10 is applicable to payments beginning January 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Maya Ferrandino, Consultant, Compensation and Pension Service, Policy and Regulations Staff, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** The Veterans Benefits Act of 2003 and the Veterans Benefits Improvement Act of 2004, Public Law 108-183 and Public Law 108-454 respectively, added and [\*44916] revised sections of title 38 of the United States Code, which addresses veterans benefits law. To ensure consistency with statutory changes, VA regulations will be amended as further described below.

Section 501 of the Veterans Benefits Act of 2003 amended 38 U.S.C. 2303(b)(1) and (2), Death in Department facility; plot allowance, and 38 U.S.C. 2307, Death from service-connected disability, to allow States to receive a plot or interment allowance for the interment, in a state cemetery or portion thereof used solely for

the burial of veterans, of any veteran eligible for burial in a national cemetery. Under prior law, the allowance was payable only for veterans of a war, veterans discharged for disability incurred or aggravated in the line of duty, veterans entitled to VA compensation or pension, and certain other veterans. VA's regulation regarding payment of burial expenses for deceased veterans is 38 CFR 3.1600 and VA's regulation regarding payment of a plot or interment allowance to a State is 38 CFR 3.1604(c) and (d). This document amends § 3.1600(a) and (f) and 3.1604(c) and (d)(1)(i) and (5) to provide, in accordance with the statutory amendments, that States may be paid a plot or interment allowance on behalf of veterans buried in a state veterans' cemetery who were eligible for burial in a national cemetery and that the allowance is payable to States in addition to burial or funeral expenses to which they are eligible. The amendments to 38 CFR 3.1600 and 3.1604 are applicable to claims for an allowance filed on or after December 16, 2003.

Section 705(a) of the Veterans Benefits Act of 2003 amended 38 U.S.C. 6105(b) (2), Forfeiture for subversive activities, by adding certain offenses under title 18, United States Code, for which an individual forfeits his or her right to gratuitous benefits under the laws administered by the Secretary of Veterans Affairs. Section 6105(b)(2) as amended by the Veterans Benefits Act of 2003 applies to claims filed on or after December 17, 2003. Public Law 108-183, § 705(b), 117 Stat. 2672. VA's regulation regarding forfeiture of VA benefits for subversive activities is 38 CFR 3.903. This document amends § 3.903(a) to reflect the statutory change by adding 18 U.S.C. 175, 229, 831, 1091, 2332a, and 2332b to the current list of 18 U.S.C. sections cited in the regulation.

Section 708(c) of the Veterans Benefits Act of 2003 amended various sections of title 38 of the United States Code to reflect the establishment of the Social Security Administration as an independent agency by replacing references to the Secretary of Health and Human Services with references to the Commissioner of Social Security, and striking "Department of Health and Human Services" and inserting "Social Security Administration" each time it appears in the provisions. This document amends 38 CFR 3.152(a), 3.153, and 3.714(f) to reflect the statutory changes.

In a similar manner, this document amends 38 CFR 3.1(g)(4), to reflect that the Coast Guard is now under the jurisdiction of the Secretary of Homeland Security, not the Secretary of Transportation. See Homeland Security Act of 2002, Public Law 107-296, § 1704(d), 116 Stat. 2135, 2314. The authorizing statute for § 3.1(g)(4) is 38 U.S.C. 101(25)(D), which was amended by section 1704(d) of Public Law 107-296 to reflect that the Coast Guard is under the jurisdiction of the



Secretary of Homeland Security. To ensure consistency with section 101(25)(D), we are amending the corresponding regulation, § 3.1(g)(4).

Section 301 of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1311, Dependency and indemnity compensation to a surviving spouse, by adding subsection (e), which provides for a \$ 250 increase in the monthly rate of dependency and indemnity compensation to which a surviving spouse with one or more children below the age of 18 is otherwise entitled. The increased rate is payable for the two-year period beginning on the date on which entitlement to dependency and indemnity compensation commenced. The increase ceases the first month after the month in which all children of the surviving spouse have attained the age of 18. The increase in dependency and indemnity compensation under section 1311(e) is applicable to payments beginning January 1, 2005. Public Law 108-454, § 301, 118 Stat. 3610. This document amends § 3.10(e) by adding § 3.10(e)(4) to reflect the statutory change.

We note that the Veterans Benefits Act of 2003 added a different subsection (e) to section 1311 than the subsection (e) added by the Veterans Benefits Improvement Act of 2004. There is no indication that Congress intended to replace section 1311(e) as added by the Veterans Benefits Act of 2003 with section 1311(e) as added by the Veterans Benefits Improvement Act of 2004, and for the purposes of this rulemaking document, VA assumes that Congress intended to include both paragraphs designated as subsection (e) in the statute.

Section 302(a) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1112(c) to provide that a radiation-exposed veteran's receipt of a payment under the Radiation Exposure Compensation Act of 1990 as amended (42 U.S.C. 2210 note) (RECA) does not deprive such a veteran of receipt of VA compensation. Section 302(b) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1310, Deaths entitling survivors to dependency and indemnity compensation, to provide that a person's receipt of a RECA payment does not deprive the person of receipt of dependency and indemnity compensation. However, the statutory amendment also provides for an offset of RECA payments against VA compensation awarded pursuant to 38 U.S.C. 1112 (c)(1) and dependency and indemnity compensation. The statutory changes are applicable to compensation and dependency and indemnity compensation payments for months beginning after March 26, 2002. Public Law 108-454, § 302 (c), 118 Stat. 3610.

VA's regulation regarding RECA is 38 CFR 3.715. This document amends § 3.715 by adding paragraph (a)(1), which states that a RECA payment to a "radiation-exposed veteran," as defined in 38 CFR 3.309(d)(3), does not bar payment of VA compensation to the veteran for months beginning after March 26, 2002. New § 3.715(b) provides that a person's receipt of a RECA payment does not bar the person's receipt of dependency and indemnity compensation for months beginning after March 26, 2002. Also, § 3.715(c) states:

"Notwithstanding paragraph (a) or (b), the amount of a RECA payment will be deducted from the amount of compensation payable pursuant to § 3.309(d) or the amount of dependency and indemnity compensation payable."

We have made one further amendment to 38 CFR 3.715 to correct an inconsistency with RECA, as amended. Section 6(e) of RECA states that, "[e]xcept as otherwise authorized by law, the acceptance of payment by an individual under this section shall be in full satisfaction of all claims of or on behalf of that individual against the United States \* \* \* that arise out of exposure to radiation, from atmospheric nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during the period described in subsection (a)(1), (a)(2)(A), or (a)(2)(B) of section 4(a), exposure to radiation in a uranium mine, mill, or while employed in the transport of uranium ore or vanadium-uranium ore from such mine or mill at any time during the period described in section 5(a) or exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device." Currently, 38 CFR 3.715 is broader than RECA. The RECA statute provides that RECA payments satisfy all further claims against the United States, including claims for VA compensation, arising out of exposure to radiation covered by that Act. Section 3.715, however, currently precludes payment of compensation for disability, no matter what the cause of the disease. We are therefore amending § 3.715 to make the regulation consistent with statute by adding paragraph (a)(2) to provide that payment of VA compensation to a veteran who is not a radiation-exposed veteran is barred only if the veteran's disability resulted from a disease that is attributable to exposure to radiation for which payments have been received under RECA.

Section 303 of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1503, Determinations with respect to annual income, by adding subsection 1503(a)(11) to exclude lump-sum proceeds of a life insurance policy on a veteran from consideration as income for pension purposes. VA's regulation regarding exclusions from income for pension purposes is 38 CFR 3.272. This document amends § 3.272 by adding § 3.272(x) to reflect the statutory changes. New § 3.272(x) is applicable for periods on or after December 10, 2004.

Section 304 of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1151, Benefits for persons disabled by treatment or vocational rehabilitation, by adding subsection (c), which states that a qualifying additional disability under section 1151 shall be treated as if it were a service-connected disability for purposes of entitlement to chapter 21 (specially adapted housing) and chapter 39 benefits (automobiles and adaptive equipment). This is an expansion of the benefits to which persons receiving compensation under section 1151 are entitled. This statutory amendment to 38 U.S.C. 1151 is applicable with respect to eligibility for these benefits and services on or after December 10, 2004. Public Law 108-454, § 304(b), 118 Stat. 3611.

VA's regulation regarding automobiles and adaptive equipment is 38 CFR 3.808, Automobiles or other conveyances; certification. This document therefore amends § 3.808 to reflect the statutory change. To implement the statutory change, we are amending the introduction and paragraphs (a) and (b) in § 3.808. While the format of the current regulation is being amended for ease of use, we are making no substantive change to the content of the regulation, other than implementation of the statutory change.

In this rulemaking, however, we are not amending 38 CFR 3.809, Specially adapted housing under 38 U.S.C. 2101(a), and 3.809a, Special home adaptation grants under 38 U.S.C. 2101(b), to reflect new 38 U.S.C. 1151(c)(1). We have decided to promulgate a separate rulemaking that will amend 38 CFR 3.809 and 3.809a to implement section 304 of the Veterans Benefits Improvement Act of 2004, as well as section 401 of the 2004 Act, which amended 38 U.S.C. 2101, which provides the eligibility criteria for chapter 21 benefits. In that rulemaking, we will also amend relevant regulations in part 36 of title 38, Code of Federal Regulations, to reflect these statutory amendments.

Section 304(c) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1151(b) by adding section 1151(b)(2) to provide that, where a judgment, settlement, or compromise of a claim specifically designates a portion of the award for the type of benefits provided under chapter 21 or 39 of title 38, United States Code, and VA later awards chapter 21 or 39 benefits, VA may reduce the amount of the chapter 21 or 39 benefits payable by the amount of benefits specifically designated for these purposes in the judgment, settlement, or compromise. Section 1151(b)(2) applies to a judgment, settlement, or compromise that became final on or after December 10, 2004. Section 1151(b)(2)

also states that, if the amount received as a result of the judgment, settlement, or compromise is greater than the amount of the chapter 21 or 39 benefits, the excess amount received will be offset against benefits otherwise payable under 38 U.S.C. chapter 11. This document amends 38 CFR 3.362, Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151 for claims filed on or after October 1, 1997, by adding § 3.362(e) and 38 CFR 3.800, Disability or death due to hospitalization, etc. for claims filed before October 1, 1997, by adding § 3.800(a)(4) to reflect the statutory changes with regard to chapter 39 benefits only. We will amend 38 CFR 3.362 and 3.800 to reflect new 38 U.S.C. 1151(b)(2) and (c)(1) regarding chapter 21 benefits in the separate rulemaking described above.

Section 305 of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 5110, Effective date of awards, by removing the effective date restriction for death pension in section (d)(2), which required an application to be received within 45 days from the date of death for an effective date for an award of death pension to be the first day of the month in which the death occurred. The amendment allows the effective date for an award of death pension to be governed by the same rule as the effective date for an award of death compensation or dependency and indemnity compensation, which is that, if an application for death pension is received within one year from the date of death, the effective date of an award shall be the first day of the month in which the death occurred. VA's regulation regarding effective dates is 38 CFR 3.400. This document amends § 3.400(c)(3) by amending paragraphs (c)(3)(i) and (ii) to reflect the statutory change. We have determined that amended paragraphs 3.400(c)(3)(i) and (ii) are applicable to claims filed on or after December 10, 2004, the effective date of the Veterans Benefits Improvement Act of 2004.

Section 306(b) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1112, Presumptions relating to certain diseases and disabilities, by further defining a "radiation-risk activity" in section 1112(c)(3)(B)(iv) to include service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000, codified as amended at 42 U.S.C. 7348l(14). The amendment to section 1112(c)(3)(B) is effective as of March 26, 2002. VA's regulation regarding diseases subject to presumptive service connection for radiation-exposed veterans is 38 CFR 3.309(d). This document amends § 3.309(d)(3)(ii) by adding a new paragraph § 3.309(d)(3)(ii)(E) to reflect the statutory change.

## **Administrative Procedure Act**

This final rule merely restates statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and the delayed effective date provisions of 5 U.S.C. 553.

## **Paperwork Reduction Act**

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

## **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, 5 U.S.C. 601-612. Only VA beneficiaries 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.

## **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 Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of \$ 100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action because it may raise novel legal or policy issues.

## **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies 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 Numbers**

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

## **List of Subjects in 38 CFR Part 3**

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

Approved: April 25, 2006.

**Gordon H. Mansfield,**

*Deputy 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.

2. Amend § 3.1(g)(4) by removing "Secretary of Transportation" and adding, in its place, "Secretary of Homeland Security".

3. Amend § 3.10 by adding paragraph (e)(4) to read as follows:

**§ 3.10 Dependency and indemnity compensation rate for a surviving spouse.**

\* \* \* \* \*

(e) \* \* \*

(4) For a two-year period beginning on the date entitlement to dependency and indemnity compensation commenced, the dependency and indemnity compensation paid monthly to a surviving spouse with one or more children below the age of 18 shall be increased by the amount set forth in 38 U.S.C. 1311 (e), regardless of the number of such children. The dependency and indemnity compensation payable under this paragraph is in addition to any other dependency and indemnity compensation payable. The increase in dependency and indemnity compensation of a surviving spouse under this paragraph shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18. (Authority: 38 U.S.C. 1311(e))

\* \* \* \* \*

**§ 3.152 [Amended]**

4. Amend § 3.152(a) by removing "Secretary of Health and Human Services" and adding, in its place, "Commissioner of Social Security".

**§ 3.153 [Amended]**

5. Amend § 3.153 by removing "Secretary of Health, Education, and Welfare" and adding, in its place, "Commissioner of Social Security".

6. Amend § 3.272 by adding paragraph (x) immediately following the authority citation at the end of paragraph (w) to read as follows:

### **§ 3.272 Exclusions from income.**

\* \* \* \* \*

(x) *Life insurance proceeds.* Lump-sum proceeds of any life insurance policy on a veteran.

(Authority: 38 U.S.C. 1503(a)(11))

7. Amend § 3.309 by adding paragraph (d)(3)(ii)(E) immediately following paragraph (d)(3)(ii)(D)(3) to read as follows:

### **§ 3.309 Disease subject to presumptive service connection.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(E) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).

\* \* \* \* \*

8. Amend § 3.362 by adding paragraph (e) immediately following the last sentence at the end of paragraph (d) to read as follows:

### **§ 3.362 Offset under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).**

\* \* \* \* \*

(e) *Offset of award of benefits under 38 U.S.C. chapter 39.* (1) If a judgment, settlement, or compromise covered in paragraphs (b) through (d) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards chapter 39 benefits after the



date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(2) If the amount described in paragraph (e)(1) of this section is greater than the amount of an award under 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

\* \* \* \* \*

### **§ 3.400 [Amended]**

9. Amend § 3.400 by:

a. In paragraph (c)(3)(i), adding "or on or after December 10, 2004," following "October 1, 1984,"; and

b. In paragraph (c)(3)(ii), removing "on or after October 1, 1984," and adding, in its place, "between October 1, 1984, and December 9, 2004,".

10. Amend § 3.714(f) by:

a. Revising the paragraph heading.

b. In the introductory text, by removing "Department of Health and Human Services" and adding, in its place, "Social Security Administration".

The revision reads as follows:

### **§ 3.714 Improved pension elections--public assistance beneficiaries.**

\* \* \* \* \*

(f) *Notification to the Social Security Administration.* \* \* \*

\* \* \* \* \*

11. Revise § 3.715 to read as follows:

### **§ 3.715 Radiation Exposure Compensation Act of 1990, as amended.**

(a) *Compensation.* (1) A radiation-exposed veteran, as defined in 38 CFR 3.309(d)(3), who receives a payment under the Radiation Exposure Compensation Act of 1990, as amended (42 U.S.C. 2210 note) (RECA), will not be denied compensation to which the veteran is entitled under 38 CFR 3.309(d) for months beginning after March 26, 2002.

(2) A veteran who is not a "radiation-exposed veteran," as defined in 38 CFR 3.309(d)(3), is not entitled to VA compensation for disability caused by a disease that is attributable to exposure to radiation for which the veteran has received a payment under RECA.

(b) *Dependency and indemnity compensation.* A person who receives a payment under RECA based upon a veteran's death will not be denied dependency and indemnity compensation to which the person is entitled under 38 CFR 3.5 and 3.22 for months beginning after March 26, 2002.

(c) *Offset of RECA payment against VA benefits.* Notwithstanding paragraph (a) or (b) of this section, the amount of a RECA payment will be deducted from the amount of compensation payable pursuant to § 3.309(d) or the amount of dependency and indemnity compensation payable.

(Authority: 38 U.S.C. 1112(c)(4), 1310(c); 42 U.S.C. 2210 note)

12. Amend § 3.800 by adding paragraph (a)(4) to read as follows:

**§ 3.800 Disability or death due to hospitalization, etc.**

\* \* \* \* \*

(a) \* \* \*

(4) *Offset of award of benefits under 38 U.S.C. chapter 39.* (i) If a judgment, settlement, or compromise covered by paragraph (a)(2) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for automobile assistance benefits under 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(ii) If the amount described in paragraph (4)(i) of this section is greater than the amount of an award under 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151(b)(2))

\* \* \* \* \*

13. Amend § 3.808 by:

- a. Removing the introductory text.
- b. Revising paragraph (a).
- c. Redesignating the paragraph (b)(1) introductory text as paragraph (b) introductory text and revising it.
- d. Removing paragraph (b)(2).
- e. Redesignating former paragraphs (b)(1)(i) through (b)(1)(iv) as paragraphs (b) (1) through (b)(4), respectively.
- f. Removing the authority citations at the end of paragraphs (c) and (d).
- g. Adding an authority citation at the end of paragraph (e)(3).

The revisions and addition read as follows:

**§ 3.808 Automobiles or other conveyances; certification.**

(a) *Entitlement.* A certificate of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 3902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be provided to—

(1) A veteran who is entitled to compensation under chapter 11 of title 38, United States Code, for a disability described in paragraph (b) of this section; or

(2) A member of the Armed Forces serving on active duty who has a disability described in paragraph (b) of this section that is the result of an injury or disability

incurred or disease contracted in or aggravated by active military, naval, or air service.

(b) \* \* \* One of the following must exist:

\* \* \* \* \*

(e) \* \* \*

(Authority: 38 U.S.C. 501(a), 1151(c)(2), 3902)).

14. Amend § 3.903 by:

a. Redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5), respectively.

b. Adding a new paragraph (a)(2).

The addition reads as follows:

**§ 3.903 Subversive activities.**

(a) \* \* \*

(2) In title 18 U.S.C., sections 175, 229, 831, 1091, 2332a, and 2332b, for claims filed on or after December 17, 2003.

\* \* \* \* \*

15. Amend § 3.1600 by:

a. In paragraph (a), removing "Payment" in the last sentence and adding, in its place, "Except as provided in § 3.1604(d)(5), payment".

b. Revising paragraph (f) introductory text.

c. Redesignating paragraphs (f)(1) through (f)(5) as paragraphs (f)(2)(i) through (f)(2)(v), respectively.

d. Adding a new paragraph (f)(1).

e. Adding paragraph (f)(2) introductory text.

The revision and additions read as follows:

**§ 3.1600 Payment of burial expenses of deceased veterans.**

\* \* \* \* \*

(f) *Plot or interment allowance.* A plot or interment allowance is payable to the person or entity who incurred the expenses in an amount not to exceed the amount specified in 38 U.S.C. 2303(b) (or if the entitlement is under § 3.40 (c) or (d), an amount computed in accordance with the provisions of § 3.40(c)) if the following conditions are met:

(1) For claims filed on or after December 16, 2003:

(i) The deceased veteran is eligible for burial in a national cemetery;

(ii) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States;

(iii) The applicable further provisions of this section and § § 3.1601 through 3.1610.

(2) For claims filed before December 16, 2003:

\* \* \* \* \*

16. Amend § 3.1604 by:

a. Revising the authority citation at the end of paragraph (c).

b. Revising paragraph (d)(1)(i).

c. Adding paragraph (d)(5) following the authority citation at the end of paragraph (d)(4).

The revisions and addition read as follows:

**§ 3.1604 Payment from non-Department of Veterans Affairs sources.**

\* \* \* \* \*

(c) \* \* \*

(Authority: 38 U.S.C. 2303(b)(1)).

(d) \* \* \*

(1) \* \* \*

(i) The plot or interment allowance is payable based on the deceased veteran's eligibility for burial in a national cemetery (or, in claims filed prior to December 16, 2003, the deceased veteran's service). See § 38.620 of this chapter.

\* \* \* \* \*

(5) A plot or interment allowance may be paid to a state in addition to a burial allowance under § 3.1600(a) for claims filed on or after December 16, 2003.