

Dated: June 13, 2004.

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[FR Doc. 04-16381 Filed 7-16-04; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AL12

Exceptions to Definition of Date of Receipt Based on Natural or Man-made Disruption of Normal Business Practices

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule and request
for comments.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend the Veterans Benefits Administration's (VBA) adjudication regulations concerning the definition of "date of receipt" by authorizing the Under Secretary for Benefits to establish exceptions to the general rule when a natural or man-made event interferes with the channels through which VBA ordinarily receives correspondence, resulting in extended delays in receipt of claims, information or evidence from claimants served by VBA. Currently, VBA receives correspondence through its 57 Regional Offices (RO) and through the Appeals Management Center (AMC), which develops claims on appeal to the Board of Veterans Appeals. The intended effect is to ensure that claimants served by the affected VBA office or offices are not deprived of potential entitlement to benefits because of unexpected delays or impediments not caused by the claimants.

DATES: *Effective Date:* This interim rule is effective July 19, 2004. Comments must be received by September 17, 2004.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail to VAregulations@mail.va.gov; or, through www.Regulations.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL12." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00

a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at 273-7210.

SUPPLEMENTARY INFORMATION: Pursuant to section 5110 of title 38, United States Code, the date of receipt of application generally governs the effective date of a VA benefit award by VBA. VA implemented the provisions of section 5110 at 38 CFR 3.1(r), which defines "date of receipt" for purposes of benefit entitlement as the date on which a claim, information, or evidence was received in a VBA office, except as to specific provisions for claims or evidence received in the State Department, Social Security Administration, or Department of Defense.

A delay in date of receipt of correspondence in VBA could deprive a veteran or beneficiary of one or more months of benefits potentially amounting to thousands of dollars. For example, under normal conditions a claimant could expect VBA to receive his or her application for benefits within days of mailing. However, an extended delay in mail delivery, such as that resulting from the introduction of anthrax into the U.S. postal system in October 2001, could add weeks or months to the time it takes VBA to actually receive that application, resulting in a later date of entitlement to benefits. Furthermore, such extended delay in mail delivery could result in a claimant being barred from further pursuing a claim or an appeal even though the claimant mails evidence in an otherwise timely manner to comply with a certain limitations period.

Although the regulations allow VBA to grant extensions on time limits in individual cases for good cause shown as under 38 CFR 3.109(b), the regulations currently do not provide any exception for widespread delays in receipt of claims or evidence, such as that experienced primarily by three VBA Regional Offices—Newark RO, New York RO and Washington (DC) RO—following the anthrax postal contamination in October 2001. Delays in receipt of claims or evidence due to events of natural or man-made origin threaten impairment or loss of benefits for VA claimants through no fault of their own.

VA wishes to protect the interests of claimants who send correspondence to

VBA through the normal channels of communication from being deprived of benefits to which they are entitled solely because those channels of communication have been disrupted due to events outside of the claimants' control.

Accordingly, through this interim final rule, we are amending § 3.1(r) to give the Under Secretary for Benefits authority to establish exceptions to the rule governing date of receipt when he or she determines that natural or man-made disruption of the normal channels of communication results in one or more VBA offices experiencing extended delays in the receipt of correspondence, including claims, information, and evidence. This permits the Under Secretary to immediately address emergency situations, such as an event delaying mail delivery or a disaster at a VBA office location that bars access to the building, and to avoid adverse consequences to claimants who otherwise have followed a normal course of seeking entitlement to VA benefits. It also permits a centralized and coordinated response to emergency situations, thereby avoiding possible inconsistent responses to such crises within and among regions. To determine the date of receipt, the Under Secretary alternatively would use factors such as the postmark or the date that the claimant signs his or her correspondence. The scope of the Under Secretary's action would depend on the scope of the crisis that prevents the timely delivery or receipt of correspondence. If the crisis were national, the Under Secretary would have the authority to declare a nationwide exception to the definition. If the crisis were merely regional, however, or were confined to a particular RO or the AMC, the Under Secretary's declaration of an exception would apply to that region or office only.

Under section 501(a)(1) of title 38, United States Code, the Secretary of Veterans Affairs has the authority to prescribe regulations respecting "the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws." Regulations defining when a claim for benefits, or evidence or information, is "received" by VBA fall within this category. Further, under section 512(a) of the same title, the Secretary may delegate his or her authority to carry out certain functions and duties to subordinate officials as he or she finds necessary. In this case, we designate the Under Secretary for Benefits as the official authorized to establish and implement

the necessary exceptions to the rule governing date of receipt because he or she provides technical expertise and advice to the Secretary of Veterans Affairs on veterans benefits issues and is well qualified to exercise this authority in an expeditious, objective, and impartial manner. Further, there is no need to elevate these determinations to the Secretary of Veterans Affairs.

We are publishing this amendment as an interim final rule. We do not believe that it is necessary to issue a Notice of Proposed Rulemaking (NPRM) as a prelude because there is "good cause" for dispensing with the customary procedure of notice and comment in this case under section 553(b)(B) of title 5, United States Code. This rule is designed to address emergency situations by compensating for delays in the delivery of important information that those situations could create. It applies to unforeseen situations that may arise at any time in the future and can only redound to the public's benefit in its operation. It would therefore be contrary to the public interest to delay the publication and operation of this rule because an emergency situation requiring its operation could arise at any time, including the time that it would take to publish this rule by conventional means. It would be contrary to the public interest to delay the publication of this rule when it so clearly benefits the public in an emergency that could happen at any time. Further, this rule does not impose any additional obligations or have any adverse effects on claimants, as it insures that claimants may establish entitlement to benefits they otherwise would have had but for the occurrence of a special or unforeseen circumstance.

Because it would permit VA to respond to an emergency situation that could arise at any time, and because it imposes no additional obligations, we find that publication of this rule as an interim rule serves the public interest. VA will consider comments received during the comment period for this interim rule (see DATES section). After the comment period closes, VA will publish another document in the Federal Register to discuss any comments received in response to this interim rule and any amendments made as a result of those comments.

For the reasons stated above in connection with our discussion of section 553(b)(B), we find that there is "good cause" under 5 U.S.C. 553(d)(3) for making this rule effective on the date of its publication in the Federal Register. Our intent is that the rule shall apply to claims filed on or after the date of publication. We see no reason to give

this rule retroactive effect because we do not believe that there is any mail affected by the anthrax incident that is still outstanding, and we are not aware of any man-made or natural disruption other than the anthrax incident that precipitated delays in the receipt of correspondence. In addition, this rule certainly "grants or recognizes an exemption or relieves a restriction" under section 553(d)(1).

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this interim 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 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. 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.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

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

Paperwork Reduction Act

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

The Catalog of Federal Domestic Assistance program numbers are 64.100 through 64.110 and 64.127.

List of Subjects in 38 CFR Part 3

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

Approved: April 9, 2004.

Anthony J. Principi,
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 § 3.1, paragraph (r) is amended by adding at the end of the paragraph the following:

§ 3.1 Definitions.

* * * * *

(r) * * * However, the Under Secretary for Benefits may establish, by notice published in the **Federal Register**, exceptions to this rule, using factors such as postmark or the date the claimant signed the correspondence, when he or she determines that a natural or man-made interference with the normal channels through which the Veterans Benefits Administration ordinarily receives correspondence has resulted in one or more Veterans Benefits Administration offices experiencing extended delays in receipt of claims, information, or evidence from claimants served by the affected office or offices to an extent that, if not addressed, would adversely affect such claimants through no fault of their own. (Authority: 38 U.S.C. 501(a), 512(a), 5110)

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[FR Doc. 04-16308 Filed 7-16-04; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04-OAR-2004-GA-0001-200420; FRL-7788-3]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the approval of a revision to the Georgia State Implementation Plan (SIP) submitted by the Georgia Environmental