

5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-143219-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at <http://www.irs.gov/taxregs/regsglist.html>.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622-7180; concerning the proposals, Frank Boland, (202) 622-3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Under section 6416(b)(2), the person that paid the gasoline tax imposed by section 4081 to the government may receive a credit or refund of the amount of the tax if the gasoline is, by any person, exported, used or sold for use as supplies for vessels or aircraft, sold to a state or local government for its exclusive use, sold to a nonprofit educational organization for its exclusive use, or used or sold for use in the production of special fuels (exempt purposes).

Section 6102 of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100-647, 102 Stat. 3342) added section 6416(a)(4) to the Internal Revenue Code. Under section 6416(a)(4)(A), a wholesale distributor (described in section 6416(a)(4)(B)) that buys gasoline on which the tax imposed by section 4081 has been paid and sells the gasoline to its ultimate purchaser for an exempt purpose is treated as the person (and the only person) that paid the tax to the government and thus is the person eligible to claim a credit or refund of that tax.

Section 6416(a)(4)(B), as added by the 1988 Act, provides that the term wholesale distributor includes any person that sells gasoline to producers, retailers, or to users that purchase in bulk quantities and accept delivery into bulk storage tanks. For this purpose, the term producer includes a refiner, blender, or wholesale distributor of gasoline, or a dealer selling gasoline exclusively to producers of gasoline. The term wholesale distributor does not include any person that is an importer, refiner, or blender of gasoline, or is a dealer selling gasoline exclusively to producers. Section 905 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788) amended section

6416(a)(4)(B) of the Code by providing that the term wholesale distributor also includes any person that makes retail sales of gasoline at 10 or more retail motor fuel outlets.

Notice 89-29 (1989-1 C.B. 669) provides rules for implementing section 6416(a)(4), as added by the 1988 Act. These include rules that allow claims by the person that actually paid the tax to the government instead of claims by the wholesale distributor if (1) tax is not included in the price of the gasoline bought by the wholesale distributor or (2) the sale by the wholesale distributor is charged on an oil company credit card issued to an exempt person.

In response to questions that have arisen concerning the application of the rules in Notice 89-29, the IRS is considering proposing regulations under section 6416(a)(4) that, when finalized, would replace the guidance provided by Notice 89-29. The IRS invites comments from the public on issues that should be addressed in the regulations, including issues relating to refund claims by persons other than the wholesale distributor.

Paul Kugler,

Associate Chief Counsel (Passthroughs and Special Industries).

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AK18

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the adjudication regulation concerning finality of the decisions made by the Department of Veterans Affairs (VA). The intended effect of this amendment is to present the existing regulation in "plain language".

DATES: Comments must be received on or before December 24, 2001.

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-AK18". 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: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC, 20420, telephone (202) 273-7228. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: VA proposes to rewrite 38 CFR 3.104 in plain language. This regulation explains how a decision made by one VA field office affects other field offices as well as the VA Insurance Center. There is also a discussion of the circumstances under which VA may change a decision. The current regulation is located in subpart A of part 3. We propose to create new § 3.2120 to restate the current regulation. The new section would be located in subpart D, Universal Adjudication Rules that Apply to Benefit Claims Governed by part 3 of This Title.

Paragraph (a) of proposed new § 3.2120 informs claimants that when a Veterans Service Center makes a decision, the claimant is informed and given appeal rights. That decision is then binding on all other Veterans Service Centers. There are three exceptions to this general rule. The specific conditions under which a decision can be changed, based on the same evidence, are listed in paragraphs (a)(1) through (a)(3). Paragraphs (a)(1) and (a)(2) are restatements of the exceptions currently found in § 3.104(a). Paragraph (a)(3) incorporates new § 3.2600, Review of benefit claims decisions.

Proposed paragraph (b) of new § 3.2120 lists types of VA decisions that are made by both Veterans Service Centers and the VA Insurance Center. For clarity, we have added some examples of "domestic relations" issues. It explains that a decision by one Center is binding on the other Centers, as long as the facts of the case have not changed, and the instructions and criteria used to make the decision have not changed. The only exception is if VA determines the decision was based on a clear and unmistakable error, since VA will revise such decisions. This is a restatement of § 3.104(b).

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the

adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed rule is part of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104-4, March 22, 1995, requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

Regulatory Flexibility Act

The Secretary certifies that the adoption of the 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. 601-612. This proposed rule does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, and 64.127.

List of Subjects in 38 CFR Part 3

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

Approved: October 12, 2001.

Anthony J. Principi,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA 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.

§ 3.104 [Removed]

2. Section 3.104 is removed.

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

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

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

4. New § 3.2120 is added to read as follows:

§ 3.2120 When do VA benefit decisions become binding?

(a) When a claim is decided, and the Veterans Service Center sends the claimant written notification of that decision along with information about appeal rights, the decision is binding on all Veterans Service Centers and cannot be changed, based on the evidence in file at the time the Center notified the claimant, except:

(1) Through an appellate decision by the Board of Veterans' Appeals, the U.S. Court of Appeals for Veterans Claims, the U.S. Court of Appeals for the Federal Circuit, or the U.S. Supreme Court; or

(2) Under § 3.105, Revision of decisions; or

(3) Under § 3.2600, Review of benefit claims decisions.

(Authority: 38 U.S.C. 502, 511, 5104, 5109A)

(b) Types of decisions made by both Veterans Service Centers and the Insurance Center are listed in paragraphs (b)(1) through (b)(7) of this section. A decision of a Veterans Service Center or the Insurance Center on one of these issues is binding on all other Centers, unless the decision was the result of clear and unmistakable error. Absent such error, the issues decided cannot be reconsidered by a Veterans Service Center or the Insurance Center, if the later decision would require application of the same instructions or criteria and would be based on the same facts. The types of issues to which this paragraph (b) applies are:

- (1) Line of duty;
- (2) Character of discharge;
- (3) Relationship;
- (4) Dependency;
- (5) Domestic relations issues such as marriage, divorce, adoption and child custody and support;
- (6) Homicide; and
- (7) Findings of fact of death or presumption of death.

(Authority: 38 U.S.C. 511)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL-7076-5]

RIN 2050-AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In order to help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, EPA is proposing to revise the definition of "municipal solid waste landfill unit" in both the Criteria for Classification of Solid Waste Disposal Facilities and Practices and the Criteria for Municipal Solid Waste Landfills. EPA is also proposing to add two new definitions for "construction and demolition (C&D) landfill" and "residential lead-based paint waste." This rule would expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action would not prevent a municipal solid waste landfill unit from continuing to receive residential lead-based paint waste.

In the "Rules and Regulations" section of the **Federal Register**, we are approving these definitions as a direct final rule without prior proposal because we view this rule as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 23, 2001.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number