

Dated: November 4, 2009.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander,  
Eleventh Coast Guard District.

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 9

RIN 2900-AN39

#### Servicemembers' Group Life Insurance—Dependent Coverage

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its Servicemembers' Group Life Insurance (SGLI) regulations in order to implement sec. 402 of the Veterans' Benefits Improvement Act of 2008. Section 402 of the Veterans' Benefits Improvement Act of 2008 extended SGLI dependent coverage to an insured member's stillborn child. This final rule defines the term "member's stillborn child."

**DATES:** *Effective Date:* November 18, 2009.

*Applicability Date:* VA will apply this rule to deaths occurring on or after October 10, 2008, the date of enactment of the Veterans' Benefits Improvement Act of 2008.

**FOR FURTHER INFORMATION CONTACT:** Greg Hosmer, Senior Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842-2000, ext 4280. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** The Veterans' Survivor Benefits Improvements Act of 2001, Public Law 107-14, established a program of family insurance coverage under Servicemembers' Group Life Insurance (SGLI) through which the dependents of SGLI-insured service members could also be insured. Section 4 of Public Law 107-14 amended section 1965 of title 38, United States Code (U.S.C.), which defines various terms for SGLI purposes, to define the term "insurable dependent" as a member's spouse or a member's child (as defined in 38 U.S.C. 101(4)(A)). Section 101(4)(A) defines the term "child" in part as an unmarried person who: (1) Is under the age of 18 years; (2) became permanently incapable of self support before attaining the age of 18; or (3) after

attaining the age of 18 and until completion of education or training (but not after attaining the age of 23) is pursuing a course of instruction at an approved educational institution. Under Public Law 107-14, stillborn children were not eligible for coverage under SGLI as insurable dependents. Effective October 10, 2008, section 402 of the Veterans' Benefits Improvement Act of 2008, Public Law 110-389, amended 38 U.S.C. 1965(10) to include a service member's stillborn child as an insurable dependent under the SGLI program.

We are adding to 38 CFR 9.1 a new paragraph (k) to define the term "member's stillborn child" as a member's natural child whose death occurs before expulsion, extraction, or delivery and: (1) Whose fetal weight is 350 grams or more; or (2) if the fetal weight is unknown, whose duration in utero was 20 or more completed weeks of gestation, calculated from the date the last normal menstrual period began to the date of expulsion, extraction, or delivery. Our definition of the term excludes a fetus or child extracted for purposes of an abortion.

Our definition is consistent with Congressional intent that VA issue regulations that define the term "stillborn child" consistently with the 1992 recommended reporting requirements of the Model State Vital Statistics Act and Regulations (Model Act) as drafted by the Centers for Disease Control and Prevention's National Center for Health Statistics. S. Rep. No. 110-449, at 41 (2008); Joint Explanatory Statement on Amendment to Senate Bill, S. 3023, as Amended, 154 Cong. Rec. S10,445, S10,452 (daily ed. Oct. 2, 2008). Congress did not intend the term "stillborn child" to cover the deaths of fetuses or children at any gestational age or under every circumstance. S. Rep. No. 110-449, at 41. The Model Act recommends a state reporting requirement of fetal deaths involving fetuses weighing 350 grams or more, or if weight is unknown, of 20 completed weeks or more of gestation, calculated from the date the last normal menstrual period began to the date of delivery. Model Act section 15. The Model Act defines "fetal death" to mean "death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy. The death is indicated by the fact that[,] after such expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary

muscles. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps." Model Act section (1)(b). We do not include in § 9.1(k) the portion of the Model Act definition that describes what indicates death because a child who is not stillborn but later dies, is already a dependent covered under SGLI. Therefore, nuanced distinctions are unnecessary. Pursuant to Congressional intent, our definition fully complies with the Model Act.

#### Administrative Procedure Act

Because this final rule merely interprets a statutory term, it is an interpretive rule exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553(b).

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This rule would have no such effect on State, local, and tribal governments, or the private sector.

#### Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or

planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the interagency, economic, legal, and policy implications of this final rule and has determined that it is not a significant regulatory action under the Executive Order because it merely interprets existing law and does not raise any novel legal or policy issues and will have little to no effect on the economy.

### Regulatory Flexibility Act

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, 5 U.S.C. 601 *et seq.* This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance

The catalog of Federal Domestic Assistance Program number and the title for this regulation is 64.103, Life Insurance for Veterans.

### List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: October 6, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons stated in the preamble, the Department of Veterans Affairs is amending 38 CFR part 9 as follows:

### PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for part 9 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Section 9.1 is amended by adding paragraph (k) to read as follows:

#### § 9.1 Definitions.

\* \* \* \* \*

(k)(1) The term *member's stillborn child* means a member's natural child—

(i) Whose death occurs before expulsion, extraction, or delivery; and  
(ii) Whose—

(A) Fetal weight is 350 grams or more; or

(B) Ff fetal weight is unknown, duration in utero is 20 completed weeks of gestation or more, calculated from the date the last normal menstrual period began to the date of expulsion, extraction, or delivery.

(2) The term does not include any fetus or child extracted for purposes of an abortion.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XS89

### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Halibut in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of halibut prohibited species catch (PSC) from rockfish cooperatives in the Central Gulf of Alaska (GOA) Rockfish Pilot Program to vessels using trawl gear in the GOA. This action is necessary to provide the opportunity to vessels using trawl gear to harvest available GOA groundfish total allowable catch (TAC) under existing PSC limits.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 15, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 allocation of halibut PSC to vessels using trawl gear in the GOA is 2,000 metric tons (mt) as established by the final 2009 and 2010 harvest

specifications for groundfish in the GOA (74 FR 7333, February 17, 2009). Under § 679.81(c)(1), 170 mt of halibut PSC is allocated to catcher/processor and catcher vessel rockfish cooperatives in the Central GOA. The website at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/goarat/09rppallocations.xls> lists this amount. The remaining 1,830 mt of halibut PSC is allocated to vessels using trawl gear not in a rockfish cooperative.

As of November 9, 2009, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that rockfish cooperatives in the Central GOA have not used 139 mt of the allocation. Therefore, in accordance with § 679.21(d)(5)(iii)(B)(1), NMFS is reallocating 139 mt of halibut PSC from rockfish cooperatives in the Central GOA to the last seasonal apportionment for vessels using trawl gear in the GOA.

Therefore, the harvest specifications for halibut PSC are revised as follows: 31 mt to rockfish cooperatives in the Central GOA and 1,969 mt to vessels using trawl gear.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of projected unused amounts of halibut PSC in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 9, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 12, 2009

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–27668 Filed 11–13–09; 4:15 pm]

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