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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-AO84

Specially Adapted Housing Eligibility for Amyotrophic Lateral Sclerosis

Beneficiaries

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amended by interim final rule its adjudication regulation regarding specially adapted housing (SAH) to authorize automatic issuance of a certificate of eligibility for SAH to all veterans and active-duty servicemembers with service-connected amyotrophic lateral sclerosis (ALS) rated totally disabling under the VA Schedule for Rating Disabilities. This document adopts as a final rule, without change, the interim final rule published in the Federal Register on December 3, 2013.

DATES: Effective date: [insert date of publication in the Federal Register].

Applicability date: The provisions of this regulatory amendment apply to all applications for SAH pending before VA on or received after December 3, 2013.

FOR FURTHER INFORMATION CONTACT: Randy A. McKeivitt, Legal Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits

Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW.,
Washington, DC 20420, (202) 461-9700. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on December 3, 2013 (78 FR 72573), VA amended its regulations concerning SAH. The amendment authorized automatic issuance of a certificate of eligibility for SAH to all veterans and active-duty servicemembers with service-connected ALS rated totally disabling under the VA Schedule for Rating Disabilities. The comment period for that interim final regulation ended February 3, 2014. VA received no comments. Based on the rationale set forth in the interim final rule, we are adopting the provisions of the interim final rule as a final rule without change.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), VA found that there was good cause to dispense with advance public notice and opportunity to comment on the interim final rule and good cause to publish that rule with an immediate effective date. The interim final rule was necessary to implement immediately the Secretary's decision to establish SAH eligibility for all persons with totally-disabling service-connected ALS. Delay in the implementation of this rule would have been impracticable and contrary to the public interest, particularly to veterans and active-duty servicemembers.

Because the survival period for persons suffering from ALS is generally 18–48 months or less from the onset of symptoms, any delay in establishing SAH eligibility is extremely detrimental to veterans and active-duty servicemembers who are currently afflicted with ALS. Any delay in implementation until after a public-comment period could have delayed modifying the regulated certificate of eligibility process, depriving ALS veterans and active-duty servicemembers of quick and efficient access to SAH benefits.

For the foregoing reasons, the Secretary issued the rule as an interim final rule with immediate effect.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

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. 601-612. This final rule will not affect any small entities. Only VA beneficiaries will be directly affected. 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.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “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 this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis

can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

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 the 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 final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.106, Specially Adapted Housing for Disabled Veterans and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert A. McDonald, Secretary, Department of Veterans Affairs, approved this document on August 6, 2014, for publication.

List of Subjects in 38 CFR Part 3

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

Dated: August 11, 2014

Robert C. McFetridge,
Director, Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

Accordingly, the interim final rule revising 38 CFR part 3, which was published at 78 FR 72573 on December 3, 2013, is adopted as a final rule without change.

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