DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ65

DIC Benefits for Survivors of Certain Veterans Rated Totally Disabled at Time of Death

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes an interpretive rule reflecting the Department of Veterans Affairs (VA) conclusion that 38 U.S.C. 1318(b) authorizes payment of dependency and indemnity compensation (DIC) only in cases where the veteran had, during his or her lifetime, established a right to receive total service-connected disability compensation from VA for the period required by that statute or would have established such a right if not for clear and unmistakable error by VA. This document also makes certain non-substantive changes.

DATES: *Effective Date:* Janaury 21, 2000.

FOR FURTHER INFORMATION CONTACT: Don England, Senior Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: This document establishes an interpretive rule reflecting VA's conclusion that 38 U.S.C. 1318(b) authorizes payment of DIC only in cases where the veteran had, during his or her lifetime, established a right to receive total service-connected disability compensation from VA for the period required by that statute or would have established such a right if not for clear and unmistakable error by VA.

I. History of 38 CFR 3.22

Under chapter 13 of title 38, United States Code, VA is authorized to pay DIC to certain survivors of veterans who died as a result of service-connected disability. In 1978, Congress enacted Public Law 95–479, which authorized VA to pay DIC to the survivors of a veteran whose death was not caused by service-connected disability, but who, at the time of death, ''was in receipt of (or but for the receipt of retired or retirement pay was entitled to receive)'' compensation for a service-connected disability rated 100 percent disabling for 10 years immediately preceding death, or for a period of at least five years extending from date of discharge from service until date of death. That provision was codified in 38 U.S.C. 410(b)(1). In 1979, VA issued 38 CFR 3.22 to implement the statute (44 FR 22716, 22718 (1979)).

A 1981 opinion by the VA General Counsel (Op. G.C. 2–81) concluded that 38 U.S.C. 410(b)(1) did not permit a DIC award to the survivors of a veteran who was not actually in receipt of compensation for a total disability for a full ten years prior to death, but who would have been in receipt of such benefits if not for error by VA in a decision rendered during the veteran's lifetime.

In 1982, Congress enacted Public Law 97–306, which amended 38 U.S.C. 410(b)(1) in response to the General Counsel's 1981 decision. The amended statute, now codified at 38 U.S.C. 1318(b), authorizes payment of DIC in cases where the veteran ''was in receipt of or entitled to receive (or but for the receipt of retired or retirement pay was entitled to receive)'' compensation for a service-connected disability rated totally disabling for 10 years immediately preceding death or a period of five years from the date of discharge. The legislative history stated that the purpose of the amendment was ''to provide that the requirement that the veteran have been in receipt of compensation for a service-connected disability rated as total for a period of 10 years prior to death (or for 5 years continuously from the date of discharge) is met if the veteran would have been in receipt of such compensation for such period but for a clear and unmistakable error regarding the award of a total disability rating.'' (Explanatory Statement of Compromise Agreement, 128 Cong. Rec. H7777 (1982), reprinted in 1982 U.S.C.C.A.N. 3012, 3013.)

In 1983, VA revised 38 CFR 3.22 to state that DIC would be payable under 38 U.S.C. 410(b)(1) (now 38 U.S.C. 1318(b)) when the veteran ''was in receipt of or for any reason (including receipt of military retired or retirement pay or correction of a rating after the veteran's death based on clear and unmistakable error) was not in receipt of but would have been entitled to receive compensation at the time of death'' for service-connected disability rated totally disabling for 10 years prior to death or five years continuously from date of discharge to date of death (48 FR 41160, 41161 (1983)).

In *Wingo* v. *West,* 11 Vet. App. 307 (1998), the United States Court of Appeals for Veterans Claims (CAVC) (formerly United States Court of Veterans Appeals) interpreted 38 CFR 3.22(a) as permitting a DIC award in a case where the veteran had never established entitlement to VA compensation for a service-connected total disability and had never filed a claim for such benefits which could have resulted in entitlement to compensation for the required period. The CAVC concluded that the language of § 3.22(a) would permit a DIC award where it is determined that the veteran ''hypothetically'' would have been entitled to a total disability rating for the required period if he or she had applied for compensation during his or her lifetime.

The CAVC's interpretation of § 3.22(a) does not accurately reflect VA's intent in issuing that regulation. Section 1318 of the statute authorizes DIC where the veteran was ''in receipt of or entitled to receive'' compensation for total service-connected disability for a specified period preceding death. The statute does not authorize VA to award DIC benefits in cases where the veteran merely had hypothetical, as opposed to actual, entitlement to compensation. VA does not have authority to provide by regulation for payment of DIC in a manner not authorized by 38 U.S.C. 1318. Section 3.22(a) is an interpretive rule that was intended to explain the requirements of 38 U.S.C. 1318, and not to establish any substantive rights beyond those authorized by section 1318. However, VA acknowledges that the language of § 3.22(a) has apparently caused confusion regarding VA's interpretation of 38 U.S.C. 1318. Accordingly, VA is revising § 3.22(a) to ensure that it clearly expresses VA's interpretation of section 1318.

II. Scope of This Rule

This document revises existing paragraph (a) of 38 CFR 3.22 and redesignates it as paragraphs (a) through (d). VA is also redesignating existing paragraphs (b) through (e) as new paragraphs (e) through (h), respectively.

Paragraph (a), as revised, states that even though a veteran died of non-service-connected causes, VA will pay benefits to the surviving spouse or children in the same manner as if the veteran's death was service-connected service connected if:

(1) the veteran's own willful misconduct did not cause his or her death, and (2) at the time of death, the veteran was receiving, or was entitled to receive, compensation for a service-connected service connected disability that was (i) rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death, or (ii) rated by VA as totally disabling continuously since the veteran's release from active duty and for at least 5 years immediately preceding death.

Paragraph (b), as revised, states that the phrase ''entitled to receive'' means

that, at the time of death the veteran had a service-connected disability rated by VA as totally disabling, but was not actually receiving compensation because:

(1) VA was paying the compensation to the veteran's dependents; (2) VA was withholding the compensation to offset an indebtedness of the veteran; (3) the veteran had not received total disability compensation solely because of clear and unmistakable error in a VA decision; (4) the veteran had not waived retired or retirement pay in order to receive compensation; (5) VA was withholding payments under the provisions of 10 U.S.C. § 1174(h)(2); (6) VA was withholding payments because the veteran's whereabouts was unknown, but the veteran was otherwise entitled to receive continued payments based on a total service-connected disability rating; or (7) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. § 5309.

The revision reflects VA's conclusion that 38 U.S.C. 1318(b) authorizes payment of DIC only in cases where the veteran had, during his or her lifetime, established a right to receive total service-connected disability compensation for the required period or would have established such a right if not for clear and unmistakable error by VA. The basis for VA's interpretation of 38 U.S.C. 1318(b) is set forth below.

III. Interpretation of 38 U.S.C. 1318

Section 1318 authorizes payment of DIC in cases where the veteran was, at the time of death, ''in receipt of or entitled to receive (or but for the receipt of retired or retirement pay was entitled to receive)'' compensation for service-connected disability that ''was continuously rated totally disabling for a period of 10 or more years immediately preceding death'' or was so rated for 5 years continuously from date of discharge to date of death. The phrase ''in receipt of * * * compensation'' unambiguously refers to cases where the veteran was, at the time of death, actually receiving compensation for service-connected disability rated totally disabling for the required period. VA has concluded that the phrase ''entitled to receive * * * compensation'' is most reasonably interpreted as referring to cases where the veteran had established a legal right to receive compensation for the required period under the laws and regulations governing such entitlement, but was not actually receiving the compensation.

Under 38 U.S.C. 5101, ''a specific claim in the form prescribed by the Secretary * * * must be filed in order for benefits to be paid or furnished to any individual under the laws administered by the Secretary.'' No person can have a right to receive compensation from VA in the absence of a properly filed claim. (See *Jones* v. *West,* 136 F.3d 1296, 1299–1300 (Fed. Cir.), cert. denied, 119 S. Ct. 90 (1998)). Section 5110(a) of title 38, United States Code, provides that an award of compensation may not be made effective earlier than the date of the claimant's application, unless specifically provided otherwise by statute. Accordingly, a person cannot have a right to receive compensation from VA for any period prior to the date of an application for benefits except as expressly authorized by specific statutory provision.

The legislative history of Public Law 97–306 indicates that the purpose of adding the phrase ''or entitled to receive'' to what is now 38 U.S.C. 1318 was to provide that DIC may be paid in cases where the veteran would have been in receipt of compensation for a total service-connected disability for the specified period prior to death if not for a clear and unmistakable error by VA. A ''clear and unmistakable error'' is an error in a prior final VA decision which materially affected the outcome of the decision. Pursuant to law and regulation, a decision containing a clear and unmistakable error may be revised retroactively, and entitlement to benefits may be established retroactively as if the error had not occurred (38 U.S.C. 5111, 7109A; 38 CFR 3.105(a)).

A retroactive award predicated on a finding of clear and unmistakable error is, like all awards of VA benefits, subject to the requirement that the veteran have filed a claim for benefits under 38 U.S.C. 5101(a). Further, the period of the veteran's retroactive entitlement is governed by the effective-date provisions of 38 U.S.C. 5110, and generally may not be earlier than the date of the veteran's claim which resulted in the erroneous decision. In using the phrase ''entitled to receive'' to refer to the specific class of cases where the veteran's entitlement was established by correction of clear and unmistakable error, Congress plainly contemplated that determinations concerning the existence and duration of the veteran's entitlement to benefits would continue to be governed by the requirements of 38 U.S.C. 5101(a) and 5110.

The legislative history also suggests that final decisions concerning a veteran's disability rating and effective date would be binding for purposes of determinations under 38 U.S.C. 1318(b) unless there was clear and unmistakable error in such decisions. Sections 7104(b) and 7105(c) of title 38, United States Code provide that determinations of the Board of Veterans' Appeals and VA regional offices, respectively, are final unless a timely appeal is filed. Such final decisions may be revised only on the basis of clear and unmistakable error. In providing that DIC benefits may be awarded if there was clear and unmistakable error in a prior final decision which prevented the veteran from receiving total disability compensation for the specified period, Congress plainly contemplated that the prior final decision would continue to be binding in the absence of clear and unmistakable error. Accordingly, if a regional office or the Board had rendered a final decision which establishes that the veteran was not entitled to a total rating for at least ten years immediately preceding death (or at least five years from date of discharge to date of death), such decision would preclude VA from reaching a contrary conclusion in adjudicating a claim for DIC under 38 U.S.C. 1318(b).

In view of Congress' clear intent, VA has concluded that determinations concerning the existence and duration of the veteran's entitlement to compensation for a service-connected disability rated totally disabling are governed by the generally-applicable provisions of 38 U.S.C. 5101(a), 5110, 7104(b), and 7105(c), governing claim-filing requirements, effective dates of entitlement, and the finality of regional-office and Board decisions. Congress' stated purpose to authorize DIC in cases where clear and unmistakable error was the only obstacle to the veteran's receipt of total disability compensation for the required period fits logically within this well-established statutory scheme.

In contrast, interpreting 38 U.S.C. 1318(b) as permitting DIC awards where the veteran ''hypothetically'' could have been entitled to benefits would create a substantially broader rule which would be inconsistent with the general statutory requirements governing a veteran's entitlement to compensation. VA has found no indication in section 1318(b) or its legislative history that Congress intended VA to ignore those established statutory requirements in making determinations regarding the veteran's entitlement to compensation for purposes of section 1318(b). To the contrary, Congress indicated that the purpose of the phrase ''or entitled to receive'' was to authorize DIC awards in a specific class of cases where the veteran's entitlement is established under those generally-applicable statutory requirements.

The language of 38 U.S.C. 1318(b) is consistent with Congress' stated purpose. Section 1318(b) authorizes

payment of DIC in cases where the veteran was entitled to receive compensation for a service-connected disability that ''was continuously rated totally disabling for a period of 10 or more years immediately preceding death.'' The requirement that the disability have been ''continuously rated'' totally disabling for the specified period is most reasonably construed as referring to ratings which had actually been assigned by VA for the duration of that period in accordance with the established statutory requirements governing claims, ratings, and effective dates. A contrary interpretation would render the term ''rated'' wholly unnecessary, for Congress could simply have provided that DIC would be payable based on a posthumous determination that the veteran had a service-connected disability that ''was continuously * * * totally disabling for a period of 10 or more years immediately preceding death.''

This interpretation of 38 U.S.C. 1318(b) is consistent with VA's prior interpretation of that provision. In a 1990 precedent opinion (VAOPGCPREC 68–90) which is binding on all VA officials and employees, the VA General Counsel examined the language and history of section 1318(b) (previously section 410(b)). The General Counsel concluded that the legislative history clearly indicated that Congress intended to authorize DIC in cases where the veteran had a total service-connected disability rating for the specified period, or would have had such a rating but for clear and unmistakable error by VA. The General Counsel concluded that VA could not award DIC in cases where the veteran did not have a total service-connected rating for the specified period and there was no clear and unmistakable error which could have provided a basis for retroactively assigning such a rating.

IV. The CAVC's ''Wingo'' Decision

In *Wingo*, the CAVC did not expressly discuss the meaning of 38 U.S.C. 1318 and did not analyze the language and history of that provision. The CAVC stated that 38 U.S.C. 1318 and 38 CFR 3.22(a) allow a claimant to establish entitlement to DIC merely by showing that the veteran hypothetically would have been entitled to total service-connected disability compensation for the required period if the veteran had applied for such compensation. (11 Vet. App. at 311.) The CAVC did not, however, state that section 1318 alone established such a right. Further, the CAVC's discussion indicates that its conclusion was based primarily, if not exclusively, on the language of § 3.22(a). The CAVC reversed a determination by the Board of Veterans' Appeals that DIC could not be paid under section 1318 in a case where the veteran had not applied for compensation during his lifetime. In support of that conclusion, the CAVC stated repeatedly that the Board's determination was inconsistent with the language of § 3.22(a). (11 Vet. App. at 311, 312.) Because the CAVC did not expressly analyze the language and history of section 1318, and because its holding was predicated primarily on the language of the regulation, it does not appear that the CAVC has concluded that section 1318 by its terms requires VA to pay DIC in cases where the veteran had no more than a ''hypothetical'' entitlement to total disability compensation for the required period.

The CAVC also did not expressly address the issue of whether 38 CFR 3.22(a), as construed by that court, is a valid exercise of VA's rule-making authority. Although the CAVC's interpretation of § 3.22(a) may be a plausible construction of the language of that regulation, the CAVC's construction creates a conflict between § 3.22(a) and 38 U.S.C. 1318 that is inconsistent with VA's authority, as well as with VA's intent. VA has no authority to provide by regulation for the payment of DIC in a manner not authorized by section 1318. Section 3.22(a) is an interpretive rule, which was intended to explain the requirements of the statute rather than to establish new legal rights or obligations beyond those provided by statute. An interpretive rule is one which merely clarifies or explains existing statutes or regulations. (*Animal Legal Defense Fund* v. *Quigg,* 932 F.2d 920, 927 (Fed. Cir. 1991).) In contrast, a legislative, or substantive, rule is one which effects a change in existing law or policy which affects individual rights and obligations. (*Animal Legal Defense Fund,* 932 F.2d at 927.) A rule can be legislative only if Congress has delegated legislative power to an agency with respect to a particular matter and the agency intended to use that power in promulgating the rule. (*Schuler Indus.* v. *United States,* 109 F.3d 753, 755 (Fed. Cir. 1997); *American Postal Workers Union, AFL–CIO* v. *United States Postal Serv.,* 707 F.2d 548, 558 (D.C. Cir. 1983), cert. denied, 465 U.S. 1100 (1984).)

38 U.S.C. 1318 authorizes VA to pay DIC only in cases where a veteran had an actual, rather than merely hypothetical, right to receive compensation for service-connected disability rated by VA as totally disabling for 10 years preceding death or 5 years continuously from date of discharge to date of death. Congress has not delegated authority to VA to establish legislative rules restricting or expanding the class of persons eligible for DIC under the statute, and VA did not intend to exercise any such authority in issuing or amending § 3.22(a).

In contrast to a legislative rule, an interpretive rule can ''create no law and have no effect beyond that of the statute.'' (*Pickus* v. *United States Board of Parole,* 507 F.2d 1107, 1113 (D.C. Cir. 1974).) Because 38 U.S.C. 1318 does not authorize VA to pay DIC benefits in cases where the veteran had no more than ''hypothetical'' entitlement to the underlying compensation, and because Congress has not authorized VA to establish legislative rules creating a right to DIC in such cases, VA has no authority to create such a right. In *Wingo,* the CAVC concluded that the language of 38 CFR 3.22(a) recognizes such a right existing under section 1318, but did not address VA's authority to recognize or establish such a right in view of the language and purpose of the statute and the principles governing the effect of interpretive rules. Because § 3.22(a), as interpreted by the CAVC, does not accurately reflect the requirements of the statute and VA's intention in issuing that regulation, VA has determined that it is necessary to revise the regulation.

V. Definition of ''Entitled To Receive''

In order to clarify the requirements of 38 U.S.C. 1318, VA is revising 38 CFR 3.22 to expressly define the statutory term ''entitled to receive.'' VA is defining that term to refer to each specific circumstance where a veteran could have had a service-connected disability rated totally disabling by VA but may not have been receiving VA compensation for such disability at the time of death. Those circumstances are as follows.

In certain circumstances, VA may pay a veteran's compensation directly to his or her dependents. (See 38 U.S.C. 1158, 5307, 5308(c).) VA may also withhold a veteran's compensation in order to offset the veteran's indebtedness to the United States arising out of participation in a program administered by VA. (See 38 U.S.C. 5314.) In such cases, where the veteran's compensation is being applied to satisfy an obligation of the veteran, VA believes that the veteran may be considered to have been entitled to receive compensation within the meaning of 38 U.S.C. 1318.

There are other circumstances in which a veteran who has established entitlement to compensation for disability rated totally disabling by VA

may not have been receiving payments of compensation at the time of death. A veteran will be considered to have been entitled to receive compensation for such disability at the time of death if he or she had filed a claim and would have received compensation for the required period but for clear and unmistakable error by VA. Additionally, a veteran will be considered to have been entitled to receive compensation if, at the time of death, the veteran had a service-connected disability (or disabilities) that was rated 100 percent disabling by VA for the required period, but the veteran was not receiving compensation because he or she had not waived military retired or retirement pay, or because VA was withholding payments under certain circumstances. Payments of compensation may be withheld under 10 U.S.C. 1174(h)(2) to offset the amount of certain payments to the veteran from the Department of Defense. It may also be necessary for VA to withhold compensation if the veteran's whereabouts is unknown. Additionally, under 38 U.S.C. 5308, VA may withhold payments to aliens located in the territory of an enemy of the United States or any of its allies. A veteran is entitled to receive payments withheld under section 5308 if it is shown that the veteran was not guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies (38 U.S.C. 5309). Accordingly, revised § 3.22(b) states that the phrase ''entitled to receive'' refers to veterans who were not receiving payments at the time of death for one of the reasons stated above.

This definition also reflects VA's conclusion that the language ''rated totally disabling'' in 38 U.S.C. 1318 requires that the disability or disabilities have been rated totally disabling by VA. Section 1155 of title 38, United States Code, requires the Secretary of Veterans Affairs to ''adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries.'' Under this authority, VA has created its Schedule for Rating Disabilities (38 CFR Part 4). Given the very specific requirements of 38 U.S.C. 1155 as well as 38 U.S.C. 1114, which establishes the rates of compensation for the ten levels of disability, including disabilities ''rated as total'' (section 1114(j)), we believe that the term ''rated'', as it is used in section 1318, can only mean ''rated by VA''.

VI. Other Changes

New paragraph (c) of § 3.22 is a restatement of material previously contained in paragraph (a). New paragraph (c) provides that a rating based on individual unemployability under 38 CFR 4.16 qualifies as a disability rated by VA as totally disabling. New paragraph (d) of § 3.22 provides the criteria for being considered a surviving spouse for purposes of 38 U.S.C. 1318 and 38 CFR 3.22. These criteria are merely a restatement of 38 U.S.C. 1318(c) and 38 CFR 3.54(c)(2). We are simultaneously removing § 3.54(c)(2) as unnecessary. New paragraphs (e) through (h) are redesignations of former paragraphs (b) through (e), respectively.

This document establishes interpretive rules. It also restates statutory provisions and makes other nonsubstantive changes. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and with a 30-day delay of effective date.

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 (RFA), 5 U.S.C. 601–612. The reason for this certification is that this final rule would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.110.

List of Subjects

38 CFR Part 3

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

Approved: September 7, 1999.

Togo D. West, Jr.,

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 § 3.22, paragraphs (b) through (e) are redesignated as paragraphs (e) through (h), respectively; and the section heading, paragraph (a) and newly redesignated paragraph (f) are revised; and new paragraphs (b) through (d) are added, to read as follows:

§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.

(a) Even though a veteran died of non-service-connected causes, VA will pay death benefits to the surviving spouse or children in the same manner as if the veteran's death were service-connected, if:

(1) The veteran's death was not the result of his or her own willful misconduct, and

(2) At the time of death, the veteran was receiving, or was entitled to receive, compensation for service-connected disability that was:

(i) Rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death; or

(ii) Rated by VA as totally disabling continuously since the veteran's release from active duty and for at least 5 years immediately preceding death.

(b) For purposes of this section, ''entitled to receive'' means that at the time of death, the veteran had service-connected disability rated totally disabling by VA but was not receiving compensation because:

(1) VA was paying the compensation to the veteran's dependents;

(2) VA was withholding the compensation under authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;

(3) The veteran had applied for compensation but had not received total disability compensation due solely to clear and unmistakable error in a VA decision concerning the issue of service connection, disability evaluation, or effective date;

(4) The veteran had not waived retired or retirement pay in order to receive compensation;

(5) VA was withholding payments under the provisions of 10 U.S.C. 1174(h)(2);

(6) VA was withholding payments because the veteran's whereabouts was unknown, but the veteran was otherwise entitled to continued payments based on a total service-connected disability rating; or

(7) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. 5309.

(c) For purposes of this section, ''rated by VA as totally disabling'' includes total disability ratings based on unemployability (§ 4.16 of this chapter).

(d) To be entitled to benefits under this section, a surviving spouse must have been married to the veteran—

(1) For at least 1 year immediately preceding the date of the veteran's death; or

(2) For any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 1318)

* * * * *

(f) *Social security and worker's compensation.* Benefits received under social security or worker's compensation are not subject to recoupment under paragraph (e) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

* * * * *

§ 3.54 [Amended]

3. In § 3.54, paragraph (c)(2) and its authority citation are removed, and paragraphs (c)(1), (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) are redesignated as paragraphs (c), (c)(1), (c)(2), and (c)(3), respectively.

[FR Doc. 00–1507 Filed 1–20–00; 8:45 am]

BILLING CODE 8320–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 87]

RIN 3090–AH18

Federal Travel Regulation; Maximum Per Diem Rates and Other Travel Allowances

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States (CONUS), and footnote 4, contained in a final rule appearing in Part III of the **Federal Register** of Thursday, December 2, 1999 (64 FR 67670). The rule, among other things, increased/decreased the maximum lodging amounts in certain existing per diem localities, added new per diem localities, and removed a number of previously designated per diem localities.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–4857.

SUPPLEMENTARY INFORMATION: In rule document 99–31215 beginning on page 67670 in the issue of Thursday, December 2, 1999, make the following corrections:

Appendix A to Chapter 301 [Corrected]

1. On page 67678, under the State of Louisiana, in the 31st line from the bottom under the entry New Orleans/Plaquemine/St. Bernard, column two is corrected to remove the word ''New''.

2. On page 67679, under the State of Maryland, in the 15th line from the top under the entry Lexington Park/Leonardtown/Lusby, column two is corrected to remove the apostrophe and to add ''and Calvert''.

3. On page 67679, under the State of Michigan, in the 11th line from the bottom under the entry Auburn, column two is corrected to read ''Bay (except Auburn Hills, see Oakland and City limits of Auburn Hills)''.

4. On page 67680, under the State of Michigan, in the 24th line from the bottom under the entry Pontiac/Troy/Auburn Hills, column two is corrected to read ''Oakland and City limits of Auburn Hills (see Bay County)''.

5. On page 67683, under the State of Ohio, in the fifth line from the bottom under the entry Cincinnati, column two is corrected to read ''Hamilton and Warren''.

6. On page 67684, under the State of Pennsylvania, in the ninth line from the bottom under the entry King Prussia/Ft. Washington/Bala Cynwyd, column one is corrected to read ''King of Prussia/Ft. Washington/Bala Cynwyd'', and column two is corrected to add the county ''Montgomery''.

7. On page 67688, footnote 4 is corrected to include missing text and is set out in its entirety for the ease of the reader. The corrected text should read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

Per diem locality: Key city [1]	County and/or other defined location [2 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
* * *	*	*		*		*
LOUISIANA						
* * *	*	*		*		*
New Orleans/Plaquemine/St. Bernard	Orleans, Iberville and St. Bernard.	88		42		130
* * *	*	*		*		*
MARYLAND						
* * *	*	*		*		*
Lexington Park/Leonardtown/Lusby	St. Marys and Calvert	66		34		100
* * *	*	*		*		*
MICHIGAN						
* * *	*	*		*		*
Auburn	Bay (except Auburn Hills, see Oakland and City limits of Auburn Hills).	59		38		97