

(n) Appropriate provisions granting the Director and the Comptroller General access to the records of the lessee as necessary for lease administration purposes and/or as provided by applicable law.

Dated: July 19, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for, Fish and Wildlife and Parks.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Chapter 1, Part 3

RIN 2900-AK65

Filipino Veterans' Benefits Improvements

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, which changed the rate of compensation payments to certain Filipino veterans residing in the United States and the Veterans Benefits and Health Care Improvement Act of 2000, which changed the amount of the burial benefit paid to the survivors of certain Filipino veterans who were residing in the United States at the times of their deaths.

DATES: *Effective Date:* December 27, 2001.

Applicability Dates: The provisions of this interim final rule regarding compensation benefits, 38 CFR 3.42, 38 CFR 3.405, and 38 CFR 3.505, apply beginning October 27, 2000. The provision of this interim final rule regarding burial benefits, 38 CFR 3.43, applies when the veteran has died after November 1, 2000.

Comment Date: Comments must be received by VA on or before February 25, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AK65." All comments received will be

available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7211.

SUPPLEMENTARY INFORMATION: The Philippine Islands achieved independence from the United States in 1946. The Philippines was still a commonwealth of the United States when America entered World War II, and President Roosevelt ordered many Filipinos into service. In the years that followed, a variety of VA benefits were provided to Filipinos based on service in different military units. One long-standing provision, 38 U.S.C. 107, gave certain Filipino veterans certain VA benefits at half the rate paid to United States veterans.

I. Compensation Benefits

On October 27, 2000, the President signed into law the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, Pub. L. 106-377, 114 Stat. 1441. Section 501 of Pub. L. 106-377 amended 38 U.S.C. 107 to provide full-rate payments of benefits for Filipino veterans who had "[s]ervice before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States under the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States. * * *" In order to be entitled to full-dollar rate benefits, Pub. L. 106-377 requires that the veteran be "residing in the United States" and also be either a U.S. citizen or an alien lawfully admitted for permanent residence in the U.S. To implement this new law, this document adds new §§ 3.42 and 3.43 to 38 CFR, redesignates §§ 3.8 and 3.9 as §§ 3.40 and 3.41, respectively, and amends § 3.40.

Legislative Intent

By increasing compensation to Filipino veterans residing in the U.S., Congress indicated its recognition that

Filipino veterans residing in the U.S. have a higher cost of living than Filipino veterans living in the Philippines. However, Congress did not intend to create a windfall for Filipino veterans who do not actually face the higher cost of living in the U.S. In order to avoid that potential result, Congress required that Filipino veterans be residing in the U.S. and either be citizens of the U.S. or aliens lawfully admitted for permanent residence in the U.S.

Definitions

Although Congress did not define the term "residing in the United States" in Pub. L. 106-377, we believe Congress intended that VA pay Filipino veterans the full-dollar rate for compensation only while they are actually residing in the U.S. We are therefore defining the term to require that the veteran's principal, actual dwelling place must be in the U.S. We have used simple, objective criteria for determining whether a veteran meets that definition: requiring that the veteran be present in the U.S. for at least the majority of each calendar year, beginning with the calendar year in which he or she applies for the full-dollar rate, and continuing in each year in which the veteran receives full-dollar rate benefits; and that the veteran not be absent from the U.S. for more than 60 consecutive days. If a veteran is absent from the U.S. for longer than these periods, it is reasonable to conclude that he or she is not residing in the U.S. In addition, this definition will be understandable to veterans and readily applied by VA employees. This rule will also allow veterans reasonable periods to travel outside of the U.S. for business or personal reasons without having their benefits reduced.

Congress did not define "United States" in Pub. L. 106-377, but we believe that Congress intended to more adequately compensate Filipino veterans for the cost-of-living in the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. Therefore, this rule specifically references the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Congress did not define the terms "citizen" of the U.S. and "lawfully admitted for permanent residence" in Pub. L. 106-377. However, these terms are well defined by existing federal immigration and naturalization laws found in title 8, United States Code, and we believe that Congress intended for the terms to have the same meaning.

Therefore, we are defining "citizen" of the U.S. to mean any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated. We are defining "lawfully admitted for permanent residence" to mean lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with title 8, United States Code, such status not having changed.

Evidence of Eligibility

VA has an obligation to ensure that veterans receiving full-dollar rate benefits meet the residency and citizenship/permanent-resident-alien requirements in the law. As proof that the veteran is residing in the U.S., this rule requires satisfactory evidence (which may include, for example, a driver's license, lease agreement, or utility bills) that he or she is residing at a valid street address in the U.S. and receiving mail at that address. Furthermore, this rule provides that VA will not pay benefits at the full rate if the veteran's mailing address is a Post Office box, unless evidence from the U.S. Postal Service shows that it does not deliver mail to the veteran's street address. We believe these provisions will help ensure program integrity and reduce the possibility of fraud.

This rule states that a valid original or copy of one of the following documents is required to prove that a veteran is a natural born citizen of the U.S.:

- A valid U.S. passport;
- A birth certificate showing that he or she was born in the U.S.; or
- A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

We believe this is a reasonable requirement, since these documents are standardized, reliable means of proving an individual's U.S. citizenship. A U.S. passport is issued only to individuals who have provided acceptable proof of U.S. citizenship to the U.S. Department of State. One of the latter two documents listed above are generally issued at birth.

The U.S. Immigration and Naturalization Service (INS) is the federal agency responsible for granting naturalized citizen status and keeping records on such status. Therefore, this rule states that only verification of that status by INS to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

INS documents all aliens who receive permanent-resident-alien status in the U.S. Therefore, this rule requires that, in order to establish status as a permanent resident alien for purposes of receiving compensation at the full-dollar rate, only verification of that status by INS to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

Continued Eligibility

We believe that Congress intended that Filipino veterans receive an increased rate of benefit payment due to the relatively high cost-of-living in the U.S., if the U.S. is their principal, actual dwelling place. Therefore, we believe it is reasonable to establish limits on how long a veteran may be absent from the U.S. but yet continue to receive benefits at the full-dollar rate. Under this rule, in order to continue receiving benefits at the full-dollar rate under this section, a veteran must be physically present in the U.S. for at least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time. If a veteran is absent from the U.S. for longer than these periods, it is reasonable to conclude that the U.S. is not his or her principal, actual dwelling place. However, if a veteran becomes eligible for full-dollar rate benefits on an initial basis, on or after July 1 of any calendar year, the 183-day rule will not apply during that calendar year. Further, VA will not consider a veteran to have been absent from the U.S. if he or she left and returned to the U.S. on the same date. To ensure program integrity, we have included in this rule a requirement that a veteran receiving full-dollar rate benefits must notify VA within 30 days of leaving the U.S.

Also to ensure program integrity, we are requiring that a Filipino veteran receiving benefits at the full-dollar rate must notify VA within 30 days if he or she loses his or her U.S. citizenship or lawful-permanent-resident-alien status. This rule also states that, when a veteran no longer meets the citizenship/permanent-resident-alien eligibility requirements, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law.

These requirements will be understandable to veterans and readily applied by VA employees. This rule will also allow veterans reasonable periods to travel outside of the U.S. for business or personal reasons without having their benefits reduced.

In addition, this rule states that a veteran receiving full-dollar rate benefits must provide VA with satisfactory evidence that he or she

continues to meet the residency and citizenship/naturalization requirements, whenever VA requests such evidence. This rule incorporates 38 CFR 3.652, which contains VA's procedure for requesting proof of continued eligibility and reducing a benefits award if it is not submitted in a timely manner. Section 3.652 states that VA beneficiaries must provide VA with proof, when requested, that any or all of the eligibility factors which established entitlement continue to exist. This rule specifically restates that requirement and the requirement that VA advise the veteran at the time of the request that the proof must be furnished within 60 days and that failure to do so will result in the reduction of benefits under § 3.652. We believe these concepts from § 3.652 are fair, reasonable and efficient.

To further ensure program integrity, a veteran receiving benefits at the full-dollar rate under this section must notify VA promptly if the veteran changes his or her address. For the same reason, if mail from VA to the veteran is returned as undeliverable, VA will attempt to verify a more current address. If this attempt at verification proves unsuccessful, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under law. We believe this is necessary, since such returned mail may indicate that the veteran no longer resides at the address that was the basis for his or her entitlement to the full-dollar rate benefits.

Effective dates for initial eligibility

We are adding a new § 3.405 containing the effective date rules for the full-dollar rate benefit. Section 501(a) of Pub. L. 106-377 states that the amendments allowing full-dollar rate benefits for certain Filipino veterans "shall take effect on the date of the enactment of this Act and shall apply to benefits paid for months beginning on or after that date." In order to be consistent with congressional intent, for veterans who met the eligibility requirements in § 3.42 on October 27, 2000, and maintained such eligibility continuously from that date to the date of an administrative determination of entitlement, the effective date of awards of compensation at the full-dollar rate will be October 27, 2000. For all other veterans, awards of compensation for Filipino veterans under § 3.42 will be effective on the latest of the following dates, which are consistent with existing effective date rules:

- Date entitlement arose;
- Date on which the veteran first met the residency and citizenship/permanent-resident-alien status requirements in § 3.42, if VA receives

evidence of this within 1 year of that date;

- Effective date of the rating establishing service connection, provided VA receives evidence that the veteran meets the residency and citizenship/permanent-resident-alien status requirements in § 3.42 within 1 year of notification of such rating action.
- Date the veteran returned to the U.S. after absence of more than 60 consecutive days.
- First day of the year following the year in which the veteran was absent from the U.S. for a total of 183 days or more, or the first day after that date that the veteran returns to the U.S.

Effective dates for reductions

As stated above, Pub. L. 106-377 does not address the issue of effective dates for the new full-dollar rate payments, so we will apply existing effective date regulations. We believe this is consistent with congressional intent, and that application of existing rules will avoid unnecessarily complicating the adjudication process.

This rule also gives VA authority to verify continued eligibility for full-dollar rate payments. If VA requests information for this purpose, and the veteran does not provide it within 60 days, the eligibility factor(s) for which certification was requested will, pursuant to § 3.652(a), be considered to have ceased to exist as of the end of the month in which it was last shown by the evidence of record to have existed. Under § 3.652(b), if the required certification is submitted to VA after benefits have been reduced, the benefits will be adjusted in accordance with the facts found. We believe the general rules provided in § 3.652 are fair and easy to administer. Accordingly, we will rely on them in cases of increased rate payments under Pub. L. 106-377; this rule provides that reductions for failure to verify continued eligibility will be as provided in § 3.652.

Under this rule, when a veteran no longer meets the residence or citizenship/permanent-resident-alien eligibility requirements of Pub. L. 106-377, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law, effective on the date determined under new § 3.505, discussed below. The rule also states that, if mail from VA to the veteran is returned as undeliverable, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under law, effective on the date determined under § 3.505.

We are adding a new § 3.505 to state that if a veteran receiving benefits at the full-dollar rate under § 3.42 is

physically absent from the U.S. for a total of 183 days or more during any calendar year, VA will reduce the payment of any compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the 183rd day of absence from the U.S. In addition, it states that, if a veteran receiving benefits at the full-dollar rate under § 3.42 is physically absent from the U.S. for more than 60 consecutive days, VA will reduce his or her compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the 61st day of the absence. It further states that a veteran receiving benefits at the full-dollar rate under § 3.42 loses either U.S. citizenship or status as an alien lawfully admitted for permanent residence in the U.S., VA will reduce the compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the day he or she no longer satisfies one of these criteria. Finally, it also states that if mail to a veteran receiving benefits at the full-dollar rate under § 3.42 is returned to VA as undeliverable, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under law, effective on the date of the last payment of compensation benefits.

Effective dates for restored eligibility

Under this rule, if a veteran who stopped meeting the residency or citizenship/permanent-resident-alien requirements in Pub. L. 106-377 again meets these requirements, and provides VA with proof of this, VA will restore the veteran's full-dollar rate benefits, effective the date the veteran meets the eligibility requirements in 3.42. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she meets the requirements again. These rules are consistent with VA's existing effective date regulations. If a veteran's payments are reduced based on an absence from the U.S. of 183 or more days during a calendar year, under no circumstances will VA resume payments at the full-dollar rate before the beginning of the following calendar year. This is consistent with what we believe is Congress' intent that these higher payments be paid only to veterans whose principal, actual dwelling place is in the U.S.

II. Burial Benefits

On November 1, 2000, the President signed into law the Veterans Benefits and Health Care Improvement Act of 2000, Pub. L. 106-419, 114 Stat. 1822. Section 332 of Pub. L. 106-419 authorizes VA to pay burial benefits to

the survivors of certain Filipino veterans at the full-dollar rate, instead of the half-dollar rate. It includes the same requirements as Pub. L. 106-377 regarding residency and citizenship and also requires that the deceased veteran must have been receiving compensation or have met the disability and income requirements for pension, on the date of his or her death. (Generally, Filipino veterans are not eligible for pension, see 38 U.S.C. 107.) Specifically, with regard to compensation and pension, the veteran must have been receiving compensation under chapter 11 of title 38 or, if the veteran's service had been deemed to be active military, naval, or air service, he or she would have been entitled to pension under 38 U.S.C. 1521 without denial or discontinuance by reason of 38 U.S.C. 1522's net worth restriction. This rule adds a new 38 CFR 3.43 to implement this new law.

Definitions

Although Congress did not define the term "residing in the United States" in Pub. L. 106-419, we believe that, when Congress enacted Section 332 of Pub. L. 106-419, it intended to more adequately compensate the survivors of Filipino veterans for the cost of burial in the U.S., which is higher than the cost of burial in the Philippines. We believe that, for the purposes of burial benefits, the relevant issues under this statute are whether the deceased veteran was residing in the U.S. on the date of death (regardless of how long he or she was residing in this country) and whether he or she met the citizenship or resident-alien requirements. We believe this standard is consistent with the governing statute, will not impose an undue evidentiary burden on claimants, and will be relatively simple for VA to administer. In addition, VA does not believe Congress intended to exclude from this added benefit the survivors of veterans who resided in the U.S. but happened to die while temporarily out of the U.S., and we have included a sentence to that effect in § 3.43.

Congress did not define "United States," "citizen of the United States," or "lawfully admitted for permanent residence" in Section 332 of Pub. L. 106-419. For the reasons stated in the discussion of compensation benefits above, we are defining these terms in a similar manner, but with minor modifications applicable to burial benefits.

Evidence of Eligibility

VA has an obligation to ensure that claimants receive full-dollar rate benefits only if the deceased veteran met the residency and citizenship/

permanent-resident-alien requirements in the law on the date of death. As proof that the deceased was residing in the U.S., we are requiring that a claimant provide VA with satisfactory evidence (which may include, for example, a driver's license, lease agreement, or utility bills) that the deceased was residing on the date of death at a valid street address in the U.S. We believe these provisions will help ensure program integrity and reduce the possibility of fraud.

For the reasons stated in the discussion of compensation benefits above, this rule states that in claims for full-dollar-rate burial benefits in which the claimant asserts that the deceased veteran was a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

- A valid U.S. passport;
- A birth certificate showing that he or she was born in the U.S.; or
- A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

For the reasons stated in the discussion of compensation benefits above, this rule states that only verification of naturalized citizen or permanent-resident-alien status by INS to VA will be sufficient proof of such status for purposes of eligibility for full-dollar rate benefits.

We are making this document effective on an emergency basis because there is good cause under the provisions of 5 U.S.C. 553 to publish this interim final rule without regard to prior notice and comment and effective date provisions. Compliance with these provisions would be impracticable, unnecessary, and contrary to the public interest. This interim final rule is necessary to implement legislation that provides additional benefits to disabled Filipino veterans and their survivors, most of whom are elderly. Many of these Filipino veterans, and their survivors, have chronic health problems and financial hardships. Publication of this amendment as an interim final rule will enable VA to immediately provide to these beneficiaries the increased benefits they need in order to better cope with the cost of living in the United States.

Scope and Applicability

On October 27, 2000, the President signed into law the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, Pub. L. 106-377, 114 Stat. 1441. Section 501 of Pub. L. 106-377 amended 38 U.S.C. 107 to provide full-rate payments of VA compensation benefits for certain

Filipino veterans who had "[s]ervice before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States under the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States. . . ." Therefore, the provisions of this interim final rule regarding compensation benefits, 38 CFR 3.42, 38 CFR 3.405, and 38 CFR 3.505, apply beginning October 27, 2000.

On November 1, 2000, the President signed into law the Veterans Benefits and Health Care Improvement Act of 2000, Pub. L. 106-419, 114 Stat. 1822. Section 332 of Pub. L. 106-419 authorizes VA to pay burial benefits to the survivors of certain Filipino veterans at the full-dollar rate (instead of the half-dollar rate), if the veteran died after the date of enactment. Therefore, the provision of this interim final rule regarding burial benefits, 38 CFR 3.43, applies when the veteran has died after November 1, 2000.

Paperwork Reduction Act

Proposed 38 CFR 3.42 and 3.43 contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Section 3.42 deals with the payment of compensation at the full dollar rate under the provisions of Pub. L. 106-377. Section 3.43 deals with the payment of burial benefits at the full dollar rate under the provisions of Pub. L. 106-419. Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The collection of information provisions in this document will not be effective until approved by the OMB and assigned an OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations

Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AK65."

Title: Rate of Compensation Payments for Filipino Veterans Residing in the United States.

Summary of collection of information: In proposed 38 CFR 3.42, VA requests information from certain Filipinos ordered into service during World War II to determine their entitlement to VA compensation at the full-dollar rate.

Description of the need for information and proposed use of information: The information is necessary to determine the entitlement of certain Filipinos ordered into service during World War II to VA compensation at the full-dollar rate.

Description of likely respondents: Estimated number of respondents: 800.

Estimated frequency of responses: 1.
Estimated total annual reporting and record keeping burden: 400 hours.

Estimated annual burden per collection: 30 minutes.

Title: Payment Rate of Burial Benefits for certain Filipino veterans of WWII.

Summary of collection of information: In proposed 38 CFR 3.43, VA requests information from survivors of certain Filipinos ordered into service during World War II to determine their entitlement to VA burial benefits at the full-dollar rate.

Description of the need for information and proposed use of information: The information is necessary to determine the entitlement of survivors of certain Filipinos ordered into service during World War II to VA burial benefits at the full-dollar rate.

Description of likely respondents: Estimated number of respondents: 250.

Estimated frequency of responses: 1.
Estimated total annual reporting and record keeping burden: 375 hours.

Estimated annual burden per collection: 90 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

Executive Order 12866

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

Regulatory Flexibility Act

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. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, under 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

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

List of Subjects in 38 CFR Part 3

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

Approved: October 5, 2001.

Anthony J. Principi,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§§ 3.8 and 3.9 [Redesignated as §§ 3.40 and 3.41]

2. Sections 3.8 and 3.9 are redesignated as §§ 3.40 and 3.41, respectively, under the undesignated center heading “General”.

3. In chapter 1, remove all cross-references to “§ 3.8” and “§ 3.9” and add, in their place, “§ 3.40” and “§ 3.41” respectively.

4. In newly redesignated § 3.40, paragraph (c)(1) the last sentence of paragraph (c)(1) is revised to read as follows:

§ 3.40 Philippine and Insular Forces.

* * * * *

(c) * * *

(1) * * * Except as provided in §§ 3.42 and 3.43, benefits based on service described in this paragraph are payable at a rate of \$0.50 for each dollar authorized under the law.

* * * * *

5. A new § 3.42 is added under “General” to read as follows:

§ 3.42 Compensation at the full-dollar rate for certain Filipino veterans residing in the United States.

(a) *Definitions.* For purposes of this section:

(1) *United States (U.S.)* means the states, territories and possessions of the United States; the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means that an individual’s principal, actual dwelling place is in the U.S. and that the individual meets the residency requirements of paragraph (c)(4) of this section.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that an individual has been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Immigration and Naturalization Service under title 8, United States Code, such status not having changed.

(b) *Eligibility requirements.* Compensation is payable at the full-dollar rate based on service described in § 3.40(c) or (d) to a veteran who is residing in the United States (U.S.) and is either:

- (1) A citizen of the U.S., or
- (2) An alien lawfully admitted for permanent residence in the U.S.

(c) *Evidence of eligibility for full-dollar rate benefits.* (1) A valid original or copy of one of the following documents is required to prove that the veteran is a natural born citizen of the U.S.:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) Only verification by the U.S. Immigration and Naturalization Service to VA that a veteran is a naturalized citizen of the U.S. will be sufficient proof of such status.

(3) Only verification by the U.S. Immigration and Naturalization Service to VA that a veteran is an alien lawfully admitted for permanent residence in the U.S. will be sufficient proof of such status.

(4) VA will not pay benefits at the full-dollar rate under this section if the veteran’s mailing address is a Post Office box, unless evidence from the U.S. Postal Service shows that it does not deliver mail to the veteran’s street address. In order to pay benefits at the full-dollar rate, evidence (such as a driver’s license, lease agreement, utility bills) must establish that the veteran is residing at a valid street address in the U.S. and receiving mail at that address.

(d) *Continued eligibility.* (1) In order to continue receiving benefits at the full-dollar rate under this section, a veteran must be physically present in the U.S. for at least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time. However, if a veteran becomes eligible for full-dollar rate benefits on an initial basis, on or after July 1 of any calendar year, the 183-day rule will not apply during that calendar year. VA will not consider a veteran to have been absent from the U.S. if he or she left and returned to the U.S. on the same date.

(2) A veteran receiving benefits at the full-dollar rate under this section must notify VA within 30 days of leaving the U.S. or within 30 days if he or she loses either his or her U.S. citizenship or lawful permanent resident alien status. When a veteran no longer meets the eligibility requirements of paragraph (a) of this section, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law, effective on the date determined under § 3.505. If such veteran regains his or her U.S. citizenship or lawful

permanent resident alien status, VA will restore full-dollar rate benefits, effective the date the veteran meets the eligibility requirements in § 3.42.

(3) When requested to do so by VA, a veteran receiving benefits at the full-dollar rate under this section must verify that he or she continues to meet the residency and citizenship/permanent-resident-alien status requirements of paragraph (b). VA will advise the veteran at the time of the request that the verification must be furnished within 60 days and that failure to do so will result in the reduction of benefits. If the veteran fails to furnish the evidence within 60 days, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized, as provided in § 3.652.

(4) A veteran receiving benefits at the full-dollar rate under this section must promptly notify VA of any change of his or her address. If mail from VA to the veteran is returned to VA by the U.S. Postal Service, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under law, effective on the date determined under § 3.505.

(e) *Effective date for restored eligibility.* In the case of a veteran receiving benefits at the full-dollar rate, if his or her payments are reduced to the rate of \$0.50 for each dollar authorized under the law, VA will resume payments at the full-dollar rate, if otherwise in order, effective the first day of the month following the date on which he or she again meets the requirements. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she again meets the requirements. If payments are reduced based on an absence from the U.S. of 183 or more days during a calendar year, VA will not resume payments at the full-dollar rate before the first day of the following calendar year.

(Authority: 38 U.S.C. 107, 501(a))

6. A new § 3.43 is added to under "General" read as follows:

§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

(a) *Definitions.* For purposes of this section:

(1) *United States (U.S.)* means the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means an individual's principal, actual dwelling place was in the U.S. When death occurs outside the U.S., VA will consider the deceased individual to

have been residing in the U.S. on the date of death if the individual maintained his or her principal actual dwelling place in the U.S. until his or her most recent departure from the U.S., and he or she had been physically absent from the U.S. less than 61 consecutive days when he or she died.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Immigration and Naturalization Service, and on the date of death, still had this status.

(b) *Payment of burial benefits at the full-dollar rate.* VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate, based on service described in § 3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, and was on the date of death:

- (1) Residing in the U.S.; and
- (2) Either—
 - (i) A citizen of the U.S., or
 - (ii) An alien lawfully admitted for permanent residence in the U.S.; and
- (3) Either—
 - (i) Receiving compensation under chapter 11 of title 38, United States Code; or
 - (ii) Would have satisfied the disability, income and net worth requirements of § 3.3(a)(3) of this part and would have been eligible for pension if the veteran's service had been deemed to be active military, naval, or air service.

(c) *Evidence of eligibility.* (1) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(3) In a claim based on the deceased veteran having been an alien lawfully

admitted for permanent residence in the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(4) In a claim for burial benefits at the full-dollar rate, evidence (which may include, for example, a driver's license, lease agreement or utility bills) must establish that the deceased veteran was, on the date of death, residing at a valid street address in the U.S.

(Authority: 38 U.S.C. 107, 501(a))

7. A new § 3.405 is added under "Effective Dates" to read as follows:

§ 3.405 Filipino veterans; benefits at the full-dollar rate.

For veterans who met the eligibility requirements in § 3.42 on October 27, 2000, and maintained such eligibility continuously from that date to the date of an administrative determination of entitlement, the effective date of awards of compensation at the full-dollar rate will be October 27, 2000. For all other veterans, awards of compensation for Filipino veterans under § 3.42 will be effective on the latest of the dates stated in this section:

- (a) Date entitlement arose;
- (b) Date on which the veteran first met the residency and citizenship/permanent-resident-alien status requirements in § 3.42, if VA receives evidence of this within 1 year of that date;
- (c) Effective date of the rating establishing service connection, provided VA receives evidence that the veteran meets the residency and citizenship/permanent-resident-alien status requirements in § 3.42 within 1 year of notification of such rating action;
- (d) Date the veteran returned to the United States after absence of more than 60 consecutive days; or
- (e) First day of the year following the year in which the veteran was absent from the United States for a total of 183 days or more, or the first day after that date that the veteran returns to the United States.

(Authority: 38 U.S.C. 107)

8. A new § 3.505 is added under "Reductions and Discontinuances" to read as follows:

8. A new § 3.505 is added under "Reductions and Discontinuances" to read as follows:

§ 3.505 Filipino veterans; benefits at the full-dollar rate.

The effective date of discontinuance of compensation for Filipino veterans under § 3.42 will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) If a veteran receiving benefits at the full-dollar rate under § 3.42 is physically absent from the U.S. for a total of 183 days or more during any calendar year, VA will reduce compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the 183rd day of absence from the U.S.

(b) If a veteran receiving benefits at the full-dollar rate under § 3.42 is physically absent from the U.S. for more than 60 consecutive days, VA will reduce his or her compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the 61st day of the absence.

(c) If a veteran receiving benefits at the full-dollar rate under § 3.42 loses either U.S. citizenship or status as an alien lawfully admitted for permanent residence in the U.S., VA will reduce the compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the day he or she no longer satisfies one of these criteria.

(d) If mail to a veteran receiving benefits at the full-dollar rate under § 3.42 is returned to VA by the U.S. Postal Service, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under law, effective on the date of the last payment of compensation benefits.

(Authority: 38 U.S.C. 107)

[FR Doc. 01-31828 Filed 12-26-01; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

CFR Correction

In Title 40 of the Code of Federal Regulations, part 52 (§ 52.01 to 52.1018), revised as of July 1, 2001, § 52.120 is corrected by removing paragraph (c)(94)(i)(E).

[FR Doc. 01-55534 Filed 12-26-01; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Regulation of Fuels and Fuel Additives

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2001, § 80.81 is corrected by revising paragraph (a) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(a) The requirements of subparts D, E, F and J of this part are modified in accordance with the provisions contained in this section in the case of California gasoline.

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[FR Doc. 01-55535 Filed 12-26-01; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 153 and 180

[OPP-301026A; FRL-6813-6]

RIN 2070-AB78

Pesticide Chemicals Not Requiring a Tolerance or an Exemption from a Tolerance; Rhodamine B; Revocation of Unlimited Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule creates a new subpart E in 40 CFR part 180. This subpart will be titled: Pesticide Chemicals Not Requiring a Tolerance or an Exemption from a Tolerance. It will contain a list of the pesticide chemicals (including, as appropriate, their limitations and use patterns) for which the Agency has determined that neither a tolerance nor an exemption from the requirement of a tolerance is needed under the Federal Food, Drug, and Cosmetic Act (FFDCA). The Agency is acting on its own initiative. This document also revokes the unlimited tolerance exemption for the inert ingredient Rhodamine B in 40 CFR 180.1001 (c), and amends by time-limiting the unlimited tolerance exemption for Rhodamine B in 40 CFR 180.1001 (e). These regulatory actions are part of the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. The regulatory actions taken in this document, would be counted toward the August 2002 deadline.

DATES: This final rule is effective on December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703)

305-6304; fax number: (703) 305-0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR parts 153 and 180 are available at: http://www.access.gpo.gov/nara/cfr/cfrhtml_153/Title_40/40cfr153_00.html and http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this