

**38 CFR Part 3****RIN 2900-AR12****New Evidence**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends the regulation governing use of service department records as new evidence to remove the words “Joint Services Record Research Center.” This change is necessary because the U.S. Department of Army, Records Management and Declassification Agency (RMDA) has realigned its records research activities and the Joint Services Record Research Center (JSRRC) no longer exists.

DATES: This final rule is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Parks, Chief, Part 3 Regulations Staff (211D) Compensation Service (21C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9450. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The purpose of this amendment is make a technical change to VA regulations, without substantive effect, by removing reference to the Joint Services Records Research Center (JSRRC) in title 38, Code of Federal Regulations (CFR), § 3.156(c)(2). The U.S. Department of Army, Records Management and Declassification Agency (RMDA) has realigned its records research activities and

the Joint Services Record Research Center (JSRRC) no longer exists. The JSRRC was a research office that provided support to the Department of Veterans Affairs (VA), acting as an intermediary to conduct multi-service research of official military unit records for information that may verify an incident described by a veteran in a claim for disability compensation. Although the JSRRC no longer exists, the military unit records that were the subject of JSRRC research have not been impacted. Those records remain in the custody of the U.S. military and will be researched by VA as appropriate in the course of adjudicating claims for VA benefits. This amendment does not impact existing standards governing VA's duty to assist a claimant, under 38 U.S.C. 5103A, in obtaining evidence necessary to substantiate a claim.

Currently, 38 CFR 3.156(c) provides that VA will reconsider a previously decided claim if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim. Moreover, 38 CFR 3.156(c)(2) provides examples of service department records that do not qualify, and references the situation where the claimant had not provided, when VA decided the claim, sufficient information for VA to identify and obtain the records from "the respective service department, the Joint Services Records Research Center, or from any other official source." This regulatory change removes from that section the reference to the JSRRC because it no longer exists. However, this change does not alter the essential import of the provision, as the JSRRC was only listed as an example of an official source from which VA could have obtained the records. The essential standard remains that nonqualifying records include those where the claimant had not provided sufficient information for VA to identify and obtain the records from "any official source." Where the JSRRC existed at the time that VA decided the claim, the JSRRC would, in general, continue to qualify as an "official

source” at that time for purposes of § 3.156(c)(2). For claims adjudicated after the JSRRC ceased to exist, the military records themselves previously researched by the JSRRC remain available for research by VA as an official source of records, as indicated above.

Administrative Procedure Act

VA finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) and (d) to publish this final rule without prior opportunity for public comment and with immediate effect. Namely, the removal of reference to JSRRC is minor, does not impact the applicable standard, aligns the regulation with an organizational change within the military that is outside of VA’s control, and does not involve VA’s exercise of policy-making discretion. Continuing to reference a non-existent research entity in the regulation would create the potential for public confusion and an adverse impact on associated records requests. VA therefore for good cause finds that notice and public procedure for this minor, technical update is unnecessary under 5 U.S.C. 553(b)(B). For the same reasons, VA concludes there is good cause not to delay the effective date of the final rule under 5 U.S.C. 553(d)(3).

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).

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. The Office of Information and Regulatory Affairs has determined that this final rule is not 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 Regulatory Impact Analysis (RIA) are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Regulatory Flexibility Act

The Secretary hereby certifies that this final 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 certification is based on the fact that the technical changes made by this rule do not affect entitlement to VA disability compensation, and in any event there is no impact on small entities or businesses. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 3

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

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on March 11, 2021 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.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of the Secretary,

Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as set forth below:

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.

2. Amend § 3.156 by revising paragraph (c)(2) to read as follows:

§ 3.156 New evidence.

* * * * *

(c) * * *

(2) Paragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or because the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department or from any other official source.

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