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(g) To get copies of the documents referenced in this AD, contact Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2005–21410; Directorate Identifier 2005–CE–31–AD.

Issued in Kansas City, Missouri, on June 14, 2005.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12060 Filed 6–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM15

New and Material Evidence

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to revise its rules regarding the reconsideration of decisions on claims for benefits based on newly discovered service records received after the initial decision on a claim. The proposed revision would provide consistency in adjudication of certain types of claims.

DATES: Comments must be received on or before August 19, 2005.

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 *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AM15.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Compensation and Pension Service (211A), Policy and Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7232.

SUPPLEMENTARY INFORMATION: To provide consistency in adjudication, we propose to revise current 38 CFR 3.156(c), to establish clearer rules regarding reconsideration of decisions on the basis of newly discovered service department records. We propose to include the substance of current 38 CFR 3.400(q)(2) in revised § 3.156(c). Current § 3.400(q)(2) governs the effective date of benefits awarded when VA reconsiders a claim based on newly discovered service department records. We propose to redesignate current § 3.400(q)(1) as new § 3.400(q)(1) and (2) without substantive change.

Current §§ 3.156(c) and 3.400(q)(2) together establish an exception to the general effective date rule set forth in § 3.400, which provides that the effective date of an award of benefits will be the date of claim or the date entitlement arose, whichever is the later. The exception applies when VA receives official service department records that were unavailable at the time that VA previously decided a claim for benefits and those records lead VA to award a benefit that was not granted in the previous decision. Under this exception, the effective date of such an award may relate back to the date of the original claim or date entitlement arose even though the decision on that claim may be final under § 3.104.

The provisions in current §§ 3.156(c) and 3.400(q)(2) are also an exception to the general rule in § 3.156(a) concerning claims to reopen based upon ''new and material evidence.'' Generally, § 3.156(a) and current § 3.400(q)(1) provide that a claimant must submit new and material evidence to reopen a finally denied claim, and the effective date for the award of benefits based upon such evidence may be no earlier than the date VA received the claim to reopen. Current § 3.156(c) states that new and material evidence may consist of supplemental service department records received before or after the decision has become final. Current § 3.156(c) is confusing because including a ''new and material'' requirement infers that VA may reopen a claim when service department records that were unavailable at the time of the prior decision are received, and the effective date would be the date of the reopened claim. In practice, when VA receives service department records that were unavailable at the time of the prior decision, VA may reconsider the prior decision, and the effective date assigned will relate back to the date of the original claim, or the date entitlement arose, whichever is later. We propose to revise § 3.156(c) to clarify VA's current practice regarding newly received service department records. To eliminate possible confusion regarding the effective date assigned based on newly received service department records, we propose to remove the ''new and material'' requirement in current § 3.156(c).

We also propose to revise current § 3.156(c) by revising the statement in current § 3.156(c) that states that VA will reconsider its decision regarding a claim for benefits if it receives misplaced service department records or certain corrected service department records. In proposed paragraph § 3.156(c)(1), we propose to elaborate on this statement and generally describe service department records as including any official service department records relating to the claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) are met. We intend that this broad description of ''service department records'' will also include unit records, such as those obtained from the Center for Research of Unit Records (CRUR) that pertain to military experiences claimed by a veteran. Such evidence may be particularly valuable in connection with claims for benefits for post traumatic stress disorder.

We also propose to clarify the language in current § 3.156(c), which suggests that reconsideration may occur only if the service department records ''presumably have been misplaced and have now been located.'' Even though the current language can be read as a limitation, in practice, VA does not limit its reconsideration to ''misplaced'' service department records. Rather, VA intended the reference to misplaced records as an example of the type of service department records that may have been unavailable when it issued a decision on a claim. The proposed revision to § 3.156(c) removes this ambiguity.

Proposed § 3.156(c)(1)(iii), adds ''declassified records that could not have been obtained because the records were classified when VA decided the claim'' as an example of service department records that may have been unavailable at the time of the prior decision. Declassified records may provide evidence of injuries, exposures, or other events in service that may support a claim for VA benefits. Classified service department records are similar to misplaced records and subsequently corrected records in that

they were unavailable at the time of VA's initial adjudication of the claim. Therefore, it is reasonable to include declassified service department records within the scope of the proposed rule.

We propose in § 3.156(c)(2) to limit the application of this rule by stating that it ''does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or the claimant failed to provide VA sufficient information for VA to identify and obtain the records from the respective service department, the Center for Research of Unit Records, or from any other official source.'' Reconsideration based upon service department records would not be available in cases where the claimant did not provide information that would have enabled VA or another federal agency to identify and search for relevant records. This limitation would allow VA to reconsider decisions and retroactively evaluate disability in a fair manner, on the basis that a claimant should not be harmed by an administrative deficiency of the government, but limited by the extent to which the claimant has cooperated with VA's efforts to obtain these records.

We also propose to limit the application of § 3.156(c) to avoid conflict with 38 U.S.C. 5110(i), which specifically limits the effective date of an award based on corrected service department records to no earlier than one year before the date on which the previously disallowed claim was reopened. *See also* 38 CFR 3.400(g). Accordingly, proposed § 3.156(c) excludes decisions based upon this type of corrected service department records because the proposed rule does not apply to ''records that VA could not have obtained * * * because the records did not exist when VA decided the claim.'' For the sake of additional clarity, we propose to cross reference 38 CFR 3.400(g) at the end of the rule.

We propose to remove the language in current § 3.156(c) requiring the submission of ''a supplemental report from the service department'' as a prerequisite to reconsideration and retroactive evaluation of disability, because VA does not require such supplemental reports in its current administrative proceedings. If, for example, VA itself had been in possession of the records during the prior adjudication but did not associate the records with the claim before a final denial, then the evidence would still warrant reconsideration and a retroactive evaluation of disability or entitlement to benefits under this rule. For the same reason, we propose to eliminate the third sentence of current § 3.156(c), which refers to the same type of report.

Current §§ 3.156(c) and 3.400(q)(2) may be read as requiring an earlier effective date for the award of benefits upon reconsideration only when the basis for the award is newly discovered service department records. Proposed § 3.156(c)(3) eliminates this ambiguity and clarifies that ''[a]n award based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.'' This provision would apply, for example, in cases where a veteran files a claim for disability compensation, which VA denies because there is no evidence of an in-service injury. Years later, if VA receives service department records that show an in-service injury, and obtains a medical opinion that links that injury to the claimant's current disability, it would grant service connection. Although the doctor's opinion is not a document that meets the definition of proposed § 3.156(c)(1), the service department record showing incurrence, which provided the basis for the medical opinion, is such a document. Therefore, the veteran in this example would be entitled to reconsideration of the prior decision and retroactive evaluation of disability. Any award of benefits as a result of such reconsideration would be effective on the date entitlement arose or the date of claim, whichever is later, or any other date made applicable by law or regulation to previously decided claims.

Benefits awarded upon reconsideration of a claim and/or retroactive evaluations of disability under current § 3.156(c) are effective on the dates specified in current § 3.400(q)(2).

Because we propose to include the rule regarding the effective date of an award of benefits based all or in part on newly discovered service department records in § 3.156(c), we additionally propose to remove that effective date provision from current § 3.400(q).

Paperwork Reduction Act

This document contains no new collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). To the extent the proposed revision to § 3.156(c) applies to service department records obtained by VA or provided by a service department, it does not involve a collection of information under the Paperwork Reduction Act. To the extent the proposed revision applies to service department records submitted by individual claimants, the collection of information has been approved by OMB in connection with the VA forms governing applications for compensation, pension, and dependency and indemnity compensation (DIC). Those forms govern the submission of evidence, including service department records, that are relevant to claims for those benefits. This proposed rule would merely explain what actions VA will take when such evidence is submitted after VA has made its initial decision on the claim. The OMB approval numbers for those information collections are 2900–0001 (VA Form 21–526, Veterans' Application for Compensation and/or Pension); 2900–004 (VA Form 21–534, Application for DIC, Death Compensation, and Accrued Benefits by a Surviving Spouse or Child); and 2900–005 (VA Form 21–535, Application for DIC by Parent(s)).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed 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. This proposed amendment would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

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

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 an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.102, 64.104–106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: March 2, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—Adjudication

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 3.156 is amended by:

a. Adding a paragraph heading to paragraph (a).

b. Adding a paragraph heading to paragraph (b).

c. Revising paragraph (c).

The additions and revision read as follows:

§ 3.156 New and material evidence.

(a) *General.* * * *

(b) *Pending claim.* * * *

(c) *Service department records.* (1) Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section. Such records include, but are not limited to:

(i) Service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) of this section are met;

(ii) Additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and

(iii) Declassified records that could not have been obtained because the records were classified when VA decided the claim.

(2) Paragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department, the Center for Research of Unit Records, or from any other official source.

(3) An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.

(4) A retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly, except as it may be affected by the filing date of the original claim.

(Authority: 38 U.S.C. 501(a))

* * * * *

3. Section 3.400 is amended by:

a. Revising the heading of paragraph (q).

b. Removing paragraph (q)(1) heading.

c. Redesignating paragraph (q)(1)(i) as new paragraph (q)(1).

d. Removing paragraph (q)(2).

e. Redesignating paragraph (q)(1)(ii) as new paragraph (q)(2).

The revision reads as follows:

§ 3.400 General.

* * * * *

(q) *New and material evidence (§ 3.156) other than service department records.* * * *

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[FR Doc. 05–12103 Filed 6–17–05; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–VA–0008; FRL–7925–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards in the Hampton Roads VOC Emissions Control Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision removes the volatile organic compound (VOC) emission standards exemption for sources located in the Hampton Roads VOC Emissions Control Area localities of James City County, York County, Poquoson City, and Williamsburg City. Sources located in these jurisdictions will now be subject to the VOC emission standards for existing sources as is the case in the other jurisdictions within the Area. This action is necessary in order for Virginia to meet its obligation to implement contingency measures as a result of the area's violation of the 1-hour ozone standard. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 20, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0008 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.dave@epa.gov.*

D. Mail: R03–OAR–2005–VA–0008, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–VA–0008.