established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Clark County Airport, Clark, SD.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014 and effective September 15, 2014, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Clark, SD [New]

Clark County Airport, ND
(Lat. 48°28′48″ N., long. 099°14′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Clark County Airport.

Issued in Fort Worth, TX, on November 24, 2014.

Humberto Melendez,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–28363 Filed 12–1–14; 8:45 am]

BILLING CODE 4901–14–P

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: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend 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.

DATES: Comments must be received on or before February 2, 2015.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP18—Additional Compensation on Account of Children Adopted Out of Veteran's Family.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Section 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: Pursuant to 38 U.S.C. 1115, a veteran entitled to compensation based on a service-connected disability rated not less than 30 percent is entitled to an additional rate of disability compensation for each of his or her children. Section 101(4)(A) of title 38, United States Code, defines ''child'' to include an unmarried person under the age of 18 years who is a legitimate child, a legally adopted child, a stepchild who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child. See also 38 CFR 3.57. The statute also provides some exceptions for individuals who are permanently incapable of self-support and individuals who are pursuing an education. See 38 U.S.C. 101(4)(A); see also 38 CFR 3.57. 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.'' See VA Op. Gen. Couns. Prec. 16–94 (1994) (''pursuant to [§ 3.58] a child adopted out of a veteran's family may remain a child of the veteran for VA purposes''). Therefore, under current regulations, VA is required to pay a veteran additional disability compensation for a child who otherwise meets the requirements under § 3.57 but has been adopted out of the veteran's family.

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. This purpose is evident from the statute's language, structure, and legislative history. VA 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 proposes to amend its regulations, particularly 38 CFR 3.57, 3.58, and 3.458, to eliminate this additional compensation paid to veterans for such children.

I. History of 38 U.S.C. 1115 and Bases for Rulemaking

The definition of ''child'' in 38 U.S.C. 101(4)(A), which refers to legitimate, illegitimate, adopted, and certain stepchildren, is ambiguous as to whether it encompasses a biological child who has been legally adopted out of the veteran's family. As noted above, VA historically has concluded that an adopted-out child will be considered the veteran's child for purposes of all benefits administered by VA. However, providing payments to a veteran under 38 U.S.C. 1115 on the basis of an adopted-out child creates an anomaly that undermines the clear purpose of that statute.

Section 1115 provides that certain veterans entitled to disability compensation ''shall be entitled to additional compensation *for dependents* in the following monthly amounts.'' (Emphasis added.) The term ''dependent'' is not defined for purposes of title 38 generally or section 1115 specifically, but is commonly understood to refer to a person who is legally or factually reliant upon the veteran for support. Although a veteran ordinarily will have a legal and moral obligation to support his or her biological child, that is not the case when the child has been adopted out of the veteran's family. A child-parent relationship typically ''does not exist between an [adopted-out child] and the [adopted-out child's] genetic parents.'' See *Astrue* v. *Capato ex rel. B.N.C.,* 132 S. Ct. 2021, 2030 (2012) (quoting Unif. Probate Code § 2–119(a), 8 U.L.A. 55 (Supp. 2011)). Accordingly, we believe an adopted-out child generally would not be a ''dependent'' within the meaning of 38 U.S.C. 1115.

Further, section 1115(1) provides that the dependents' allowance will be paid, in monthly amounts, ''[i]f and while [the veteran] . . . has . . . one or more children.'' The statute thus clearly refers to the present existence of a parent-child relationship. Even if the child's biological relationship or pre-adoption legal relationship to the veteran may provide a basis for certain types of VA benefits, it would not provide a basis for payment under section 1115 if the parent-child relationship has been severed at the time relevant to current payments.

The payments authorized by 38 U.S.C. 1115 are paid in addition to payments authorized by 38 U.S.C. 1114 as payment for the level of impairment caused by the veteran's service-connected disability. Because payments under section 1115 are in addition to payments for impairment due to disability and because they are paid ''for dependents,'' the clear purpose of section 1115 is to provide payments to the disabled veteran because of the economic burden associated with providing for dependents. *See Rose* v. *Rose,* 481 U.S. 619, 630–31 (1987) (citing 38 U.S.C. 315 (now codified as 38 U.S.C. 1115) and concluding that ''Congress clearly intended veterans' disability benefits to be used, in part, for the support of veterans' dependents''). We do not believe that Congress intended to authorize payment to the veteran of a dependents' allowance in cases where the veteran does not have a present parent-child relationship with the adopted-out child and thus would not incur the economic burdens the statute is designed to address.

The legislative history of the statute further supports this interpretation. The current version of 38 U.S.C. 1115 originated in 1958 under Public Law 85–857, 72 Stat. 1121. However, ''[t]he additional compensation for dependents was first authorized by Public Law 877, 80th Congress, approved July 2, 1948.'' Letter from Bradford Morse, Dep. Adm. U.S. Vet. Adm., to Rep. Olin E. Teague, Chair, H. Comm. on Veterans Affairs, contained in H.R. Rep. No. 86–1541, at 3 (1960). By enacting this statute, Congress intended that a veteran entitled to compensation based on a service-connected disability rated not less than a designated level would receive additional compensation on account of his or her children.

Additionally, ''the legislative history [of Public Law 80–877] indicates that one of the reasons for limiting the benefits provided by the act to persons 60 percent or more disabled was based on the fact that this group of veterans because of the serious nature of their disabilities are not generally in a position to supplement their compensation payments by income from steady employment'' and ''veterans with disabilities rated less than 50 percent are generally able to supplement their compensation payments with other income.'' See H.R. Rep. No. 86–1541, at 3–4. In view of section 1115's legislative history, VA believes Congress intended the section 1115 allowance to only supplement a veteran's income, that is, to provide additional budgetary support within the veteran's household expense framework. Section 101(13) of title 38, U.S.C., in part, defines the term ''compensation'' as a ''monthly payment made by the Secretary *to a veteran because of service-connected disability*'' (emphasis added), which may be supplemented by ''other income'' to support the veteran's family, see H.R. Rep. No. 1541, at 4. Compare with 38 U.S.C. 101(14) (defining the term ''dependency and indemnity compensation'' as ''a monthly payment made by the Secretary *to a . . . child*'') (emphasis added). Thus, the section 1115 allowance was provided for those veterans who likely were unable to supplement their compensation payments to support their family with ''other income'' due to their service-connected disabilities.

The Secretary, however, does not interpret the legislative history to support, nor intend this rulemaking, to restrict to any degree a child's right to receive VA benefits in the child's own right, such as dependency and indemnity compensation (DIC), which is not necessarily dependent upon a continuing, legally based parent-child relationship. See 38 CFR 3.5 (referring to a child's entitlement to DIC); 38 U.S.C. 101(14) (defining DIC as ''a monthly payment made by the Secretary *to a . . . child*'') (emphasis added). The U.S. Court of Appeals for the Federal Circuit has held that the dependent's allowance, or child's allowance under section 1115, is provided to the veteran, not to the veteran's children (or other dependents). See *Sharp v. Nicholson,* 403 F.3d 1324, 1327 (Fed. Cir. 2005) (''[T]he reference [in 38 U.S.C. 1115] to '*additional* compensation' . . . indicates that *the veteran,* who is already entitled to some degree of compensation for his service-connected disability, is also entitled to a supplementary amount because he or she has dependents.''). See also H.R. Rep. No. 1541, at 3–4. We find it significant that payments under section 1115 are payments to the veteran based on the veteran's relationship to the purported child, whereas DIC and certain other benefits are paid to the child in his or her own right.

VA's current regulation at 38 CFR 3.58 derives from a line of VA legal opinions consistently holding that a child's adoption out of a veteran's family does not affect the child's right to receive DIC or similar benefits payable to the child in his or her own right. One of the earliest of these opinions, which was relied upon in part to support VA's current policy in § 3.58, was issued by the Bureau of War Risk Insurance, a predecessor agency to VA, in 1919 and prior to enactment of section 1115. This opinion stated, ''An adopted child, is in a legal sense, the child both of its natural and of its adopting parents, and is not, because of the adoption, deprived of its rights of inheritance from its natural parents, unless the statute of the state of its domicile expressly so provides.'' See Memorandum, Bureau of War Risk Insurance, General Counsel (Apr. 5, 1919). The Secretary notes that, similar to DIC and unlike additional compensation under section 1115, inheritance rights of a child who is adopted from the biological parents are not contingent on an existing child-parent relationship or financial dependency on the biological parents and may survive a legal adoption, depending upon the laws of individual states. See Child Welfare Information Gateway, U.S. Dept. of Health & Human Services, *Interstate Inheritance Rights for Adopted Persons* 2 (2012), available at *https://www.childwelfare.gov/systemwide/laws_policies/statutes/inheritance.pdf.* Because the additional compensation payable to a veteran for a child under 38 U.S.C. 1115 is the benefit of the veteran, not the child, the logic of the prior VA opinions and the analogy to the child's right to inherit from the veteran who is the child's biological parent are not relevant to section 1115.

We recognize that this interpretation may be viewed as treating an adopted-out child's status as the veteran's ''child'' differently for purposes of section 1115 in comparison to other benefits. However, we believe our interpretation is warranted by the specific requirements and clear purpose of section 1115, which distinguish that statute from statutes governing DIC and other benefits, and by the rationale in prior VA opinions for finding that adoption out of the veteran's family does not terminate the child's right to receive benefits in his or her own right. We believe our interpretation is reasonable and logically comports with the intent of Congress.

II. Proposed Regulatory Amendments

For the reasons discussed above, VA proposes to implement this interpretation of section 1115 by modifying 38 CFR 3.57, 3.58, and 3.458.

The proposed amendment to § 3.57 would add a third exception to the definition of child in § 3.57(a) to provide that the definition of child does not include a child who is adopted out of a veteran's family in connection with any benefits that are provided to a veteran pursuant to 38 U.S.C. 1115. The amended regulation would state that this limitation would not apply to any VA benefit payable directly to a child in the child's own right, such as DIC under 38 CFR 3.5. The same limitation would be added to § 3.58, the regulation governing a child adopted out of a family. Both proposed amendments would be consistent with the legislative intent of section 1115 to provide supplemental income to a veteran to enhance the veteran's efforts to provide financial support to the veteran's then constituted family. Congress recognized that this supplemental income was necessary because the veteran's service-connected disability or disabilities would hinder the veteran's ability to generate earned income. Once a child is no longer a member of the veteran's family, the veteran's corresponding family-related expenses would presumably and proportionately decrease, so the veteran should no longer receive increased compensation due to the child, who would no longer be financially dependent on the veteran.

Consistent with the intent of Congress, specifically that the additional benefits that are provided under section 1115 are intended to supplement the veteran's income, VA also proposes to amend 38 CFR 3.458, which sets forth limitations on the apportionment of a veteran's benefits. VA proposes to amend § 3.458 to exclude the apportionment of section 1115 benefits in the case of an adopted-out child because section 1115 benefits would no longer be payable in the case of an adopted-out child.

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, to 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 proposed rule would 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 proposed rule would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 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 proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed 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. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on November 21, 2014, 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: November 26, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 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 by:
■ a. In paragraph (a)(1) introductory text, removing the phrase ''paragraphs (a)(2) and (3)'' and adding in its place ''paragraphs (a)(2) through (4)'';
■ b. Adding paragraph (a)(4).
■ c. Adding an authority citation immediately following paragraph (a)(4).
■ d. 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 by:
■ (a) In paragraph (d) removing the phrase '', except the additional compensation payable for the child''.
■ (b) 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.

[FR Doc. 2014–28374 Filed 12–1–14; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0352; FRL–9919–97–OAR]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana Second 10-Year Carbon Monoxide Maintenance Plan for Billings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Montana. On July 13, 2011, the Governor of Montana's designee submitted to EPA a second 10-year maintenance plan for the Billings area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This maintenance plan addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. EPA is also proposing approval of an alternative monitoring strategy for the Billings CO maintenance area, which was submitted by the Governor's designee on June 22, 2012.

DATES: Comments must be received on or before January 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0352, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Email: *clark.adam@epa.gov*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- Hand Delivery: Director, Air Program, EPA, Region 8, Mail Code 8P–AR, 1595 Wynkoop, Denver, Colorado