DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AP18

Additional Compensation on Account of Children Adopted Out of Veteran's Family

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations to clarify that a veteran will not receive the dependent rate of disability compensation for a child who is adopted out of the veteran's family. This action is necessary because applicable VA adjudication regulations are currently construed as permitting a veteran, whose former child was adopted out of the veteran's family, to receive the dependent rate of disability compensation for the adopted-out child, which constitutes an unwarranted award of benefits not supported by the applicable statute and legislative history. This document adopts as a final rule, without change, the proposed rule published in the **Federal Register** on December 2, 2014.

DATES: This rule is effective September 14, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On December 2, 2014, VA published in the **Federal Register** (79 FR 71366), a proposed rule to amend 38 CFR 3.57 and 3.58 to clarify that a veteran will not receive the dependent rate of disability compensation for a child who is adopted out of the veteran's family. In this regard, pursuant to 38 U.S.C. 1115, a veteran entitled to compensation based on a service-connected disability rating of not less than 30 percent is entitled to an additional rate of disability compensation for each of his or her children. Additionally, 38 CFR 3.58 provides that ''[a] child of a veteran adopted out of the family of the veteran . . . is nevertheless a *child* within the meaning of that term as defined by § 3.57 and is eligible for benefits payable under all laws administered by the Department of Veterans Affairs.'' However, VA believes its longstanding interpretation in § 3.58, as it applies to 38 U.S.C. 1115, is inconsistent with the statute's clear purpose to provide for payments to a veteran that are based primarily upon the veteran's needs for purposes of supporting his or her dependent family members.

VA, therefore, believes Congress did not intend for section 1115 to provide additional disability compensation to a veteran on account of a child who is adopted out of the veteran's family. In such cases, it is clear that any payment to the veteran on account of the adopted-out child would rarely, if ever, fulfill the clear purpose of section 1115 to provide for the expense of supporting that child. As such, VA is amending its regulations, particularly 38 CFR 3.57, 3.58, and 3.458, to eliminate this additional compensation paid to veterans for such children.

Any child, however, who is adopted out of the veterans family does not, as the result of the amendments to 38 CFR 3.57 and 3.58, lose any rights to receive VA benefits in the child's own right, such as dependency and indemnity compensation, which is not necessarily dependent upon a continuing, legally based parent-child relationship.

The proposed rule was published in the **Federal Register** (79 FR 71366) on December 2, 2014. A 60-day comment period was provided. No public comments were received regarding the proposed rule. As a result, based on the rationale set forth in the proposed rule, we adopt the provisions of the proposed rule as a final rule without change. This rule will apply as of the effective date of the final rule, namely 30 days following the date of publication of the final rule.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines 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 this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

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 (5 U.S.C. 601–12). This final rule will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of section 604.

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 one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–21).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the

programs affected by this document are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 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.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on August 7, 2015, for publication.

List of Subjects in 38 CFR Part 3

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

Dated: August 10, 2015.

Michael Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 3 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 § 3.57:

■ a. In paragraph (a)(1) introductory text, by removing the phrase ''paragraphs (a)(2) and (3)'' and adding in its place ''paragraphs (a)(2) through (4)''.

■ b. By adding paragraph (a)(4).

■ c. By adding an authority citation immediately following newly added paragraph (a)(4).

■ d. By revising the Cross References at the end of the section.

The revisions and additions read as follows:

§ 3.57 Child.

(a) * * *

(4) For purposes of any benefits provided under 38 U.S.C. 1115, Additional compensation for dependents, the term child does not include a child of a veteran who is adopted out of the family of the veteran. This limitation does not apply to any benefit administered by the Secretary that is payable directly to a child in the child's own right, such as dependency and indemnity compensation under 38 CFR 3.5.

(Authority: 38 U.S.C. 101(4), 501, 1115).

* * * * *

CROSS REFERENCES: Improved pension rates. See § 3.23. Improved pension rates; surviving children. See § 3.24. Child adopted out of family. See § 3.58. Child's relationship. See § 3.210. Helplessness. See § 3.403(a)(1). Helplessness. See § 3.503(a)(3). Veteran's benefits not apportionable. See § 3.458. School attendance. See § 3.667. Helpless children—Spanish-American and prior wars. See § 3.950.

■ 3. Revise § 3.58 to read as follows:

§ 3.58 Child adopted out of family.

(a) Except as provided in paragraph (b) of this section, a child of a veteran adopted out of the family of the veteran either prior or subsequent to the veteran's death is nevertheless a *child* within the meaning of that term as defined by § 3.57 and is eligible for benefits payable under all laws administered by the Department of Veterans Affairs.

(b) A child of a veteran adopted out of the family of the veteran is not a child within the meaning of § 3.57 for purposes of any benefits provided under 38 U.S.C. 1115, Additional compensation for dependents.

(Authority: 38 U.S.C. 101(4)(A), 1115).

CROSS REFERENCES: Child. See § 3.57. Veteran's benefits not apportionable. See § 3.458.

■ 4. Amend § 3.458:

■ (a) In paragraph (d), by removing the phrase '', except the additional compensation payable for the child''.

■ (b) By adding Cross References at the end of the section.

The addition reads as follows:

§ 3.458 Veterans benefits not apportionable.

* * * * *

CROSS REFERENCES: Child. See § 3.57. Child adopted out of family. See § 3.58.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

[156A2100DD/AAKC001030/ A0A501010.999900 253G]

RIN 1094–AA54

Hearing Process Concerning Acknowledgment of American Indian Tribes

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Office of the Secretary is publishing this final rule contemporaneously and in conjunction with the Bureau of Indian Affairs final rulemaking (the BIA final rule) revising the process and criteria for Federal acknowledgment of Indian tribes. This rule establishes procedures for a new optional, expedited hearing process for petitioners who receive a negative proposed finding for Federal acknowledgment.

DATES: This rule is effective September 14, 2015.

FOR FURTHER INFORMATION CONTACT: Karl Johnson, Senior Attorney, Office of Hearings and Appeals, Departmental Cases Hearings Division, (801) 524–5344; *karl_johnson@oha.doi.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule

This final rule establishes procedures for the hearing process, including provisions governing prehearing conferences, discovery, motions, an evidentiary hearing, briefing, and issuance by the administrative law judge (ALJ) of a recommended decision on Federal acknowledgment of an Indian tribe for consideration by the Assistant Secretary—Indian Affairs (AS–IA). This final rule complements the BIA final rule published in the July 1, 2015 **Federal Register**, 80 FR 37862, that revises 25 CFR part 83 to improve the processing of petitions for Federal acknowledgment of Indian tribes. These improvements include affording the petitioner an opportunity to request a hearing before an ALJ in the Departmental Cases Hearings Division (DCHD), Office of Hearings and Appeals (OHA), if the petitioner receives a negative proposed finding on Federal acknowledgment from the Office of Federal Acknowledgment (OFA).