

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 3

RIN 2900-AH51

Evidence of Dependents and Age

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the evidence required to establish marriage, dissolution of marriage, birth of a child, and death of a family member. This amendment implements a provision of the "Veterans' Benefits Improvements Act of 1994," which authorizes the Secretary to accept the written statement of a claimant as proof of the existence of these relationships. This amendment is intended to facilitate proof of the existence of these relationships.

EFFECTIVE DATE: November 4, 1996.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: Section 301 of the "Veterans' Benefits Improvements Act of 1994," Pub. L. 103-446, authorizes the Secretary to accept the written statement of a claimant as proof of the existence of the following relationships between the claimant and another person: marriage, dissolution of marriage, birth of a child, and the death of any family member. The statute further authorizes the Secretary to require documentation in support of the claimant's statement if: (1) The claimant does not reside within a State; (2) the claimant's statement on its face raises a question of its validity; (3) there is conflicting information of record; or (4) there is a reasonable indication, in the claimant's statement or otherwise, of fraud or misrepresentation. In the Federal Register of May 17, 1996 (61 FR 24910-11), VA published a proposal to amend 38 CFR 3.204 and 3.213 to allow the Secretary to exercise this discretionary authority. Interested persons were invited to submit written comments on or before July 16, 1996. No comments were received. The information presented in the proposed rule document still provides a basis for this final rule. Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule without change.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will not directly affect small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

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, Veterans, Vietnam.

Approved: October 22, 1996.

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.

2. In § 3.204, the section heading is revised; paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively; and a new paragraph (a) is added to read as follows:

§ 3.204 Evidence of dependents and age.

(a)(1) Except as provided in paragraph (a)(2) of this section, VA will accept, for the purpose of determining entitlement to benefits under laws administered by VA, the written statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, or death of a dependent, provided that the statement contains: the date (month and year) and place of the event; the full name and relationship of the other person to the claimant; and, where the claimant's dependent child does not reside with the claimant, the name and address of the person who has custody of the child. In addition, a claimant must provide the social security number of any dependent on whose behalf he or she is seeking benefits (see § 3.216).

(2) VA shall require the types of evidence indicated in §§ 3.205 through 3.211 where: the claimant does not reside within a state; the claimant's statement on its face raises a question of its validity; the claimant's statement conflicts with other evidence of record; or, there is a reasonable indication, in the claimant's statement or otherwise, of fraud or misrepresentation of the relationship in question.

(Authority: 38 U.S.C. 5124)

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§ 3.204 [Amended]

3. In § 3.204, newly redesignated paragraph (b) is amended by removing the first sentence and adding in its place "The classes of evidence to be furnished for the purpose of establishing marriage, dissolution of marriage, age, relationship, or death, if required under the provisions of paragraph (a)(2), are indicated in §§ 3.205 through 3.211 in the order of preference."

§ 3.213 [Amended]

4. In § 3.213, paragraph (a) introductory text is amended by removing the first sentence and adding in its place "For the purpose of establishing entitlement to a higher rate of pension, compensation, or dependency and indemnity compensation based on the existence of a dependent, VA will require evidence which satisfies the requirements of § 3.204."

5. Each Cross Reference following §§ 3.205, 3.206, 3.207, 3.208, 3.209, 3.210, 3.211, 3.212, and 3.214, is amended by removing "Evidence other than evidence of service." wherever it appears and adding in its place "Evidence of dependents and age."

6. The Cross Reference following § 3.213 is amended by removing "Evidence other than evidence of services." and adding in its place "Evidence of dependents and age."

[FR Doc. 96-28039 Filed 11-1-96; 8:45 am]

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38 CFR Part 3

RIN 2900-AI26

Willful Misconduct

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations regarding "willful misconduct." The purpose is to remove unnecessary Latin phrases and to remove other unnecessary or

redundant material for purposes of clarity and readability.

EFFECTIVE DATE: This amendment is effective November 4, 1996.

FOR FURTHER INFORMATION CONTACT: Laurence Freiheit, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7252.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1110 and 1131 authorize the Secretary of Veterans Affairs to compensate veterans for disability resulting from injury or disease incurred or aggravated during active military service provided that the disability is not the result of the person's own willful misconduct. 38 U.S.C. 1521(a) authorizes the Secretary to pay disability pension to certain veterans who are permanently and totally disabled from nonservice-connected disability not the result of the veteran's willful misconduct. Although the statute does not define the term "willful misconduct," the VA regulation at 38 CFR 3.1(n) defines it as "an act involving conscious wrongdoing or known prohibited action (*malum in se* or *malum prohibitum*)."

We are deleting the Latin terms "*malum in se* or *malum prohibitum*." Although they are standard legal terms, they serve no purpose here because the definition in § 3.1(n) is clear without them. *Malum in se* and *malum prohibitum* are legal terms of art which carry with them bodies of case law defining their meaning. Essentially, they differentiate between actions that are inherently evil or immoral and those that are not inherently immoral but which become so because their commission is expressly forbidden by positive law. These terms are apparently included in the regulation to make clear that both types of actions are included within the terms "wrongdoing" and "prohibited action," together, would normally be understood to encompass both types of action, and, therefore, use of the Latin terms, the meaning of which is obscure to most persons, is not necessary.

A note following § 3.1(n)(3) directs users to § 3.1(y)(2)(iii) for a definition of the term "willful misconduct" in determining whether certain veterans meet the requirements to be considered former prisoners of war. The correct citation is § 3.1(y)(4); however, the definition at § 3.1(y)(4) merely duplicates the first sentence of § 3.1(n) (without the Latin terms) and all of § 3.1(n)(1). It is therefore, redundant, and we are deleting the last two

sentences in § 3.1(y)(4) as well as the note following § 3.1(n)(3).

Since these amendments merely remove unnecessary material and are not substantive in nature, the Secretary finds under 5 U.S.C. 553(b) that prior notice and comment are unnecessary and that there is a basis for dispensing with a 30-day delay of the effective date.

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. 601-612. Even so, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility. These amendments are not substantive and do not affect any small entities.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: September 12, 1996.
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.

§ 3.1 [Amended]

2. In § 3.1, paragraph (n) introductory text is amended by removing "(malum in se or malum prohibitum)"; and by removing the Note immediately following paragraph (n)(3).

3. In § 3.1, paragraph (y)(4) is amended by removing the last two sentences.

[FR Doc. 96-28190 Filed 11-1-96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 57-8-6368a; FRL-5640-8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from solvent degreasing operations. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on January 3, 1997, unless adverse or critical comments are received by December 4, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations: Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A-5-3), Air