(f) Accumulated profits of N Corporation as defined in section 902(c)(1)(A) (determined without regard to the section 6038(b)(1)(B) reduction	$100,000
(g) Accumulated profits of N Corporation as described in section 902(a)(1) (determined without regard to the section 6038(b)(1)(B) reduction)	60,000
(h) M Corporation is deemed to have paid the same proportion of foreign taxes paid (reduced as provided under section 6038(b)) with respect to the accumulated profits (determined without regard to the reduction provided under section 6038(b)) as the amount of the dividend (determined without regard to section 78) bears to such amount of accumulated profits	25,500

$$\frac{45{,}000}{60{,}000} \times 34{,}000$$

M Corporation must include $25,500 in gross income as a dividend under the provisions of section 78 of the Code. The above example illustrates that the reductions in foreign taxes paid by the foreign corporation provided under section 6038(b) are taken into account in determining the amount included in gross income of the domestic corporation as foreign taxes deemed paid under section 78 of the Code but such reductions are not taken into account in computing accumulated profits for purposes of determining the amount of foreign taxes deemed paid with respect to a particular dividend.

(5) *Limitation on reduction.* The amount of the reduction under this paragraph for each failure to furnish information with respect to a foreign corporation as required under this section shall not exceed the greater of:

(i) $10,000, or

(ii) The income of the foreign corporation for its annual accounting period with respect to which the failure occurs.

For purposes of this section if a person is required to furnish information with respect to more than one foreign corporation, controlled (within the meaning of paragraph (b) of this section) by that person, each failure to submit information for each such corporation constitutes a separate failure.

(6) *Reasonable cause.* For purposes of subsection (b) of section 6038 and this section, the time prescribed for furnishing information under this paragraph, and the beginning of the 90-day period after notice by the district director, shall be treated as being not earlier than the last day on which (as shown to the satisfaction of the district director) reasonable cause existed for failure to furnish such information.

(7) *Statement required.* A person, who wishes to avoid the reductions provided in subparagraphs (2), (3), and (4) of this paragraph for failure to furnish information in accordance with this section, must make an affirmative showing under subparagraph (1)(ii) or (6) of this paragraph of all facts alleged as a reasonable cause for such failure in the form of a written statement containing a declaration that it is made under the penalties of perjury.

(8) *Penalties.* The information required by section 6038 of the Code must be furnished even though there are no foreign taxes which would be reduced under the provisions of this section. For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207 of the Code.

[F.R. Doc. 62-11951; Filed, Nov. 30, 1962; 8:51 a.m.]

[T.D. 6623]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PART 301—PROCEDURE AND ADMINISTRATION

Returns as to Organization or Reorganization of Foreign Corporations and as to Acquisitions of Their Stock

On October 30, 1962, notice of proposed rule making was published in the FEDERAL REGISTER (27 F.R. 10547) regarding the amendment of the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under section 6046 of the Internal Revenue Code of 1954 as amended by section 20 (b) of the Revenue Act of 1962 (Public Law 87-834, 76 Stat. 1061), and section 6679 of such Code as added by section 20(c) of such Act (76 Stat. 1062). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as proposed are hereby adopted subject to the following changes:

PARAGRAPH 1. Section 1.6046-1 as set forth in paragraph 4 to the notice of proposed rule making is revised.

PAR. 2. Section 301.6679-1 as set forth in paragraph 5 to the notice of proposed rule making is changed by revising subparagraph (3) of paragraph (a).

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue.

Approved: November 29, 1962.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) to the amendments made to the Internal Revenue Code of 1954 by section 20 (b) and (c) of the Revenue Act of 1962 (76 Stat. 1061, 1062), such regulations are amended as follows:

PARAGRAPH 1. Section 1.6046 is amended to read as follows:

§ 1.6046 Statutory provisions; returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

SEC. 6046. *Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock*—(a) *Requirement of return.* A return complying with the requirements of subsection (b) shall be made by—

(1) Each United States citizen or resident who is on January 1, 1963, an officer or director of a foreign corporation, 5 percent or more in value of the stock of which is owned by a United States person (as defined in section 7701(a)(30)), or who becomes such an officer or director at any time after such date,

(2) Each United States person who on January 1, 1963, owns 5 percent or more in value of the stock of a foreign corporation, or who, at any time after such date—

(A) Acquires stock which, when added to any stock owned on January 1, 1963, has a value equal to 5 percent or more of the value of the stock of a foreign corporation, or

(B) Acquires an additional 5 percent or more in value of the stock of a foreign corporation, and

(3) Each person who at any time after January 1, 1963, becomes a United States person while owning 5 percent or more in value of the stock of a foreign corporation.

(b) *Form and contents of returns.* The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign corporation, such information as the Secretary or his delegate prescribes by forms or regulations as necessary for carrying out the provisions of the income tax laws, except that in the case of persons described only in subsection (a)(1) the information required shall be limited to the names and addresses of persons described in subsection (a)(2).

(c) *Ownership of stock.* For purposes of subsection (a), stock owned directly or indirectly by a person (including, in the case of an individual, stock owned by members of his family) shall be taken into account. For purposes of the preceding sentence, the family of an individual shall be considered as including only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(d) *Time for filing.* Any return required by subsection (a), shall be filed on or before the 90th day after the day on which, under any provision of subsection (a), the United States citizen, resident, or person becomes liable to file such return.

(e) *Limitation*—(1) *General rule.* Except as provided in paragraph (2), no information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations which have been in effect for at least 90 days before the date on which the United States citizen, resident, or person becomes liable to file a return required under subsection (a).

(2) *Exception.* In the case of liability to file a return under subsection (a) arising on or after January 1, 1963, and before June 1, 1963—

(A) No information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations in effect on or before March 1, 1963, and

(B) If the date on which such regulations become effective is later than the day on which such liability arose, any return required by subsection (a) shall (in lieu of the time prescribed by subsection (d)) be filed on or before the 90th day after such date.

(f) *Cross reference.* For provisions relating to penalties for violations of this section, see sections 6679 and 7203.

[Sec. 6046 as amended by sec. 7(a), Act of Sept. 14, 1960 (Public Law 86-780, 74 Stat. 1016); sec. 20(b) Revenue Act 1962 (76 Stat. 1061)]

PAR. 2. Section 1.6046-1 is redesignated § 1.6046-3 and is amended by revising the heading and paragraphs (a), (c), and (e) thereof to read as follows:

§ 1.6046-3 Returns as to formation or reorganization of foreign corporations prior to September 15, 1960.

(a) *Requirement of returns.* Every attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who, on or before September 14, 1960, aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation shall file an information return on Form 959 (as in use prior to the October 1960 revision). The return must be filed in every such case regardless of—

* * * * *

(c) *Information required to be shown on return.* The return required by section 6046, prior to its amendment by section 7(a) of the Act of September 14, 1960, and this section shall set forth the following information to the extent the information is within the possession or knowledge, or under the control, of the person filing the return:

* * * * *

(e) *Time and place for filing return*—(1) *Time for filing.* Returns required by section 6046, prior to its amendment by section 7(a) of the Act of September 14, 1960, and this section shall be filed within 30 days after the first performance of any of the functions referred to in paragraph (a) of this section. If in a particular case, the aid, assistance, counsel, or advice given by any person extends over a period of more than one day, such person, to avoid multiple filing of returns, shall file a return within 30 days after either of the following events:

PAR. 3. Immediately preceding § 1.6046-3 as redesignated there is inserted the following new section:

§ 1.6046-2 Returns as to foreign corporations which are created or organized, or reorganized, on or after September 15, 1960, and before January 1, 1963.

(a) *Requirement of returns.* In the case of any foreign corporation which is created or organized, or reorganized, on or after September 15, 1960, and before January 1, 1963—

(1) Each United States citizen or resident who was an officer or director of such corporation at any time within 60 days after such creation or organization, or reorganization, and

(2) Each United States shareholder of such corporation by or for whom, at any time within 60 days after such creation or organization, or reorganization, 5 percent or more in value of such corporation's then outstanding stock was owned directly or indirectly (including, in the case of an individual stock owned by members of his family),

shall file a return on Form 959 (Rev. Oct. 1960), United States Information Return With Respect to the Creation or Organization, or Reorganization, of a Foreign Corporation.

(b) *Information required to be shown on return.* The return required by section 6046, prior to its amendment by section 20(b) of the Revenue Act of 1962, and this section shall set forth the following information:

(1) The name and address of the person (or persons) filing the return, and an indication that he is a United States shareholder, officer, or director;

(2) The name and business address of the foreign corporation;

(3) The name of the country under the laws of which the foreign corporation was created or organized, or reorganized;

(4) The name and address of the foreign corporation's statutory or resident agent in the country of incorporation;

(5) The date of the foreign corporation's creation or organization, or reorganization;

(6) A statement of the manner in which the creation or organization, or reorganization, of the foreign corporation was effected;

(7) A complete statement of the reasons for, and the purposes sought to be accomplished by, the creation or organization, or reorganization, of the foreign corporation;

(8) A statement showing the classes and kinds of assets transferred to the foreign corporation in connection with its creation or organization, or reorganization, including a list completely describing each asset or group of assets, its value, date of transfer, and the name and address of person (or persons) owning such asset or group immediately prior to the transfer;

(9) A statement showing the assets transferred and the securities issued by the foreign corporation in its creation or organization or reorganization, as well as the name and address of each person to whom such a transfer or issuance was made;

(10) A statement specifying the amount and type of any indebtedness due from the foreign corporation to each of its shareholders and the name of each such shareholder;

(11) The names and addresses of the shareholders of the foreign corporation at the time of its creation or organization or reorganization, and the classes of stock and number of shares held by each;

(12) The names and addresses of subscribers to the stock of the foreign corporation, and the number of shares subscribed to by each; and

(13) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation, and the location of such books and records if different from such address.

(c) *Time and place for filing return.* The return required by section 6046, prior to its amendment by section 20(b) of the Revenue Act of 1962, and this section shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D.C., on or before the 90th day after such foreign corporation is created or organized, or reorganized.

PAR. 4. Immediately preceding § 1.6046-2 there is inserted the following new section:

§ 1.6046-1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

(a) *Officers or directors*—(1) *When liability arises on January 1, 1963.* Each United States citizen or resident who is on January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 959 (Rev. Jan. 1963) showing the name, address, and identifying number of each United States person (as defined in section 7701(a)(30)) who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of such foreign corporation.

(2) *When liability arises after January 1, 1963*—(i) *Requirement of return.* Each United States citizen or resident who is at any time after January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 959 (Rev. Jan. 1963) setting forth the information described in subdivision (ii) of this subparagraph with respect to each United States person (as defined in section 7701(a)(30)) who, during the time such citizen or resident is such an officer or director—

(*a*) Acquires (whether in one or more transactions) outstanding stock of such corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 5 percent or more in value of such stock) has, a value equal to 5 percent or more in value of the outstanding stock of such foreign corporation, or

(*b*) Acquires (whether in one or more transactions) an additional 5 percent or more in value of the outstanding stock of such foreign corporation.

(ii) *Information required to be shown on return.* The return required under subdivision (i) of this subparagraph shall contain the following information:

(*a*) Name, address, and identifying number of each shareholder with respect to whom the return is filed;

(*b*) A statement showing that the shareholder is either described in subdivision (i)(*a*) or (i)(*b*) of this subparagraph; and

(*c*) The date on which the shareholder became a person described in subdivision (i)(*a*) or (i)(*b*) of this subparagraph.

(3) *Application of rules.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, a United States citizen, is, on January 1, 1963, a director of M, a foreign corporation. X, on January 1, 1963, is a United States person owning 5 percent in value of the outstanding stock of M Corporation. A must file a return under the provisions of subparagraph (1) of this paragraph.

Example (2). The facts are the same as in Example (1) except that X owns only 2 percent in value of the outstanding stock of M Corporation on January 1, 1963. On July 1, 1963, X acquires 2 percent in value of the outstanding stock of M Corporation and on September 1, 1963, he acquires an additional 2 percent in value of such stock. The July

1, 1963, transaction does not give rise to liability to file a return; however, A must file a return as a result of the September 1, 1963, transaction because X's holdings now exceed 5 percent.

Example (3). The facts are the same as in Example (2) and, on September 15, 1963, X acquires an additional 4 percent in value of the outstanding stock of M Corporation (X's total holdings are now 10 percent). On November 1, 1963, X acquires an additional 2 percent in value of the outstanding stock of M Corporation. The September 15, 1963, transaction does not give rise to liability to file a return since X has not acquired 5 percent in value of the outstanding stock of M Corporation since A last became liable to file a return. However, A must file a return as a result of the November 1, 1963, transaction because X has now acquired an additional 5 percent in value of the outstanding stock of M Corporation.

Example (4). The facts are the same as in Examples (2) and (3) and, in addition, B, a United States citizen, becomes an officer of M Corporation on October 1, 1963. B is not required to file a return either as a result of the facts set forth in Example (2) or as a result of the September 15, 1963, transaction described in Example (3). However, B is required to file a return as a result of the November 1, 1963, transaction described in Example (3) because X has acquired an additional 5 percent in value of the outstanding stock of M Corporation while B is an officer or director.

(b) *Returns required of United States persons when liability to file arises on January 1, 1963*. Each United States person, as defined in section 7701(a)(30), who, on January 1, 1963, owns 5 percent or more in value of the outstanding stock of a foreign corporation, shall make a return on Form 959 (Rev. Jan. 1963) with respect to such foreign corporation setting forth the following information:

(1) The name, address, and identifying number of the shareholder (or shareholders) filing the return, and the internal revenue district in which such shareholder filed his most recent United States income tax return;

(2) The name, business address, and employer identification number, if any, of the foreign corporation and the name of the country under the laws of which it is incorporated;

(3) The date of organization and, if any, of each reorganization of the foreign corporation if such reorganization occurred on or after January 1, 1960, while the shareholder owned 5 percent or more in value of the outstanding stock of such corporation;

(4) The name and address of the foreign corporation's statutory or resident agent in the country of incorporation;

(5) The name, address, and identifying number of any branch office or agent of the foreign corporation located in the United States;

(6) If the foreign corporation has filed a United States income tax return, or participated in the filing of a consolidated return, for any of its last three calendar or fiscal years immediately preceding January 1, 1963, state each year for which a return was filed (including, in the case of a consolidated return, the name of the corporation filing such return), the type of form used, the internal revenue office to which it was sent, and the amount of tax, if any, paid;

(7) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation, and the location of such books and records if different from such address;

(8) The names, addresses, and identifying numbers of all United States persons who are the principal officers (for example, president, vice president, secretary, treasurer, and comptroller) or members of the board of director of the foreign corporation as of January 1, 1963;

(9) A complete description of the principal business activities in which the foreign corporation is actually engaged and, if the foreign corporation is a member of a group constituting a chain of ownership with respect to each unit of which the shareholder owns 5 percent or more in value of the outstanding stock, a chart showing the foreign corporation's position in the chain of ownership and the percentages of ownership;

(10) A copy of the following statements prepared in accordance with generally accepted accounting principles and in such form and detail as is customary for the corporation's accounting records:

(i) The corporation's profit and loss statement for the most recent complete annual accounting period; and

(ii) The corporation's balance sheet as of the end of the most recent complete annual accounting period;

(11) A statement showing as of January 1, 1963, the amount and type of any indebtedness of the foreign corporation—

(i) To any United States person owning 5 percent or more in value of its stock, or

(ii) To any other foreign corporation owning 5 percent or more in value of the outstanding stock of the foreign corporation with respect to which the return is filed provided that the shareholder filing the return owns 5 percent or more in value of the outstanding stock of such other foreign corporation,

together with the name, address, and identifying number, if any, of each such shareholder or entity;

(12) A statement, as of January 1, 1963, showing the name, address, and identifying number, if any, of each person who is, on January 1, 1963, a subscriber to the stock of the foreign corporation, and the number of shares subcribed to by each;

(13) A statement showing the number of shares of each class of stock of the foreign corporation owned by each shareholder filing the return and—

(i) If such stock was acquired after December 31, 1953, the dates of acquisition, the amounts paid or value given therefor, the method of acquisition, i.e., by original issue, purchase on open market, direct purchase, gift, inheritance, etc., and from whom acquired; or

(ii) If such stock was acquired before January 1, 1954, a statement that such stock was acquired before such date, and the value at which such stock is carried on the books of such shareholder;

(14) A statement showing as of January 1, 1963, the name, address, and identifying number of each United States person who owns 5 percent or more in value of the outstanding stock of the foreign corporation, the classes of stock held, the number of shares of each class held, including the name, address, and identifying number, if any, of each actual owner if such person is different from the shareholder of record and a statement of the nature and amount of the interests of each such actual owner; and

(15) The total number of shares of each class of outstanding stock of the foreign corporation (or other data indicating the shareholder's percentage of ownership).

(c) *Returns required of United States persons when liability to file arises after January 1, 1963*—(1) *United States persons required to file*. A return on Form 959 (Rev. Jan. 1963), relating to the organization or reorganization of a foreign corporation and to the acquisition of its stock, containing the information required by subparagraph (3) of this paragraph, shall be made by each United States person, as defined in section 7701(a)(30), when at any time after January 1, 1963—

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 5 percent or more in value of such stock) has, a value equal to 5 percent or more in value of the outstanding stock of such foreign corporation, or

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in subdivision (i) of this subparagraph—

(*a*) Acquires (whether in one or more transactions) an additional 5 percent or more in value of the outstanding stock of such foreign corporation,

(*b*) Owns 5 percent or more in value of the outstanding stock of such foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)), or

(*c*) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 5 percent in value of the outstanding stock of such foreign corporation.

The provisions of this subparagraph may be illustrated by the following examples:

Example (1). On January 15, 1963, A, a United States person, acquires 5 percent in value of the outstanding stock of M, a foreign corporation. A must file a return under the provisions of this subparagraph.

Example (2). On January 1, 1963, B, a United States person, owns 2 percent in value of the outstanding stock of M, a foreign corporation. B is not required to file a return under the provisions of this section because he does not own 5 percent or more in value of the outstanding stock of M Corporation. On February 1, 1963, B acquires an additional 3 percent in value of the outstanding stock of M Corporation. B must file a return under the provisions of this subparagraph.

Example (3). On January 1, 1963, C, a United States person, owns 6 percent in value of the outstanding stock of M, a foreign corporation. C must file a return under the provisions of paragraph (b) of this section. On February 1, 1963, C acquires an additional 2 percent in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. C is not required to file a return under the provisions of this subparagraph.

Example (4). The facts are the same as in Example (3) except that, in addition, on April 1, 1963, C acquires 2 percent in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. (C's total holdings are now 10 percent.) C is not required to file a return under the provisions of this subparagraph because he has not acquired 5 percent or more in value of the outstanding stock of M Corporation since he last became liable to file a return. On May 1, 1963, C acquires 1 percent in value of the outstanding stock of M Corporation. C must file a return under the provisions of this subparagraph.

Example (5). On June 1, 1963, D, a United States person, owns 12 percent in value of the outstanding stock of M, a foreign corporation. Also, on June 1, 1963, M Corporation is reorganized and, as a result of such reorganization, D owns only 6 percent of the outstanding stock of such foreign corporation. D must file a return under the provisions of this subparagraph.

Example (6). The facts are the same as in Example (5) except that, in addition, on November 1, 1970, D donates 2 percent of the outstanding stock of M Corporation to a charity. Since D has disposed of sufficient stock to reduce his interest in M Corporation to less than 5 percent in value of the outstanding stock of such corporation, D must file a return under the provisions of this subparagraph.

(2) *Shareholders who become United States persons.* A return on Form 959 (Rev. Jan. 1963), relating to the organization or reorganization of a foreign corporation and to the acquisition of its stock, containing the information required by subparagraph (3) of this paragraph, shall also be made by each person who at any time after January 1, 1963, becomes a United States person while owning 5 percent or more in value of the outstanding stock of such foreign corporation.

(3) *Information required to be shown on return*—(i) *In general.* The return on Form 959 (Rev. Jan. 1963), required to be filed by persons described in subparagraphs (1) and (2) of this paragraph, shall set forth the same information as is required by the provisions of paragraph (b) of this section except that where such provisions require information with respect to January 1, 1963, such information shall be furnished with respect to the date on which liability arises to file the return required under this paragraph.

(ii) *Additional information.* In addition to the information required under subdivision (i) of this subparagraph, the following information shall also be furnished in the return required under this paragraph:

(*a*) The date on or after January 1, 1963, if any, on which such shareholder (or shareholders) last filed a return under this section with respect to the corporation;

(*b*) If a return is filed by reason of becoming a United States person, the date the shareholder became a United States person;

(*c*) If a return is filed by reason of the disposition of stock, the date and method of such disposition and the person to whom such disposition was made; and

(*d*) If a return is filed by reason of the organization or reorganization of the foreign corporation on or after January 1, 1963, the following information:

(*1*) A statement showing a detailed list of the classes and kinds of assets transferred to the foreign corporation including a description of the assets (such as a list of patents, copyrights, stock, securities, etc.), the fair market value of each asset transferred (and, if such asset is transferred by a United States person, its adjusted basis), the date of transfer, the name, address, and identifying number, if any, of the owner immediately prior to the transfer, and the consideration paid by the foreign corporation for such transfer;

(*2*) A statement showing the assets transferred and the notes or securities issued by the foreign corporation, the name, address, and identifying number, if any, of each person to whom such transfer or issue was made, and the consideration paid to the foreign corporation for such transfer or issue; and

(*3*) An analysis of the changes in the corporation's surplus accounts occurring on or after January 1, 1963.

(iii) *Exclusion of information previously furnished.* In any case where any identical item of information required to be filed under this paragraph by a shareholder with respect to a foreign corporation has previously been furnished by such shareholder in any return made in accordance with the provisions of this section, such shareholder may satisfy the requirements of this paragraph by filing Form 959 (Rev. Jan. 1963), identifying such item of information, the date furnished, and stating that it is unchanged.

(d) *Associations, etc.* Returns are required to be filed in accordance with the provisions of this section with respect to any foreign association, foreign joint-stock company, or foreign insurance company, etc., which would be considered to be a corporation under § 301.7701-2 of this chapter (Regulations on Procedure and Administration). Persons who would qualify by the nature of their functions and ownership in such associations, etc., as officers, directors, or shareholders thereof will be treated as such for purposes of this section without regard to their designations under local law.

(e) *Special provisions*—(1) *Return jointly made.* Any two or more persons required under paragraph (a) of this section to make a return with respect to one or more shareholders of the same corporation, or under paragraph (b) or (c) of this section to make a return with respect to the same corporation, may in lieu of making several returns, jointly make one return.

(2) *Separate return for each corporation.* When returns are required with respect to more than one foreign corporation, a separate return must be made for each corporation.

(3) *Use of power of attorney by officers or directors*—(i) *In general.* Any two or more persons required under paragraph (a) of this section to make a return with respect to one or more shareholders of the same corporation may, by means of one or more duly executed powers of attorney, constitute one of their number as attorney in fact for the purpose of making such returns or for the purpose of making a joint return under subparagraph (1) of this paragraph.

(ii) *Nature of power of attorney.* The power of attorney referred to in subdivision (i) of this subparagraph shall be limited to the making of returns required under paragraph (a) of this section and shall be limited to a single calendar year with respect to which such returns are required.

(iii) *Manner of execution of power of attorney.* The use of technical language in the preparation of the power of attorney referred to in subdivision (i) of this subparagraph is not necessary. Such power of attorney shall be signed by the individual United States citizen or resident required to file a return or returns under paragraph (a) of this section. Such power of attorney must be acknowledge before a notary public or, in lieu thereof, witnessed by two disinterested persons. The notarial seal must be affixed unless such seal is not required under the laws of the state or country wherein such power of attorney is executed.

(iv) *Manner of execution of return under authority of power of attorney.* A return made under authority of one or more powers of attorney referred to in subdivision (i) of this sub-paragraph shall be signed by the attorney in fact for each principal for which such attorney in fact is acting. A copy of such one or more powers of attorney shall be kept at a convenient and safe location accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(v) *Effect on penalties.* The fact that a return is made under authority of a power of attorney referred to in subdivision (i) of this subparagraph shall not affect the principal's liability for penalties provided for failure to file a return required under paragraph (a) of this section or for filing a false or fraudulent return.

(4) *Persons excepted from filing returns.* Any person required to make a return under paragraph (b) or (c) of this section with respect to a foreign corporation need not make such return provided all of the following conditions are met:

(i) Such person does not directly own an interest in the foreign corporation;

(ii) Such person is required to furnish the information solely by reason of attribution of stock ownership from a United States person under paragraph (i) of this section; and

(iii) The person from whom the stock ownership is attributed furnishes all of the information required under paragraph (b) or (c) of this section of the person to whom such stock ownership is attributed.

(5) *Persons excepted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation, may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of value of such stock) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 959 (Rev. Jan. 1963) indicating that such liability has been satisfied and identifying the return in which such item of information was included.

(f) *Meaning of terms.* For purposes of this section—

(1) *Acquisition.* Stock in a foreign corporation shall be considered acquired when a person has an unqualified right to receive such stock, even though such stock is not actually issued. For example, when under the law of a foreign country, all the necessary steps for incorporation are completed but stock in the corporation will not be issued within 30 days, every United States citizen or resident who is an officer or a director of such corporation, provided a United States person has an interest of 5 percent or more in such corporation, and every such United States person shall, within 90 days of the date of incorporation, file the returns required under section 6046 and this section. In the case of a reorganization, new stock may be acquired, depending on the type of reorganization, whether or not any stock certificates are surrendered or exchanged or the designation of such stock is altered.

(2) *Reorganization.* With respect to a foreign corporation, the term "reorganization" shall mean not only a transaction described in section 368(a)(1) and the regulations thereunder but also any other transaction or series of transactions which has the same effect.

(g) *Method of reporting.* All amounts furnished in returns prescribed under this section shall be expressed in United States currency with a statement of the exchange rates used. All statements required to be submitted on or with returns under this section shall be rendered in the English language.

(h) *Actual ownership of stock.* If any shareholder, referred to in this section, is not the actual owner of the stock of the foreign corporation, the information required under this section shall be furnished in the name of and by such actual owner. For example, in the case of stock held by a nominee, the information required under this section shall be furnished by the actual owner of such stock.

(i) *Constructive ownership of stock*—(1) *In general.* Stock owned directly or indirectly by or for a foreign corporation or a foreign partnership shall be considered as being owned proportionately by its shareholders or partners. Thus, any United States person who is a member of a nonresident foreign partnership which becomes a shareholder in a foreign corporation shall be considered to be a shareholder in such foreign corporation to the extent of his proportionate share in such partnership.

(2) *Members of family.* An individual shall be considered as owning the stock owned directly or indirectly by or for his brothers and sisters (whether by the whole or half blood), his spouse, his ancestors, and his lineal descendants. However, when stock is treated as owned by an individual under the rule provided in this subparagraph, it shall not be treated as owned by him for the purpose of again applying such rule in order to make another the constructive owner of such stock. The provisions of this subparagraph may be illustrated by the following example:

Example. H, W, and HF are United States citizens. W, wife of H, owns 20 percent of the value of the outstanding stock of X, a foreign corporation. X Corporation owns 90 percent of the value of the outstanding stock of Y Corporation, a foreign corporation. Y Corporation becomes the owner of 50 percent of the value of the outstanding stock of each of two newly organized foreign corporations, M and N. In applying the "members of family" rule, H is considered to own 20 percent of the value of the outstanding stock of X Corporation, and 18 percent of the value of the outstanding stock of Y Corporation, and 9 percent of M Corporation and N Corporation. However, HF, the father of H, is not considered to own stock of X, Y, M, or N since his son, H, is not treated as the owner of such stock for purposes of again applying the "members of family" rule.

(j) *Time and place for filing return*—(1) *Time for filing.* Any return required by section 6046 and this section shall be filed on or before the 90th day after the day on which a United States citizen, resident, or person becomes liable to file such return under any provision of section 6046(a) and of paragraph (a), (b), or (c) of this section. The Director of International Operations is authorized to grant reasonable extensions of time for filing returns under section 6046 and this section in accordance with the applicable provisions of section 6081(a) and § 1.6081-1.

(2) *Place for filing.* Returns required by section 6046 and this section shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D.C.

(k) *Penalties.* (1) For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(2) For civil penalty for failure to file return, or failure to show information required on a return, under this section, see section 6679.

PAR. 5. At the end of the regulations in Part 301 relating to Additions to the Tax, Additional Amounts, and Assessable Penalties, there are inserted the following new sections:

§ 301.6679 Statutory provisions; failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

SEC. 6679. *Failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock*—(a) *Civil penalty.* In addition to any criminal penalty provided by law, any person required to file a return under section 6046 who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty of $1,000, unless it is shown that such failure is due to reasonable cause.

(b) *Deficiency procedures not to apply.* Subchapter B of chapter 63 (relating to deficiency procedure for income, estate, and gift taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

[Sec. 6679 as added by sec. 20(c), Revenue Act 1962 (76 Stat. 1062)]

§ 301.6679-1 Failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

(a) *Civil penalty*—(1) *In general.* In addition to any criminal penalty provided by law, each person required to file a return under section 6046, and the regulations thereunder, who fails to file such a return within the time provided, or who files a return which does not show the required information, shall pay a penalty of $1,000, unless such failure is shown to be due to reasonable cause.

(2) *Joint return.* The penalty imposed by section 6679 and this section shall apply to each United States citizen, resident, or person filing a joint return pursuant to the provisions of section 6046 and § 1.6046-1, which does not show the required information.

(3) *Showing of reasonable cause.* The penalty imposed by section 6679 shall not apply if it is established to the satisfaction of the Director of International Operations that such failure was due to a reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause. If the taxpayer exercises ordinary business care and prudence and is nevertheless unable to furnish any item of information required under section 6046, and the regulations thereunder, such failure shall be considered due to a reasonable cause. In determining the extent of a taxpayer's ability to obtain information, the percentage of stock owned by such taxpayer and the nature of the other interests in the foreign corporation will be considered.

(b) *Deficiency procedures not to apply.* The penalty imposed by section 6679 may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code.

[F.R. Doc. 62-11971; Filed, Nov. 30, 1962; 8:52 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

MISCELLANEOUS AMENDMENTS

1. In § 3.1, paragraphs (p), (q), and (r) are added to read as follows:

§ 3.1 Definitions.

* * * * *

(p) "Claim"—"Application" means a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit.

(q) "Notice" means written notice sent to a claimant or payee at his latest address of record.

(r) "Date of receipt" means the date on which a claim, information or evidence was received in the Veterans Administration, except as to specific provisions for claims or evidence received in the State Department (§ 3.108), or in the Social Security Administration (§ 3.153, § 3.201), or Department of Defense as to initial claims filed at or prior to separation.

2. A new § 3.20 is added to read as follows:

§ 3.20 Widow's benefit for month of veteran's death.

Where the veteran died on or after December 1, 1962, the rate of death pension, death compensation or dependency and indemnity compensation otherwise payable for his widow for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his death. (38 U.S.C. 3110; secs. 4 and 7, Public Law 87–825)

3. In § 3.105, the introductory portion preceding paragraph (a) and paragraphs (a), (d), and (e) are amended and paragraph (f) is added to read as follows:

§ 3.105 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his knowledge (§ 3.500(b)); there is a change in law or a Veterans Administration issue, or a change in interpretation of law or a Veterans Administration issue (§ 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

(a) *Error.* Previous determinations on which an action was predicated, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

* * * * *

(d) *Severance of service connection.* Subject to the limitations contained in §§ 3.114 and 3.957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or Veterans Administration issue, the provisions of § 3.114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons, and submitted to Central Office for review without notice to the claimant or representative. Ratings for carious or missing teeth, pyorrhea, or Vincent's disease will not be submitted. If the proposal is approved on review by Central Office, the claimant will be notified at his latest address of record of the contemplated action and furnished detailed reasons therefor and will be given 60 days for the presentation of additional evidence to show that service connection should be maintained. If additional evidence is not received within that period, rating action will be taken and the award will be discontinued effective the last day of the month in which the 60-day period expired. (38 U.S.C. 3012(b)(6); Public Law 87–825)

(e) *Reduction in evaluation—compensation.* Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, rating action will be taken. The reduction will be made effective the last day of the month in which a 60-day period from date of notice to the payee expires. The veteran will be notified at his latest address of record of the action taken and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. (38 U.S.C. 3012(b)(6); Public Law 87–825)

(f) *Reduction in evaluation—pension.* Where a reduction in evaluation is considered warranted because of a change in non-service-connected disability or employability and the lower evaluation would result in a reduction or discontinuance of pension payments currently being made, the award will be reduced or discontinued effective the last day of the month in which reduction or discontinuance of the award is approved. The veteran will be notified at his latest address of record of the action taken and furnished detailed reasons therefor, and the conditions under which his claim may be reopened. (38 U.S.C. 3012(b)(5); Public Law 87–825)

4. A new § 3.114 is added to read as follows:

§ 3.114 Change of law or Veterans Administration issue.

(a) *Effective date of awards.* Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or a liberalizing Veterans Administration issue, approved by the Administrator or by his direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue.

(1) If a claim is reviewed on the initiative of the Veterans Administration within 1 year from the effective date of the law or Veterans Administration issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or Veterans Administration issue.

(2) If a claim is reviewed on the initiative of the Veterans Administration more than 1 year after the effective date of the law or Veterans Administration issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or Veterans Administration issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request. (38 U.S.C. 3010(g); Public Law 87–825)

(b) *Discontinuance of benefits.* Where the reduction or discontinuance of an award is in order because of a change in law or a Veterans Administration issue, or because of a change in interpretation of a law or Veterans Administration issue, the payee will be notified at his latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired. (38 U.S.C. 3012(b)(6); Public Law 87–825)

5. In § 3.152, paragraph (c)(1) is amended to read as follows:

§ 3.152 **Claims for death benefits.**

* * * * *

(c)(1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a widow's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required. (38 U.S.C. 3010(e)) Where the award to the widow is terminated by reason of her death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

* * * * *

6. Immediately following § 3.152, a new cross reference is added so that the cross references read as follows:

CROSS REFERENCES: State Department as agent of Veterans Administration. See § 3.108.
Change in status of dependents. See § 3.651.

7. Section 3.154 is revised to read as follows:

§ 3.154 **Injury due to hospital treatment, etc.**

A formal claim for pension, compensation, dependency and indemnity compensation or any statement in a communication showing an intent to file a claim for disability or for death benefits resulting from the pursuit of a course of vocational rehabilitation, hospitalization, medical or surgical treatment, or examination under Veterans Administration laws may be accepted as a claim. (38 U.S.C. 351; sec. 3, Public Law 87–825)

8. Immediately following § 3.154, the cross references are revised to read as follows:

CROSS REFERENCES: Effective dates. See § 3.400.
Disability or death due to hospitalization, etc. See § 3.800(a).

9. In § 3.156, former paragraphs (a), (b), (c), (f), and (g) are canceled; former paragraph (d) revised and redesignated (a); and former paragraph (e) redesignated (b), so that the revised § 3.156 reads as follows:

§ 3.156 **New and material evidence.**

(a) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision, will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(b) Where the new and material evidence consists of a supplemental report from the service department, received before or after the decision has become final, the former decision will be reconsidered by the adjudicating agency of original jurisdiction. This comprehends official service department records which presumably have been misplaced and have now been located and forwarded to the Veterans Administration. Also included are corrections by the service department of former errors of commission or omission in the preparation of the prior report or reports and identified as such. The retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly except as it may be affected by the filing date of the original claim.

10. In § 3.157, the headnote, paragraph (a) and subparagraphs (1) and (3) of paragraph (b) are amended to read as follows:

§ 3.157 **Report of examination or hospitalization as claim for increase or to reopen.**

(a) *General.* Effective date of pension or compensation benefits, if otherwise in order, will be the date of receipt of a claim or the date when entitlement arose, whichever is the later. A report of examination or hospitalization which meets the requirements of this section will be accepted as an informal claim for benefits under an existing law or for benefits under a liberalizing law or Veterans Administration issue, if the report relates to a disability which may establish entitlement. Acceptance of a report of examination or treatment as a claim for increase or to reopen is subject to the requirements of § 3.114 with respect to action on Veterans Administration initiative or at the request of the claimant and the payment of retroactive benefits from the date of the report or for a period of 1 year prior to the date of receipt of the report. (38 U.S.C. 3010(a); Public Law 87–825)

(b) *Claim.* * * *

(1) *Report of Veterans Administration examination or hospitalization at Veterans Administration expense.* The date of outpatient or hospital examination or date of admission to a Veterans Administration hospital or date of admission to a non-Veterans Administration hospital if previously authorized will be accepted as the date of receipt of a claim. If subsequently authorized the date the Veterans Administration received notice of admission to a non-Veterans Administration hospital will be accepted.

* * * * *

(3) *State and other institutions.* When submitted by or on behalf of the veteran and entitlement is shown, date of receipt by the Veterans Administration of examination reports, clinical records, and transcripts of records will be accepted as the date of receipt of a claim if received from State, county, municipal, recognized private institutions, or other Government hospitals. These records must be authenticated by an appropriate official of the institution. Benefits will be granted if the records are adequate for rating purposes; otherwise findings will be verified by official examination. Reports received from private institutions not listed by the American Hospital Association must be certified by the Chief Medical Officer of the Veterans Administration or his physician designee.

11. Section 3.158 is revised to read as follows:

§ 3.158 **Abandoned claims.**

(a) *General.* Where evidence requested in connection with an original claim, a claim for increase or to reopen or for the purpose of determining continued entitlement is not furnished within 1 year after the date of request, the claim will be considered abandoned. After the expiration of 1 year, further action will not be taken unless a new claim is received. Should the right to benefits be finally established, pension, compensation, or dependency and indemnity compensation based on such evidence shall commence not earlier than the date of filing the new claim.

(b) *Veterans Administration examinations.* Where the veteran fails without adequate reason to respond to an order to report for Veterans Administration examination within 1 year from the date of request and payments have been discontinued, the claim for such benefits will be considered abandoned.

(c) *Disappearance.* Where payments of pension, compensation, or dependency and indemnity compensation have not been made or have been discontinued because a payee's present whereabouts is unknown for a period of 1 year or more, payments will not be made for any period prior to the date the evidence showing the payee's present whereabouts is received in the Veterans Administration, if otherwise in order.

12. Immediately following § 3.158, two new cross references are added so that the cross references read as follows:

CROSS REFERENCES: Determinations of domestic status and dependency. See § 3.652.
Failure to report for Veterans Administration examination. See § 3.655.
Disappearance of veteran. See § 3.656.

13. A new § 3.160 is added to read as follows:

§ 3.160 **Status of claims.**

The following definitions are applicable to claims for pension, compensation, and dependency and indemnity compensation.

(a) *Informal claim.* See § 3.155.

(b) *Original claim.* An initial formal application on a form prescribed by the Administrator (See §§ 3.151, 3.152).

(c) *Pending claim.* An application, formal or informal, which has not been finally adjudicated.

(d) *Finally adjudicated claim.* An application, formal or informal, which has been allowed or disallowed by the agency of original jurisdiction, the action having become final by the expiration of 1 year after the date of notice of an award or disallowance, or by denial on appellate review, whichever is the earlier. See § 3.104(c).

(e) *Reopened claim.* Any application for a benefit received after final disallowance of an earlier claim.

(f) *Claim for increase.* Any application for an increase in rate of a benefit being paid under a current award, or for resumption of payments previously discontinued.

14. In § 3.213, paragraphs (a) and (b) are amended to read as follows:

§ 3.213 Change of status affecting entitlement.

(a) *General.* Proof will be required to establish a change of status which would result in payment of a higher rate of pension, compensation or dependency and indemnity compensation. For the purpose of reducing or discontinuing such benefits, a statement by a claimant or payee setting forth the month and year of change of status which would result in a reduction or discontinuance of benefits to that person will be accepted, in the absence of contradictory information. This includes:

(1) *Veteran.* A statement by the veteran setting forth the month and year of death of a wife, child, or dependent parent.

(2) *Widow.* A statement by the widow or remarried widow setting forth the month and year of remarriage and her present name. (An award for a child or children who are otherwise entitled may be made to commence the day following the date of discontinuance of payments to the widow.)

(3) *Child.* A statement by the veteran or widow (where an additional allowance is being paid to the veteran or widow for a child), or fiduciary, setting forth the month and year of the child's death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish his marriage or the discontinuance of school attendence. Where appropriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child.

(4) *Parent.* A statement by a parent setting forth the month and year:

(i) Of marriage or remarriage;

(ii) When two parents or a parent and spouse ceased living together;

(iii) When two parents or a parent and spouse resumed living together following a period of separation;

(iv) Of divorce or death of a spouse.

(b) *Date not reported.* If the month and year of the event is not reported, the award will be reduced or discontinued, whichever is appropriate, effective date of last payment. The payee will be requested to furnish within 60 days from the date of request a statement setting forth the date of the event. Where payments are continued at a reduced rate, the award will be discontinued effective date of last payment if the required statement is not received within the 60-day period. Payments on a discontinued award may be resumed, if otherwise in order, from the date of discontinuance if the necessary information is received within 1 year from the date of request; otherwise from the date of receipt of a new claim.

* * * * *

15. Immediately following § 3.213, two new cross references are added so that the cross references read as follows:

CROSS REFERENCES: Abandoned claims. See § 3.158.
Change in status of dependents. See § 3.651.
Material change in income, net worth or change in status. See § 3.660.

16. In § 3.400, the introductory portion preceding paragraph (a) and paragraphs (c), (d), (f), (g), (i), (o), (p), (q), and (r) are amended and paragraph (v) is added to read as follows:

§ 3.400 General.

Except as otherwise provided, the effective date of an award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. The effective date of an evaluation and award of pension or compensation for a veteran will be the date of receipt of the claim or the date entitlement arose, whichever is later. (38 U.S.C. 3010(a); Pub. Law 87-825)

* * * * *

(c) *Death benefits*—(1) *Death in service (38 U.S.C. 3010(j); Public Law 87-825; §§ 3.4(c), 3.5(b)).* First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received within 1 year after the date the initial report of actual death or finding of presumed death was made; however, benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) *Death after separation from service (38 U.S.C. 3010(d); Public Law 87-825; §§ 3.3(d), 3.4(c), 3.5(b)).* First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(3) *Dependency and indemnity compensation*—(i) *Deaths prior to January 1, 1957 (§ 3.702).* Date of receipt of election or date dependency and indemnity compensation becomes the greater monthly benefit if election is received within (generally) 120 days before that date.

(ii) *Child (38 U.S.C. 3010(e); Public Law 87-825).* First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.

(d) *Age; veteran 65, widow 70 (§ 3.208).* In other than original claims date of receipt of claim or 65th (or 70th) birthday, whichever is later, if evidence filed within 1 year after date of request.

* * * * *

(f) *Bureau of Employees' Compensation cases (§ 3.708).* Date authorized by applicable law, subject to any payments made by the Bureau of Employees' Compensation over the same period of time.

(g) *Correction of military records (38 U.S.C. 3010(i); Public Law 87-825).* Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a Board established under 10 U.S.C. 1552 or 1553, or because of other corrective action by competent military naval, or air authority, the award will be effective from the latest of these dates:

(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;

(2) Date of receipt of claim if claim was disallowed; or

(3) One year prior to date of reopening of disallowed claim.

* * * * *

(i) *Disability or death due to hospitalization, etc. (38 U.S.C. 3010 (c), (d); Public Law 87-825; § 3.800)*—(1) *Disability.* Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.

(2) *Death.* First day of month in which the veteran's death occurred if a claim is received within 1 year following the date of death; otherwise, date of receipt of claim.

* * * * *

(o) *Increases (38 U.S.C. 3010(a); Public Law 87-825; §§ 3.109, 3.156, 3.157).* Except as provided in § 3.401(b)(2), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.

(p) *Liberalizing laws and Veterans Administration issues.* See § 3.114.

(q) *New and material evidence (§ 3.156)*—(1) *Other than service department records*—(i) *Received within appeal period or prior to appellate decision.* The effective date will be as though the former decision had not been rendered. See § 3.104(c).

(ii) *Received after final disallowance.* Date of receipt of new claim or date entitlement arose, whichever is later.

(2) *Service department records.* To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later, subject to rules on original claims filed within 1 year after separation from service. See paragraph (g) of this section as to correction of military records.

(r) *Reopened claims (§§ 3.109, 3.156, 3.157).* Date of receipt of claim or date entitlement arose, whichever is later.

* * * * *

(v) *Void or annulled marriage (or remarriage) (38 U.S.C. 3010(f), Public Law 87-674; 38 U.S.C. 3010 (a), (k), Public Law 87-825; § 3.55)*—(1) *Void.* Date the parties ceased to cohabit or date of receipt of claim, whichever is later.

(2) *Annulled.* Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

17. In § 3.401, paragraphs (b) and (f) are amended and paragraph (h) is added to read as follows:

§ 3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

* * * * *

(b) *Dependents, additional compensation for* (§ *3.4(b)(2)*). The earlier of the following dates:

(1) Commencing date of veteran's award if dependent shown on claim and evidence is received within 1 year after date of request.

(2) For compensation, effective date of the qualifying evaluation if basic proof of dependents in existence on that date is received within 1 year after date of notification of such evaluation, and any necessary substantiating evidence is received within 1 year after date of request. (38 U.S.C. 3010(f); Public Law 87–825) (Other increases, including disability pension, see § 3.400(o))

* * * * *

(f) *Service pension* (§ *3.3(b)*). Date of receipt of claim.

* * * * *

(h) *Temporary increase (Paragraph 29, "General Policy in Rating," 1945 Schedule for Rating Disabilities)*. Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

18. In § 3.402, paragraph (c) is revoked.

§ 3.402 Widows.

Awards of pension, compensation, or dependency and indemnity compensation to or for a widow will be effective as follows:

* * * * *

(c) [Revoked]

18a. In § 3.403, paragraph (a) is amended to read as follows:

§ 3.403 Children.

Awards of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or widow on behalf of such child, will be effective as follows:

(a) *Permanently incapable of self-support* (§ *3.57(a)(3)*). In original claims, date fixed by §§ 3.400 (b) or (c) or 3.401(b). In claims for continuation of payments, 18th birthday if the condition is claimed prior to or within 1 year after that date; otherwise from date of receipt of claim.

* * * * *

19. In § 3.500, the introductory portion preceding paragraph (a), paragraphs (b), (d), (e), (g), (h), (i), (k), (l), (n), and (r) are amended and paragraphs (v) and (w) are added to read as follows:

§ 3.500 General.

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in § 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit. (38 U.S.C. 3012(b); Public Law 87–825.)

* * * * *

(b) *Error; payee's or administrative (38 U.S.C. 3012(b) (9), (10); Public Law 87–825)*. (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his knowledge.

(2) Except as provided in paragraph (r) of this section, and § 3.501 (e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.

* * * * *

(d) *Apportionment* (§§ *3.450 series; 3.556*). (1) Except as otherwise provided, date of last payment when reason for apportionment no longer exists.

(2) Where pension was apportioned under § 3.551(c), day preceding date of veteran's release from hospital, unless overpayment would result; date of last payment if necessary to avoid overpayment.

(e) *Bureau of Employees' Compensation* (§ *3.708*). End of month following the month in which there is received from Bureau of Employees' Compensation notice that payee has elected benefits from that agency. If children on rolls and widow has primary title, award to children discontinued same date as widow's award.

* * * * *

(g) *Death (38 U.S.C. 3012 (a), (b); Public Law 87–825)*—(1) *Payee*. Last day of month before death.

(2) *Dependent of payee (includes apportionee)*. Last day of month in which death occurred.

(3) *Veteran receiving retirement pay*. Date of death.

(h) *Dependency of parent (38 U.S.C. 3012(b)(4); Public Law 87–825;* §§ *3.4 (a), (b)(2), 3.250, 3.551(b), and 3.660)*. Last day of month in which dependency ceased.

(i) *Election of Veterans Administration benefits* (§ *3.700 series*). Day preceding beginning date of award under other law.

* * * * *

(k) *Fraud (38 U.S.C. 3503(a), (d);* §§ *3.669 and 3.901)*. Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) *Guardian, marriage or divorce of* (§ *3.856*). Date of last payment (pending receipt of information as to change of name).

* * * * *

(n) *Marriage (or remarriage) (38 U.S.C. 101(3), Public Law 87–674; 38 U.S.C. 3012(b), Public Law 87–825)*—(1) *Payee*. Last day of month before marriage.

(2) *Dependent of payee (includes apportionee)*. Last day of month in which marriage occurred.

(3) *Inferred marriage of child*. Last day of month as provided in subparagraph (1) or (2) of this paragraph.

(4) *Conduct of widow*. Last day of month before inception of relationship.

* * * * *

(r) *Service connection (38 U.S.C. 3012(b)(6); Public Law 87–825;* § *3.105)*. Last day of month following 60 days after notice to payee. Applies to change from wartime to peacetime, reduced evaluation, and severance of service connection.

* * * * *

(v) *Change in law or Veterans Administration issue, or interpretation*. See § 3.114.

(w) *Failure to furnish evidence*. Except as otherwise provided, date of last payment where evidence requested to establish continued entitlement is not furnished.

20. Immediately following § 3.500, a new cross reference is added to read as follows:

Cross Reference: Failure to return questionnaire. See § 3.661(b).

21. In § 3.501, paragraphs (a), (b), (c), (d), (e), (g), (i), (k), and (l) are amended and paragraph (m) is added to read as follows:

§ 3.501 Veterans.

* * * * *

(a) *Active service pay (38 U.S.C. 3012 (b)(3); Public Law 87–825;* § *3.700(a))*. Day preceding entrance on active duty. See § 3.654.

(b) *Aid and attendance*—(1) § *3.552 (b)(1)*. Day preceding date of admission for hospitalization, institutional or domiciliary care at Veterans Administration expense.

(2) § *3.552(b)(2)*. Last day of calendar month following month in which veteran hospitalized at United States Government expense.

(c) *Disappearance of veteran*. See § 3.656.

(d) *Divorce (38 U.S.C. 3012(b)(2); Public Law 87–825)*. Last day of month in which divorce occurred.

(e) *Employability regained (38 U.S.C. 3012(b) (5), (6); Public Law 87–825;* § *3.105)*—(1) *Pension*. Last day of month in which discontinuance is approved.

(2) *Compensation*. Last day of month following 60 days after notice to payee.

* * * * *

(g) *Evaluation reduced (38 U.S.C. 3012(b) (5), (6); Public Law 87–825;* § *3.105)*—(1) *Pension*. Last day of month in which reduction or discontinuance is approved.

(2) *Compensation*. Last day of month following 60 days after notice to payee.

* * * * *

(i) *Hospitalization* — (1) § *3.551(b)*. First day of seventh calendar month following admission if veteran without dependents, or date of last payment if notice is not timely received.

(2) § *3.551(c)*. First day of third calendar month following admission if veteran without wife or child or, though married, is receiving pension at rate provided by 38 U.S.C. 521(b).

(3) § *3.557*. Incompetent hospitalized veteran, without dependents, whose estate equals or exceeds $1,500: Date of

admission or end of the month in which any Veterans Administration office receives information that estate equals or exceeds $1,500, whichever is later. If the veteran was hospitalized for observation and examination, the date treatment began will be considered the date of admission.

* * * * *

(k) *Lump-sum readjustment pay.* See § 3.700(a)(2).

(l) *Retirement pay (38 U.S.C. 3012 (b)(3); Public Law 87–825; § 3.750).* Day before effective date of retirement pay.

(m) *Temporary increase (38 U.S.C. 3012(b)(8); Public Law 87–825; Paragraph 29, "General Policy in Rating," 1945 Schedule for Rating Disabilities).* Last day of month in which hospitalization or treatment terminated, whichever is earlier, where temporary increase in compensation was authorized because of hospitalization for treatment.

22. In § 3.502, paragraphs (a) and (b) are amended and paragraph (d) is added to read as follows:

§ 3.502 Widows.

* * * * *

(a) *Additional allowance of dependency and indemnity compensation for children (§ 3.5(a)(3)).* (1) Day preceding child's 18th birthday or last day of month in which child's marriage occurred (see § 3.500(n)(2) and (3)), whichever is earlier.

(2) Last day of month in which increase was effective, when allowance is reduced or discontinued because of increase in Old-Age and Survivor's Insurance.

(b) *Basic pay; dependency and indemnity compensation (38 U.S.C. 411(a), 3012(b)(10); Public Law 87–825).* Date of last payment when rate is reduced because of new certification of basic pay.

* * * * *

(d) *Marriage.* See § 3.500(n).

23. In § 3.503, paragraphs (a), (b), (c), (d), and (h) are amended to read as follows:

§ 3.503 Children.

* * * * *

(a) *Age 18 (or 21) (38 U.S.C. 3012(a); Public Law 87–825; § 3.57).* Day before 18th (or 21st) birthday.

(b) *Enters service (§§ 3.450(b), 3.458 (e)).* Date of last payment of apportioned disability benefits for child not in custody of estranged wife. Full rate payable to veteran. No change where payments are being made for the child to the veteran, his estranged wife, his widow, or to the fiduciary of a child not in the widow's custody.

(c) *Permanently incapable of self-support (38 U.S.C. 3012(a), (b)(6); Public Law 87–825; §§ 3.57, 3.950)*—(1) *Pension.* Date of last payment.

(2) *Compensation or dependency and indemnity compensation.* Last day of month following 60 days after notice to payee.

(d) *Marriage.* See § 3.500(n).

* * * * *

(h) *War orphans' educational assistance (§§ 3.707, 3.807).* Day preceding beginning date of educational assistance allowance.

* * * * *

24. In § 3.651, paragraph (b) is amended to read as follows:

§ 3.651 Change in status of dependents.

* * * * *

(b) The commencement or adjustment will be effective the day following the reduction or discontinuance of the award to the other payee if the necessary evidence is received in the Veterans Administration within 1 year from the date of request therefor; otherwise from the date of receipt of a new claim.

* * * * *

25. In § 3.652, paragraph (b) is amended to read as follows:

§ 3.652 Determinations of domestic status and dependency.

* * * * *

(b) If the required evidence is received within 1 year from the date of request payments may be adjusted or resumed, if otherwise in order from the date of reduction or discontinuance. If the evidence is not received within 1 year from the date of request therefor, the adjustment or resumption will not be authorized prior to the date of receipt of a new claim.

26. In § 3.653, paragraphs (b) and (c)(3) are amended to read as follows:

§ 3.653 Foreign residence.

* * * * *

(b) *Retroactive payments.* Except as provided in paragraph (c) of this section, any amount not paid to an alien under this section, together with any amounts placed to his credit in the special deposit account in the Treasury or covered into the Treasury as miscellaneous receipts under 31 U.S.C. 123–128 will be paid to him on the filing of a new claim. Such claim should be supported with evidence that he has not been guilty of mutiny, treason, sabotage or rendering assistance to an enemy, as provided in § 3.902(a). (38 U.S.C. 3109)

(c) *"Iron Curtain Countries."*

* * * * *

(3) *Countries removed from "Iron Curtain" list.* When a country has been removed from the list of "Iron Curtain Countries," and the payee is otherwise entitled, the award will include payments which were not made because the Veterans Administration was prevented from obtaining evidence of the continued existence of the payee, if a claim is filed within 1 year from the date the country is removed from the "Iron Curtain" list.

* * * * *

27. Section 3.654 is revised to read as follows:

§ 3.654 Active service pay.

(a) *General.* Pension, compensation, or retirement pay will be discontinued under the circumstances stated in § 3.700(a)(1) for any period for which the veteran received active service pay. For the purposes of this section, active service pay means pay received for active duty, active duty for training or inactive duty training.

(b) *Active duty.* (1) Where the veteran returns to active duty status, the award will be discontinued effective the day preceding reentrance into active duty status. If the exact date is not known, payments will be discontinued effective date of last payment and as of the correct date when the date of reentrance has been ascertained from the service department.

(2) Payments, if otherwise in order, will be resumed effective the day following release from active duty if claim for recommencement of payments is received within 1 year from the date of such release; otherwise payments will be resumed effective 1 year prior to the date of receipt of a new claim. Prior determinations of service connection will not be disturbed except as provided in § 3.105. Compensation will be authorized based on the degree of disability found to exist at the time the award is resumed. Disability will be evaluated on the basis of all facts, including records from the service department relating to the most recent period of active service. If a disability is incurred or aggravated in the second period of service, compensation for that disability cannot be paid unless a claim therefor is filed.

(c) *Training duty.* Prospective adjustment of awards may be made where the veteran waives his Veterans Administration benefit covering anticipated receipt of active service pay because of expected periods of active duty for training or inactive duty training. Where readjustment is in order because service pay was not received for expected training duty, retroactive payments may be authorized if a claim for readjustment is received within 1 year after the end of the fiscal year for which payments were waived.

28. Section 3.655 is revised to read as follows:

§ 3.655 Failure to report for Veterans Administration examination.

(a) *Discontinuance.* When a veteran without adequate reason fails to report for Veterans Administration examination, including periods of hospital observation requested for pension or compensation purposes, the awards to the veteran and any dependents will be discontinued, except as provided in paragraph (b) of this section, effective date of last payment.

(b) *Adjustment for static disabilities.* If the veteran has one or more compensable static disabilities verified by a Veterans Administration examination and one or more compensable disabilities nonstatic in nature and without adequate reason fails to report for examination, including periods of hospital observation, the awards to the veteran and any dependents will be amended to pay an amount based on the degree of disability of such static disabilities effective the day following the date of last payment.

(c) *Resumption; no change in evaluation.* When payments have been discontinued because of failure to report for examination, payments will be resumed effective the day following the date of last payment if the evidence clearly establishes that during the period of his failure to report the disability existed in the former compensable degree and the claim was not abandoned and the rating agency confirms and continues the prior evaluation.

(d) *Resumption; reduced evaluation.* If the examination shows a changed condition and the disability is no longer compensable in degree, the award will not be reopened for the period of discontinuance. Except as to abandoned claims, if a lesser compensable degree of disability is shown the award will be resumed at the lower rate.

(e) *Resumption; increased evaluation.* Except as to abandoned claims, if the examination shows increased disability, increased benefits will be authorized from the date of examination or the date of receipt of a claim for such increase, whichever is earlier, with the former rate in effect from the day following date of last payment through the day preceding the date of the increase in rate.

(f) *Abandoned claims.* If the claim was abandoned, and the veteran subsequently states that he is willing to report for examination, benefits may be paid from the date of receipt of the new claim if he reports for such examination within 1 year from date of notice to report.

29. Immediately following § 3.655, two new cross references are added so that the cross references read as follows:

CROSS REFERENCES: Abandoned claims. See § 3.158.

Claimants required to report when requested. See § 3.329.

Resumption of rating when veteran subsequently reports for physical examination. See § 3.330.

Examination; failure to report. See § 3.501(h).

30. In § 3.656, paragraphs (a) and (b) are amended to read as follows:

§ 3.656 Disappearance of veteran.

(a) When any veteran has disappeared for 90 days or more and his whereabouts remain unknown to the members of his family and the Veterans Administration, disability compensation which he was receiving or entitled to receive may be paid to or for his wife, children and parents, effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from the date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) Dependency and indemnity compensation.

(2) Amount of compensation payable to the veteran at the time of disappearance.

(b) Where a veteran's whereabouts become known to the Veterans Administration after an award to dependents has been made as provided in this section, the award to the dependents will be discontinued effective date of last payment, and appropriate action will be taken to adjust the veteran's award in accordance with the facts found. (38 U.S.C. 358)

* * * * *

31. In § 3.660, paragraphs (a) (1) and (3) and (b) (1)(ii) and (2) (i)(b), (ii) and (iii) are amended and paragraph (a)(4) is added to read as follows:

§ 3.660 Material change in income, net worth or change in status.

(a) *Requiring reduction or discontinuance*—(1) *Dependency and indemnity compensation.* If, after approval of an award of dependency and indemnity compensation or the submission of an annual income questionnaire, the payee begins to receive additional income at a rate which if continued will cause his income to exceed the income limitation applicable to the rate of dependency and indemnity compensation being paid or by reason of a change in marital status he would not be eligible to receive the rate of dependency and indemnity compensation which was awarded, he must notify the Veterans Administration of such fact. The award to each payee will be adjusted as of the last day of the month (1962 and thereafter) in which such additional income was received or the change in marital status occurred. Where parents are living together, an overpayment will be established for each parent who was in receipt of dependency and indemnity compensation. Any overpayment created under this subparagraph will be subject to recovery if not waived. (38 U.S.C. 415(f))

* * * * *

(3) *Pension.* If, after approval of an award or the submission of an annual income (and net worth where applicable) questionnaire, the payee begins to receive additional income at a rate which if continued will cause his income to exceed the income limitation applicable to the rate of penson being paid, or if by reason of a change in marital or dependency status or increase in net worth he is not eligible to receive the rate of pension which was awarded he must notify the Veterans Administration of such fact. The award to the payee will be adjusted as of the last day of the month (1962 and thereafter) in which such additional income was received, net worth increased or the change in marital or dependency status occurred. Any overpayment created under this subparagraph will be subject to recovery if not waived.

(4) *Anticipated increase.* When information has been furnished by the payee on a questionnaire or otherwise that he anticipates receiving income which will require reduction or discontinuance of dependency and indemnity compensation, compensation or pension, the award will be reduced or discontinued the date of last payment. (38 U.S.C. 3012(b)(4); Public Law 87–825)

(b) *Requiring award or increase*—(1) *Dependency and indemnity compensation.*

* * * * *

(ii) *Change in marital status.* Except as provided in § 3.651, where a change in marital status occurs which would permit payment at a higher rate, the increased rate will be effective the date of receipt of notice constituting an informal claim reporting the change in status. Income will be computed in accordance with § 3.251(g).

(2) *Pension*—(i) *Income* * * *

(b) *Actual income.* Where a claim was disallowed, award deferred or made at a lower rate based on anticipated income, an award or increased award may be made from the first of that calendar year if evidence is received within the same or the next calendar year showing the income was less than the statutory limitation or was within a lower income increment. (38 U.S.C. 3010(h); Public Law 87–825)

(ii) *Change in marital status or status of dependents.* Except as provided in § 3.651, where a change in marital status or status of dependents occurs which would permit payment at a higher rate, the increased rate will be effective from the date of receipt of notice constituting an informal claim reporting the change in status. In such cases income will be computed in accordance with § 3.252(e).

(iii) *Reduction in net worth or change in circumstances.* Where a claim has been finally disallowed because of the net worth provisions of 38 U.S.C. 522 or 543, or because of the corpus of estate provisions of § 3.250(e) and evidence is received of a reduction in net worth or a change in circumstances such as health, acquisition of a dependent, increase in rate of depletion of "corpus of estate", benefits will not be paid for any period prior to date of receipt of the new claim.

32. In § 3.661(b), subparagraph (2) is amended to read as follows:

§ 3.661 Income and net worth questionnaires.

* * * * *

(b) *Failure to return questionnaire.* * * *

(2) *Resumption of benefits.* Payment may be made, if otherwise in order, from the date of last payment if evidence of entitlement is received within 1 year from the date the claimant is notified of the termination of payments; otherwise benefits may not be paid for any period prior to date of receipt of the new claim.

33. Immediately following § 3.661, the cross reference "Material change in income, net worth or change in status. See § 3.660" is deleted.

34. In § 3.662, paragraph (a) is amended to read as follows:

§ 3.662 Children, no widow entitled.

(a) When an award of death pension to a widow with a child or children has been discontinued for the reason that her annual income is in excess of the statutory limitation, payments to the child or children whose annual income, determined separately, does not exceed the statutory limitation will commence effective the day following the date of last payment to the widow. In those cases in which an award of death pension to a widow is discontinued retroactively in accordance with the provisions of § 3.660 and an additional amount in behalf of a child or children was included in the award, an adjustment will be made in the award to the widow. The monthly rate payable to the widow for the period from the effective date of discontinuance to the date of last payment will be the amount to which such child or children would have been entitled during that period.

* * * * *

35. In § 3.667, paragraphs (b) and (c) are amended and a citation added following paragraph (e) to read as follows:

§ 3.667 School attendance.

* * * * *

(b) *Vacation periods.* A child is considered to be in school during a vacation or other holiday period if he was attending school at the end of the preceding school term and resumes attendance, either in the same or a different approved school, at the beginning of the next term. If an award has been made covering a vacation period, and the child fails to resume attendance, or the required evidence of attendance is not received within 10 days (30 days if residing outside the continental limits of the United States) after the date the child expected to commence or resume school attendance, benefits will be terminated the date of last payment or the last day of the month preceding the date of failure to pursue the course, whichever is the earlier. Benefits may be paid from the day following the date of discontinuance only if notice is received within 1 year from that date showing that the child resumed attendance at the commencement of the term.

(c) *Ending dates.* Benefits may be authorized prospectively through the last day of the month in which it is expected a course will be completed.

* * * * *

(38 U.S.C. 3012(b)(7); Public Law 87-825)

36. Section 3.708 is revised to read as follows:

§ 3.708 Bureau of Employees' Compensation.

(a) *Military service.* (1) Where a person is entitled to compensation from the Bureau of Employees' Compensation based upon disability or death due to service in the Armed Forces and is also entitled based upon service in the Armed Forces to pension, compensation, or dependency and indemnity compensation under the laws administered by the Veterans Administration, he will elect which benefit he will receive. Pension compensation, or dependency and indemnity compensation may not be paid in such instances by the Veterans Administration concurrently with compensation from the Bureau of Employees' Compensation. Benefits are not payable by the Bureau of Employees' Compensation for disability or death incurred on or after January 1, 1957, based on military service.

(2) Effective September 13, 1960, an election to receive benefits from either agency is final. There is no right of reelection (Public Law 86-767). Where primary title is vested in the widow, her election controls the rights of any of the veteran's children, regardless of whether they are in the widow's custody and regardless of the fact that such children may not be eligible to receive benefits under laws administered by the Bureau of Employees' Compensation. A child who is eligible for dependency and indemnity compensation or other benefits independent of the widow's entitlement may receive such benefits concurrently with payment of Bureau of Employees' Compensation benefits to the widow.

(3) The provisions of this paragraph are applicable also in those cases in which disability or death occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or training.

(4) Payments on an award of disability or death benefits will be discontinued when there is received from the Bureau of Employees' Compensation notice that the payee has elected to receive benefits from that agency based upon military service.

(b) *Civilian employment.* Where a person is entitled to compensation from the Bureau of Employees' Compensation based upon civilian employment and is also entitled to pension, compensation or dependency and indemnity compensation under laws administered by the Veterans Administration for the same disability or death, he will elect which benefit he will receive. On or after September 13, 1960, an award cannot be approved for payment of pension, compensation or dependency and indemnity compensation concurrently with compensation from the Bureau of Employees' Compensation in such instances and an election to receive benefits from either agency is final. There is no right of reelection (Public Law 86-767). A child who is eligible for dependency and indemnity compensation or other benefits independent of the widow's entitlement may receive such benefits concurrently with payment of Bureau of Employee's Compensation benefits to the widow.

37. In § 3.800(a), the introductory portion preceding subparagraph (1) and subparagraph (2) are amended to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

(a) Where disease, injury, death or the aggravation of an existing disease or injury occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or the pursuit of a course of vocational rehabilitation under any law administered by the Veterans Administration and not the result of his own willful misconduct, disability or death compensation, or dependency and indemnity compensation will be awarded for such disease, injury, aggravation, or death as if such condition were service connected. The commencing date of benefits is subject to the provisions of § 3.400(i). (38 U.S.C. 351; sec. 3, Public Law 87-825)

* * * * *

(2) Where any person is awarded a judgment on or after December 1, 1962, against the United States in a civil action brought pursuant to 28 U.S.C. 1346 (b), or enters into a settlement or compromise on or after December 1, 1962, under 28 U.S.C. 2672 or 2677, by reason of a disability, aggravation or death within the purview of this section, no compensation or dependency and indemnity compensation shall be paid to such person for any month beginning after the date such judgment, settlement, or compromise on account of such disability, aggravation, or death becomes final until the total amount of benefits which would be paid except for this provision equals the total amount included in such judgment, settlement, or compromise. (38 U.S.C. 351; sec. 3, Public Law 87-825)

* * * * *

38. Section 3.951 is revised to read as follows:

§ 3.951 Total disability.

A rating of total disability or permanent total disability made for pension or compensation purposes under laws administered by the Veterans Administration and continuously in force for 20 or more years will not be reduced thereafter except upon a showing that such rating was based on fraud. The 20-year period will be computed from the effective date of the Veterans Administration finding of total or permanent total disability. (38 U.S.C. 110; sec. 6, Public Law 87-825)

39. Section 3.957 is revised to read as follows:

§ 3.957 Service connection.

Service connection for any disability or death granted or continued under title 38, United States Code, which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Veterans Administration finding of service connection. Service connection which has been in effect less than 10 years may not be severed under § 3.105 unless, after compliance with the requirements of § 3.105(d), the rating decision terminating service connection is signed within the 10-year period. (38 U.S.C. 359; sec. 6, Public Law 87-825)

40. Section 3.958 is added to read as follows:

§ 3.958 Bureau of Employees' Compensation cases.

Any award approved prior to September 13, 1960, authorizing Veterans Administration benefits concurrently with an award of Bureau of Employees' Compensation benefits based on a finding that the same disability or death was due to civilian employment is not affected by the prohibition against future awards contained in section 7(a), Federal Employees' Compensation Act as amended by Public Law 86-767.

41. In § 3.1000, paragraphs (a) introduction, (1)(iii) and (4), (b) (2) and (3), (c) and (d) (1) and (2) are amended to read as follows:

§ 3.1000 Under 38 U.S.C. 3021.

(a) *Basic entitlement.* Except as provided in §§ 3.1001 and 3.1008, where death occurred on or after December 1, 1962, periodic monetary benefits (other than insurance and servicemen's indemnity) authorized under laws administered by the Veterans Administration, to which a payee was entitled at his death under existing ratings or decisions, or those based on evidence in the file at date of death, and due and unpaid for a period not to exceed 1 year prior to the last date of entitlement as provided in § 3.500(g) will, upon the death of such person, be paid as follows:

(1) Upon the death of a veteran to the living person first listed as follows:

* * * * *

(iii) His dependent parents (in equal shares) or the surviving parent.

* * * * *

(4) In all other cases, only so much of the accrued benefit may be paid as may be necessary to reimburse the person who bore the expense of last sickness or burial. (See § 3.1002.)

(b) *Apportionments.* * * *

(2) Where at the date of death of the veteran an apportioned share is being paid to or has been withheld on behalf of another person, the apportioned amount remaining unpaid for periods prior to the last day of the month before the veteran's death is payable to the apportionee.

(3) Where the accrued death pension, compensation or dependency and indemnity compensation was payable for a child as an apportioned share of the widow's benefit, payment will be made under the provisions of paragraph (a)(4) of this section, on the expenses of such deceased child's last sickness or burial.

(c) *Claims and evidence.* Application for accrued benefits must be filed within 1 year after the date of death. A claim for death pension, compensation, or dependency and indemnity compensation, by an apportionee, widow, child or parent is deemed to include claim for any accrued benefits. (See § 3.152(b).)

(1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If such evidence is not received within 1 year from the date of such notification, no accrued benefits may be paid.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class. (38 U.S.C. 3021(c); 3012(b), Public Law 87-825)

(d) *Definitions.* (1) "Spouse" means the widow or widower of the veteran, whose marriage meets the requirements of § 3.1(j) or § 3.52. Where the marriage meets the requirements of § 3.1(j) date of marriage and continuous cohabitation are not factors.

(2) "Child" is as defined in § 3.57 and includes an unmarried child who became permanently incapable of self-support prior to attaining 18 years of age as well as an unmarried child over the age of 18 but not over 21 years of age, who was pursuing a course of instruction within the meaning of § 3.57 at the time of the payee's death. However, upon the death of a child in receipt of death pension, compensation, or dependency and indemnity compensation, any accrued will be payable to the surviving child or children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation. Upon the death of a child, another child who has elected war orphans' educational assistance under 38 U.S.C. ch. 35 may receive accrued death pension, compensation, or dependency and indemnity compensation, payable on behalf of the deceased child for periods prior to the commencement of benefits under that chapter.

* * * * *

42. In § 3.1001(a), subparagraph (4) is amended to read as follows:

§ 3.1001 Hospitalized competent veterans.

(a) *Basic entitlement.* * * *

(4) In all other cases, only so much of the lump sum may be paid as may be necessary to reimburse a person who bore the expenses of last sickness or burial. (See § 3.1002.)

* * * * *

43. In § 3.1003, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 3.1003 Returned and canceled checks.

For the purposes of §§ 3.1000 and 3.1008, where the payee of a check for benefits has died on or after the last day of the period covered by the check, and the check is returned and canceled, the amount represented by the check which is payable as limited by § 3.500(g), or any amount recovered after improper negotiation of such a check will be payable to the living person or persons in the order of precedence listed. This does not apply to checks for lump sums representing amounts withheld under § 3.551 (b) or § 3.557 which will be subject to the provisions of § 3.1001 or 3.1007, as applicable. (38 U.S.C. 3022)

* * * * *

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective December 1, 1962.

[SEAL] W. J. DRIVER,
Deputy Administrator.

[F.R. Doc. 62-11888; Filed Nov. 30, 1962; 8:49 a.m.]

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

PART 8—NATIONAL SERVICE LIFE INSURANCE

Miscellaneous Amendments

1. In Part 6, § 6.207 is added to read as follows:

§ 6.207 Total or total permanent disability for twenty years or more.

Where the Disability Insurance Claims activity has made a finding of total or total permanent disability for insurance purposes and it is found that such disability remained continuously in effect for 20 or more years, the finding will not be discontinued thereafter, except upon a showing that such a determination was based on fraud. The 20-year period will be computed from the date the continuous total or total permanent disability commenced, as determined by the Disability Insurance Claims activity.

2. In Part 8, a new center title and § 8.118 are added to read as follows:

TOTAL DISABILITY FOR TWENTY YEARS OR MORE

§ 8.118 Total disability for twenty years or more.

Where the Disability Insurance Claims activity has made a finding of total disability for insurance purposes and it is found that such disability remained continuously in effect for 20 or more years, the finding will not be discontinued thereafter, except upon a showing that such a determination was based on fraud. The 20-year period will be computed from the date the continuous total disability commenced, as determined by the Disability Insurance Claims activity.

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective December 1, 1962.

[SEAL] W. J. DRIVER,
Deputy Administrator.

[F.R. Doc. 62-11889; Filed, Nov. 30, 1962; 8:49 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER G—CIVIL DEFENSE

PART 231—CIVIL DEFENSE IDENTIFICATION FOR FEDERAL EMPLOYEES, RESERVISTS AND NON-FEDERAL SUPPORT PERSONNEL

Correction

In F.R. Doc. 62-10891, appearing at page 10541 of the issue for Tuesday, October 30, 1962, § 231.3 and its footnote should read as follows:

§ 231.3 Description of card.[1]

(a) A red-bordered, laminated, numbered identification card, overall size 2⅜ inches x 3⅝ inches has been prescribed for this purpose. Printed on the face in the top red-border in black type are the words "Federal Emergency Assignee". The left part of the card contains a photograph of the bearer (black and white or color photograph is acceptable) and, immediately under the photograph, the bearer's name and signature appears. The right portion of the card contains the following:

The person described on this card has been assigned essential emergency duties for the Federal Government. It is imperative that the bearer be assisted in travel by the fastest possible means to this emergency assignment.

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[1] Sample of Identification Card filed with the original document.