

1. On page 53748, in the first column, sixth line of the fourth full paragraph correct "(ii)" to read "(iii)".

#### **PART 1310—[CORRECTED]**

2. On page 53749, amendatory instruction 2 is corrected to read as follows: "2. Section 1310.04 is proposed to be amended by adding a new paragraph (g)(1)(v) to read as follows:"

3. Corrected § 1310.04(g)(1)(v) reads as follows:

##### **§ 1310.04 Maintenance of records.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(v) gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-Hydroxybutyric acid lactone)

\* \* \* \* \*

4. On page 53749, amendatory instruction 3 is corrected to read as follows: "3. Section 1310.08 is proposed to be amended by adding a new paragraph (k) to read as follows:"

5. Corrected § 1310.08(k) reads as follows:

##### **§ 1310.08 Excluded transactions.**

\* \* \* \* \*

(k) Domestic, import, and export distributions of gamma-butyrolactone weighing 16,000 kilograms (net weight) or more in a single container.

Dated: December 5, 2001.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

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## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 3**

**RIN 2900-AK31**

#### **Independent Medical Opinions**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the adjudication regulation dealing with independent medical opinions that may be requested to resolve complex or controversial medical issues that may arise in a claim for veterans' benefits. This amendment is a plain language restatement of the existing regulation on this subject, and no substantive changes are being made. The intended effect of this amendment

is to clarify the process by which independent medical opinions are obtained.

**DATES:** Comments must be received on or before February 11, 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](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are submitted in response to "RIN 2900-AK31." 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:** Jack Bisset, Consultant, Compensation and Pension Service, Regulations Staff, or Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7213 and (202) 273-7228, respectively. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** This document proposes to restate in plain language the provisions of the current regulation on independent medical opinions, 38 CFR 3.328 and place them in a new section designated as § 3.2410. Current § 3.328 would be removed, and § 3.2410 would be placed in subpart D, Universal Adjudication Rules that Apply to Benefit Claims Governed by part 3 of this title. This is a plain language restatement of the provisions in current § 3.328 and is not intended to change VA policy or regulations in any substantive way.

Proposed § 3.2410 is divided into seven short paragraphs. Each paragraph provides an answer to a brief introductory question. Paragraph (a) answers the question, "What is an independent medical opinion?" Paragraph (a) states that an independent medical opinion (IMO) is an advisory opinion from a medical expert who is not a VA employee. Paragraph (a) also makes clear that VA makes arrangements for these opinions with various medical institutions but does not select the individual experts who provide the opinions. That selection is made by officials of the institution. This paragraph is a restatement of paragraph (a) of current § 3.328 except for the first clause of the first sentence.

Paragraph (b) of proposed § 3.2410 answers the question, "When will an IMO be requested?" It provides that VA

will request an IMO when there is a medical issue in a pending claim which is extremely rare, complex or controversial and cannot be resolved on the evidence of record. This is a restatement of the first clause of paragraph (a) and the first sentence of paragraph (c) of current § 3.328.

Paragraph (c) of proposed § 3.2410 addresses the issue of who can request an IMO. It states that IMOs can be requested by claimants or their representatives, or by Service Center Managers on their own initiative. This is a restatement of the first sentence of paragraph (b) of current § 3.328.

The question in paragraph (d) of proposed § 3.2410 is, "How do I request an IMO?" Paragraph (d) provides that a request for an IMO must be submitted to a Service Center Manager for initial review, and the request must include detailed reasons why the IMO is necessary. This is a restatement of portions of the second and third sentences in paragraph (b) of current § 3.328.

Paragraph (b) of § 3.328 currently requires that a request for an IMO be in writing. VA believes that this requirement is too restrictive and can result in claims processing delays. We have, therefore, added to paragraph (d) of proposed § 3.2410 that the requirement for a "writing" includes e-mail, facsimile, or other written electronic means. VA does not want to prevent the use of methods of submission which could improve processing timeliness.

The question in paragraph (e) of proposed § 3.2410 is, "Who approves the request for an IMO?" Paragraph (e) provides that if the Service Center Manager agrees, on initial review, that an IMO would be appropriate, the request is then forwarded to the Director of the Compensation and Pension Service for approval. If the request is approved, the Director will make arrangements to obtain the IMO. This is a restatement of the last sentence in paragraph (b) and the first two sentences of paragraph (c) of current § 3.328.

Paragraph (f) of proposed § 3.2410 answers the question, "How will I know if the request is approved?" Paragraph (f) states that the Director of the Compensation and Pension Service will notify the claimant that the IMO request has been approved and will provide the claimant with a copy of the opinion when it is received. Paragraph (f) also provides that the special disclosure procedures in 38 CFR 1.577(d) must be followed if the Director believes that disclosure of the IMO would be harmful to the claimant's physical or mental health. Paragraph (f) is a restatement of

the provisions in paragraph (d) of current § 3.328.

Paragraph (g) of proposed § 3.2410 answers the last question, "Can I appeal a VA decision denying my request for an IMO?" Paragraph (g) provides that, if VA decides that an IMO is not appropriate in a particular case, the claimant cannot directly appeal that decision. The claimant can only contest that decision as part of an appeal on a denial of benefits in the case. This is a restatement of the last sentence in paragraph (c) of current § 3.328.

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 one 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 this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The 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 are 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: December 3, 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.

#### **§ 3.328 [Removed].**

2. Section 3.328 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 § 3.2410 is added under a new undesignated center heading "Evidence Requirements" to read as follows:

#### **Evidence Requirements**

#### **§ 3.2410 Independent medical opinions.**

(a) *What is an independent medical opinion?*

An independent medical opinion is an advisory opinion that VA obtains from one or more medical experts who are not VA employees to assist VA in deciding a claim for benefits. Although VA makes arrangements for these opinions with recognized medical schools, universities, clinics and medical institutions, the individual experts who provide the opinions are selected by appropriate officials of the institutions and not by VA.

(b) *When will an independent medical opinion be requested?*

VA will request an independent medical opinion when a pending claim involves a medical issue which is extremely rare, complex or controversial, and the evidence of record is insufficient to resolve the issue.

(c) *Who can request an independent medical opinion?*

An independent medical opinion can be requested by you, your representative, or a Service Center Manager on his or her own initiative.

(d) *How do I request an independent medical opinion?*

You or your representative must submit the request for an independent medical opinion to the Service Center Manager for initial review. The request must be submitted in writing, including e-mail, facsimile, or other written electronic means, and must include detailed reasons why you believe the independent medical opinion is necessary.

(e) *Who approves the request for an independent medical opinion?*

The request for an independent medical opinion is initially reviewed by the Service Center Manager. If the Service Center Manager agrees that an independent medical opinion is appropriate, the Service Center Manager will forward the request to the Director of the Compensation and Pension Service for approval. If approved, the Director will make arrangements for the independent medical opinion.

(f) *How will I know if the request is approved?*

When the request for an independent medical opinion is approved, the Director of the Compensation and Pension Service will notify you of the approval and will provide you with a copy of the opinion when it is received. However, if the Director believes that information contained in the independent medical opinion would be harmful to your physical or mental health, the special procedures in § 1.577(d) must be followed.

(g) *Can I appeal a denial of my request?*

You cannot directly appeal a VA decision denying your request for an independent medical opinion. If VA decides that an independent medical opinion is not appropriate in your case, the reason will be explained in the notice VA sends you about the decision on your claim. You may contest the disapproval of your request for an independent medical opinion only as part of an appeal of the decision made by VA denying benefits in your case.

(Authority: 38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

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