ACTION: Net Amounts of Countervailing Duty Determined.

SUMMARY: This notice is to inform the public of the amounts of countervailing duty which will be assessed on the sugar content of certain articles exported from Australia during the period January 1979 through June 1979. Section 159.47(f) of the Customs Regulations is being amended to include this notice.

EFFECTIVE DATE: This notice will be effective on August 6, 1979.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C., telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: The Treasury Department is in receipt of official information that the rates of bounties or grants paid or bestowed within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), on the exportation during the period January 1979 through June 1979 of approved fruit products and other approved products manufactured or produced in Australia are the amounts shown in the following table. The amounts shown are in Australian dollars, per 1,000 kilograms of sugar content.

Month	Approved fruit products	Other approved products
January 1979	Aus. $2.00	Aus. $17.00
February 1979	Aus. $17.20	Aus. $32.20
March 1979	None	Aus. $5.50
April 1979	None	Aus. $3.20
May 1979	Aus. $2.10	Aus. $17.10
June 1979	Aus. $79.50	Aus. $94.50

The net amounts of bounties or grants on the above-described merchandise are hereby ascertained, determined, or estimated to be the rates stated in the above table. Additional duties on the above-described merchandise, whether imported directly or indirectly from that country, equal to the net amount of the bounty shown above shall be assessed and collected pursuant to section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

§ 159.47 [Amended]

The table in § 159.47(f), Customs Regulations (19 CFR 159.47(f)), under "Australia—Sugar content of certain articles" is amended (1) by deleting therefrom the reference to T.D. 77-257, and (2) by adding a reference to this Treasury Decision. As amended, the last four lines of the table under this commodity will read:

Country	Commodity	Treasury decision	Action
		55716	Certain articles exempted as to shipments exported on or after July 19, 1962.
		78-115	New rate.
		79-142	New rate.
		79-	New rate.

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624).)

R. E. Chasen,

Commissioner of Customs.

Approved:

Robert H. Mundheim,

General Counsel of the Treasury.

July 27, 1979.

[FR Doc. 79-24172 Filed 8-3-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 78-167]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Atlantic Beach, N.C.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is amending the regulations for the Atlantic Beach bridge, mile 206.7, Atlantic Intracoastal Waterway by extending the period when bridge openings are restricted. This change is being made because of a significant increase in vehicular traffic during the period under consideration. This action should improve the flow of vehicular traffic while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on September 3, 1979.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: On February 26, 1979, the Coast Guard published a proposed rule (44 FR 10994) concerning this amendment. The Commander, Fifth Coast Guard District, also published these proposals as a Public Notice dated March 5, 1979. Interested persons were given until March 26, 1979, and March 30, 1979, respectively, to submit comments.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

There were twelve responses received. Nine had no objection. Three objected to the proposal. One suggested openings every half hour rather than each hour. These objectors essentially stated that wind, tides, weather and shallow water make holding vessels in this area difficult and hazardous. This proposal does not change the hourly opening requirements that have been in effect since 1971 but only moves the restricted period starting date from May 1 back to March 15. As no objections to the existing restrictions have been received, the Coast Guard feels that this change will provide for the reasonable needs of navigation. The objections to the change, while considered, were not sufficient to warrant their adoption.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising paragraph (a)(1) of § 117.355 to read as follows:

§ 117.355 Bogue Sound (Atlantic Intracoastal), N.C., North Carolina State Highway Commission Bridge at Atlantic Beach.

(a) * * *

(1) From March 15 through June 14, on Saturdays, Sundays, and Federal holidays, from 1 p.m. to 7 p.m., the draw need open only on the hour for the passage of any accumulated vessels.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5)).

Dated: July 25, 1979.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 79-24219 Filed 8-3-79; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD279-03]

Safety Zone—Ohio River Mile 319.3 to Mile 320.7

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations establishes a safety zone on the Ohio River. This safety zone is established for the protection of the facilities in these areas.

EFFECTIVE DATE: This amendment is effective from 0900 EDT, July 10, 1979 to 1500 EDT, July 10, 1979.

FOR FURTHER INFORMATION CONTACT: LCDR STRASSER, USCG, c/o Marine Safety Office, 6th Avenue & 9th Street, Huntington, WV 25725 TEL: 304-529-5524.

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication, because public procedures on this amendment are impractical due to the short amount of time available to establish the safety zone.

DRAFTING INFORMATION: The principal person in drafting of this rule is: CDR F. J. GRADY III, Captain of the Port, Huntington, WV 25725 TEL: 304-529-5524. In consideration of the foregoing, Part 165 of Title 33 of the Code of Federal Regulations is amended by adding 165.205, to read as follows:

§ 165.205 Safety zone; Ohio River.

Pursuant to the authority contained in section 1224 of title 33 of the U.S. Code and part 165 of Title 33 of the Code of Federal Regulations, the Coast Guard Captain of the Port, Huntington, WV, has established a safety zone consisting of all of the waters of the Ohio River in the following area.

(a) Semet Solvay div. of Allied Chemical Corp., Ashland, KY mile 319.3 to Mile 320.7, left descending bank Ohio River, extending 500 feet outward from the Kentucky shoreline.

(b) No vessel may enter into or proceed within the safety zone described in subsection (a) without the express permission of the Captain of the Port, Huntington, WV, 6th Avenue & 9th Street, Huntington, WV 25725 TEL 304-529-5524.

(86 Stat. 427 (33 U.S.C. 1224), as amended by P.L. 95-474, 92 STAT. 1475; 49 CFR 1.46(n)(4).).

Dated: July 9, 1979.

F. J. Grady III,

Commander, U.S. Coast Guard, Captain of the Port, Huntington, WV.

[FR Doc. 79-24220 Filed 8-3-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Implementation of Procedures and Reorganization; Correction

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: Corrects citation in 36 CFR 223.9

DATES: Effective August 6, 1979.

FOR FURTHER INFORMATION CONTACT: George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 447-4051.

SUPPLEMENTARY INFORMATION: When 36 CFR 221.10a was recodified to 36 CFR 223.9 on June 2, 1977, (42 FR 28252-28261) a reference to Title 41, CFR in paragraph (c) was inadvertently changed to Title 41, U.S.C. The correct reference should be to Section 1-1.604, Title 41, CFR. This notice corrects the reference in the Code of Federal Regulations.

Therefore, 36 CFR 223.9 is corrected by changing "41 U.S.C." to read "41 CFR" in paragraph c.

August 1, 1979.

M. Rupert Cutler,

Assistant Secretary.

August 1, 1979.

[FR Doc. 79-24205 Filed 8-3-79; 8:45 am]

BILLING CODE 3410-11-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 907

Policy on Environmental Quality and Control; Procedures for Implementing the National Environmental Policy Act; Interim Rule

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Interim Rule; Request for Comment.

SUMMARY: The Pennsylvania Avenue Development Corporation ("Corporation") proposes to adopt procedures for implementing the provisions of the National Environmental Policy Act (NEPA) in accordance with the latest regulations of the Council on Environmental Quality (CEQ), 40 CFR Parts 1500-1508 (43 FR 55978-56007(1978)).

DATES: Effective date: July 30, 1979. Comments or suggestions should be submitted in writing on or before September 5, 1979.

ADDRESS: Send comments to Office of the General Counsel, Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C. 20034.

FOR FURTHER INFORMATION CONTACT: David W. Briggs, Senior Staff Attorney, (202) 566-1078, Pennsylvania Avenue Development Corporation.

SUPPLEMENTARY INFORMATION: The Pennsylvania Avenue Development Corporation ("Corporation") is a wholly-owned government corporation of the United States created by Congress to develop and rejuvenate 21 blocks along the north side of Pennsylvania Avenue, N.W., Washington, D.C. The Corporation has prepared a development plan, The Pennsylvania Avenue Plan—1974 (the Plan), which has been adopted by Congress. Section 102 of the NEPA directs Federal agencies to interpret and administer the policies, regulations, and public laws of the United States in accordance with the environmental policies established in Section 101 of the Act. Section 102(2) contains "action-forcing" provisions to make sure that Federal agencies act according to the letter and spirit of the Act. As part of the process in preparing the Plan, the Corporation, in accordance with the NEPA, conducted extensive environmental reviews culminating in the Final Environmental Impact Statement (September 1974) on the Plan.

The CEQ has now issued new implementing regulations to provide Federal agencies with "efficient, uniform procedures for translating the law (NEPA) into practical action." These regulations provide "uniform standards applicable throughout the Federal government for conducting environmental reviews."

The CEQ regulations require that each agency develop its own procedures for their implementation. The agency procedures are required to supplement the CEQ regulations and to confine themselves to implementing procedures; they should not merely paraphrase the CEQ regulations. The regulations that follow provide for the required Corporation implementing procedures for compliance with the NEPA and the CEQ regulations. They are designed to:

(a) Integrate the NEPA process with other planning and decision making processes of the Corporation at the earliest possible time.

(b) Ensure that decisions of the Corporation are made according to the letter and spirit of the NEPA, as enforced by Section 102(2) of that Act.

(c) Involve the public in the NEPA process in an appropriate, responsible manner.

These procedures cover the Corporation's decision-making process and the substantive consideration of environmental factors, the procedural requirements for environmental documentation at critical stages of the decision making process, and criteria to assist in determining the need for environmental assessments and impact statements. CEQ regulations require that these procedures be effective July 30, 1979.

36 CFR Chapter IX, Subchapter A is amended by adding a new Part 907 "Environmental Quality" to read as follows:

PART 907—ENVIRONMENTAL QUALITY

Authority.—Pennsylvania Avenue Development Corporation Act of 1972, as amended, Sec. 6(8), Pub. L. 92-578, 86 Stat. 1270 (40 U.S.C. 875(8)); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321); the Council on Environmental Quality NEPA Regulations 40 CFR Part 1500 (43 FR 55978 (1978)).

§ 907.1 Policy.

The Pennsylvania Avenue Development Corporation's policy is to:

(a) Use all practical means, consistent with the Corporation's statutory authority, available resources, and national policy, to protect and enhance the quality of the environment;

(b) Ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Corporation;

(c) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decision making for decisions and actions which may have an impact on the human environment;

(d) Develop and utilize ecological and other environmental information in the planning and development of projects implementing the Plan;

(e) Invite the cooperation and encourage the participation, where appropriate, of Federal, District of Columbia, and regional authorities and the public in Corporation planning and decision making processes, which affect the quality of the human environment; and

(f) Minimize any possible adverse effects of Corporation decisions and actions upon the quality of the human environment.

§ 907.2 Purpose.

These regulations are prepared to supplement Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended, and describe how the Pennsylvania Avenue Development Corporation intends to consider environmental factors and concerns beginning at the earliest possible point in the Corporation's decision making process.

§ 907.3 Definitions.

(a) "CEQ Regulations" means the regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 as promulgated by the Council on Environmental Quality, Executive Office of the President, appearing at 40 CFR Parts 1500–1508 (43 FR 55978–56007) and to which this part is a supplement.

(b) "The Act of October 27, 1972" means the Pennsylvania Avenue Development Corporation Act of 1972, Pub. L. 92-578, October 27, 1972, 86 Stat. 1266 (40 U.S.C. 871).

(c) "The Plan" means The Pennsylvania Avenue Plan—1974, prepared by the Pennsylvania Avenue Development Corporation pursuant to the Act of October 27, 1972.

(d) "The Corporation" means the Pennsylvania Avenue Development Corporation, a wholly owned government corporation of the United States created by the Act of October 27, 1972.

(e) "Board of Directors" means the governing body of the Corporation in which the powers and management of the Corporation are vested by the Act of October 27, 1972.

(f) "EIS" means an environmental impact statement as defined in § 1508.11 of the CEQ Regulations.

(g) "Final EIS" means The Final Environmental Impact Statement, dated September 1974, prepared by the Corporation on the Pennsylvania Avenue Plan—1974.

(h) "Development Area" means the area under the Corporation's jurisdiction as specified in Section 2(f) of the Act of October 27, 1972 and for which The Plan has been prepared and will be implemented by the Corporation.

(i) "Decision maker" means the Board of Directors, unless a delegation to the Chairman, a member or committee of the Board of Directors, or the Executive Director has been made by the Bylaws of the Corporation, a resolution of the Board of Directors, or a written delegation of authority.

(j) "Private developer" means an individual, firm, joint venture, or other entity other than the Corporation which seeks to construct, reconstruct, rehabilitate, or restore real property within the development area.

§ 907.4 Designation of Responsible Corporation Official.

The Special Assistant to the Executive Director for Planning is the Corporation official responsible for implementation and operation of the Corporation's policies and procedures on environmental quality and control.

§ 907.5 Specific Responsibilities of Designated Corporation Official.

(a) Coordinate the formulation and revision of Corporation policies and procedures on matters pertaining to environmental protection and enhancement.

(b) Establish and maintain working relationships with the Council on Environmental Quality, the Environmental Protection Agency, and other Federal, regional and District of Columbia governmental agencies concerned with environmental matters.

(c) Develop procedures within the Corporation's planning and decision making processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part.

(d) Develop, monitor, and review the Corporation's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations.

(e) Monitor processes to ensure that the Corporation's procedures regarding consideration of environmental quality are achieving their intended purposes.

(f) Advise the Board of Directors, officers, and employees of the Corporation of technical and management requirements of environmental analysis, of appropriate expertise available, and, with the assistance of the Office of the General Counsel, of relevant legal developments.

(g) Monitor the consideration and documentation of the environmental aspects of the Corporation's planning and decision making processes by appropriate officers and employees of the Corporation.

(h) Ensure that all environmental assessments and, where required, all EIS's are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Corporation, and are submitted with all legislative proposals, review proposals before the National Capital Planning Commission on other governmental agencies, and appropriate resolutions of the Board of Directors of the Corporation.

(i) Consolidate and transmit to appropriate parties the Corporation's comments on EIS's and other environmental reports prepared by other agencies.

(j) Acquire information and prepare appropriate reports on environmental matters required of the Corporation.

(k) Coordinate Corporation efforts to make available to other parties information and advice on the Corporation's policies for protecting and enhancing the quality of the environment.

§ 907.6 Major Decision Points.

The possible environmental effects of a proposed action must be considered along with technical, economic, and other factors at the earliest planning stage. At that stage, the responsible Corporation official shall begin the necessary steps to comply with all the requirements of Section 102(2) of the National Environmental Policy Act. Corporation activities related to decision-making can generally be viewed as having four distinct stages: (a) The conceptual/schematic stage; (b) the design development/detailed planning/definition stage; (c) the development/construction/implementation stage; and (d) the operation/occupancy stage. Some activities of the Corporation have fewer, less well defined stages. These activities can still be characterized as having: (1) A general or feasibility study stage; (2) a detailed planning or definition stage; and (3) an implementation stage. Environmental review will be integrated into the decision making process of the Corporation as follows:

(i) Completion of an environmental assessment and the determination as to whether an EIS is required must be made prior to the decision to proceed from the conceptual/schematic stage or the general or feasibility study stage to the design development/detailed planning/delineation stage of a proposed action. For example, this determination would be made concurrent with;

(A) Proposing the development by the staff of an amendment to the Plan;

(B) Proposing a segment or project of the Public Improvements Program within the Development Area for design development;

(C) Staff review of a private development proposal submitted to the Corporation prior to formal submittal to the Board of Directors for its approval of that proposal; or,

(D) Proposing to the Board of Directors that a development prospectus, which solicits development proposals, be approved and issued by the Corporation.

(ii) An EIS should be completed and circulated prior to the decision to proceed from the design development/detailed planning/definition stage to the development/construction/implementation stage of a proposed action. For example, the EIS for a specific action should be completed by, and incorporated with:

(A) Proposing an amendment to the Plan to the Board of Directors for its adoption and approval;

(B) Proposing a segment or project of the Public Improvements Program within the Development Area for development/construction;

(C) Formal submission of a private development proposal to the Board of Directors for its approval; or,

(D) Selection of a developer candidate by the Board of Directors after solicitation of development proposals through a development prospectus.

§ 907.7 Criteria For and Identification of Typical Classes of Corporation Actions.

(a) Whether a proposed decision or action by the Corporation, within the meaning of the CEQ Regulations, requires the preparation of an environmental assessment, an EIS, both, or neither, will depend upon the scope of the action, and the context and the intensity of any environmental effects expected to result. A Corporation action or decision shall require an environmental assessment where the action or decision is not one that normally requires an EIS or is not one that is categorically excluded from the requirement for an environmental assessment, or EIS.

(b) Specific Corporation actions and decisions normally requiring an environmental assessment, but not necessarily an EIS:

(1) Amendments to the Plan which do not consititute a "substantial change" to the Plan.

(2) Property management activities beyond routine maintenance, repair, and upkeep of real property owned by the Corporation.

(3) Regulations promulgated by the Corporation which directly impact on the public or persons residing in the development area including businesses (i.e., relocation, affirmative action). Promulgation of regulations (i.e., development standards and controls) to implement the Plan, but which are not covered by the Final EIS.

(4) Development proposals to the Corporation by private developers which are consistent with the Plan and PADC Controls and Standards prepared by the Corporation.

(5) Activities related to the Public Improvements Program of the Corporation, but for which no previous environmental assessment or environmental assessment and EIS of a program nature has been prepared and which have not been previously approved by the Board of Directors.

(6) Contracts, work authorizations, and master agreements related to and

implementing programs, policies, and proposals for which no environmental assessments or for which no environmental assessment and EIS have been previously prepared.

(7) Acceptance of gifts or grants of property, financial benefits, or other aids of any form and from any source.

(8) Street closures, alley closures, rearrangement of public space, and transfers of jurisdiction over public space, whether of a temporary or a permanent nature.

(9) Demolition actions by the Corporation, other public agencies, or private developers prior to any approval of development proposals made by the Board of Directors.

(10) Proposals submitted to the District of Columbia Zoning Commission, The Commission of Fine Arts, and the National Capital Planning Commission.

(11) Acquisition/disposal of personal property by the Corporation not related to any specific decision, plan, or program adopted by the Board of Directors of the Corporation for which an environmental assessment or an environmental assessment and an EIS is required to be prepared.

(c) Corporation actions and decisions expected to have a significant impact upon the quality of the human environment shall require an EIS. For these actions or decisions an environmental assessment shall not be required. Criteria to be used in determining significance are given in § 1508.27 of the CEQ Regulations. Specific Corporation actions and decisions requiring an EIS are as follows:

(1) Amendments to the Plan which constitute a "substantial change" to the Plan.

(2) Supplements to the Plan which cover areas which were specified in the Plan for further study (i.e., Historic Preservation).

(3) Development proposals submitted to the Corporation which are inconsistent with the Plan and development controls and standards prepared by the Corporation.

(4) Acquisition or disposal of real property by the Corporation not related to any specific decision, plan, or program adopted by the Board of Directors of the Corporation for which an assessment or an assessment and an EIS has been prepared.

(5) Legislative proposals made to Congress and the District of Columbia Council.

(6) Any public building or other structure constructed within the development by any executive agency of the United States Government, any agency or department of the District of Columbia Government, or any other public or quasi-public entity.

(7) Any building or structure to be funded and/or constructed by the Corporation or its agents or representatives, even if that activity is consistent with the Plan and the Final EIS.

(d) Corporation actions and decisions categorically excluded from the requirements to prepare either an environmental assessment or an EIS, or both:

(1) Fit the following criteria:

(i) The action or decision is consistent with the Plan or the Act, and the environmental effects have been previously analyzed in the Final EIS, a supplement thereto, or in an environmental assessment or an EIS previously prepared; or

(ii) The total estimated cost directly attributable to the action or decision does not exceed $10,000; or

(iii) The action or decision is related solely to internal administrative operations of the Corporation.

(2) Specific Corporation actions fitting these criteria and thus categorically excluded from the requirements for environmental assessment and an EIS are:

(i) Personnel actions;

(ii) Administrative actions and operations directly related to the operation of the Corporation (i.e., purchase of furnishings, services, and space acquisition for the Corporation offices);

(iii) Property management actions related to routine maintenance, operation, upkeep, etc., of real property owned by PADC;

(iv) Review of permit applications relating to minor development activities in the development area (sign approval, interior renovations, minor exterior changes to facade, etc.);

(v) Promulgation of development controls and standards which implement the Plan as covered by the Final EIS;

(vi) Contracts, work authorizations, procurement actions directly related to and implementing proposals, programs, and master agreements for which an environmental assessment or an environmental assessment and an EIS have been prepared, or which are related to administrative operation of the agency;

(vii) Acquisition/disposal by lease, easement, or sale of real and personal property owned by the Corporation subsequent to and implementing a prior decision of the Board of Directors for which an assessment or an assessment and an EIS were prepared;

(viii) Activities directly related to and implementing the Public Improvements Program of the Corporation approved by the Board of Directors, and which are covered by a previously prepared environmental assessment or an environmental assessment and an EIS of a program nature; and

(ix) Demolition actions preparatory for development by the Corporation, other public agencies, or private developers subsequent to approval of development proposals made by the Board of Directors.

(e) Even though an action may be categorically excluded from the need for a formal environmental assessment or an EIS, it is not excluded from the requirement for an environmental analysis during the earliest planning stage. If that analysis shows that the action or decision would materially deviate from the criteria for exclusion and it is concluded that there may be significant effects, an environmental assessment must be carried out. Based upon that assessment, a determination must then be made whether or not to prepare an EIS.

(f) Where an environmental assessment has been prepared, a determination must be made as to whether or not to prepare an EIS. That determination shall be made by the appropriate Corporate official after evaluation of the following factors and the intensity to which they may be affected by the decision or action:

(1) Cultural and historical resources of the Washington, D.C. Metropolitan Area, and specifically the Pennsylvania Avenue area and its environs are adversely affected by the proposed decision or action;

(2) The Pennsylvania Avenue National Historic Site, buildings, structures, or spaces listed or eligible for listing on the National Register of Historic Places, or buildings, structures, or spaces listed or eligible for listing on the District of Columbia Inventory of Historic Sites are affected by the proposed decision or action;

(3) Federal, regional or District of Columbia law, ordinance, regulation, or requirement imposed for the protection of the environment would be violated by the proposed decision or action;

(4) Traffic generated by the proposed decision or action would represent a 10 percent increase in the average daily traffic volume on avenues and streets within the development area or its environs;

(5) Air quality in the development area and its environs is substantially

affected by the proposed decision or action based upon the Council of Government's recognized standard;

(6) Solid waste disposal related to a project of the Corporation or of a developer who is constructing, reconstructing, or rehabilitating that project, affects solid waste disposal in the Washington, D.C. metropolitan area as far as capacity of a solid waste disposal site and compliance with "Solid Waste Mangement Guidelines" of the U.S. Environmental Protection Agency and related local and regional controls;

(7) Public utilities have insufficient capacity to provide reliable service to a project within the development area;

(8) A project will be inconsistent with the Zoning Regulations of the District of Columbia as they are applicable to the development area;

(9) A decision or action will not conform with the Comprehensive Plan for the National Capital Area; or

(10) District of Columbia, Washington Metropolitan Area Transit Authority, and other governmental officials indicate that one or more community services will be inadequate to serve the project or will be affected by the decision.

§ 907.8 Public involvement.

Interested persons may obtain information concerning any pending EIS or any other element of the environmental review process of the Corporation by contacting the Public Information Officer of the Corporation, Suite 1148, 425 13th Street, NW, Washington, D.C. 20004, telephone (202) 566-1218.

§ 907.9 Corporation decision making procedures.

To ensure that at major decision making points all relevant environmental concerns are considered by the decision maker, the following procedures are established.

(a) An environmental document, in addition to being prepared at the earliest point in the decision making process, shall accompany the relevant proposal through the Corporation's decision making process to ensure adequate consideration of environmental factors in the decision-making process.

(b) The decision maker shall consider in its decision making process only those decision alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decision maker shall consider all alternatives described in the EIS. A written record of the consideration of alternatives during the decision making process shall be maintained.

(c) Any environmental document prepared for a project, proposal, or decision shall be made part of the record of any formal rulemaking by the Corporation, including consideration of amendments to the Plan and preparation of development controls and standards implementing the Plan.

(d) At the time of any decision by the Board of-Directors, or, where a delegation occurs, by the Chairman or the Executive Director, a concise public record of the decision shall be prepared by the staff of the Corporation which incorporates the required elements of § 1505.2 of the CEQ Regulations.

§ 907.10 Approval of private proposals for development.

(a) Each submission of a development proposal by a private developer to the Corporation for approval by the Board of Directors shall include an environmental assessment, the nature of which is described in § 1508.9 of the CEQ Regulations. Nothng shall preclude a developer from submitting an environmental assessment to the Corporation prior to submission of the development proposal which it supports.

(b) The Board of Directors may not make any decision on a submitted development proposal until such time as a supporting environmental assessment submitted by the developer has been independently analyzed, reviewed, and evaluated by the staff of the Corporation, and a determination made by the responsible Corporation official as to whether an EIS must be prepared by the Corporation. If that official determines that an EIS is necessary, the EIS must be prepared by the Corporation or by a consultant for the Corporation and be submitted to the Board of Directors for its consideration at the time of its review and decision on the approval of the development proposal submitted by a private developer.

(c) An environmental assessment prepared by a private developer to support a development proposal submitted to the Board of Directors for its approval should contain brief discussions of the following:

(1) Purpose of and need for the proposal.

(2) Statement of the Plan and analysis of the proposal in light of the Plan and development controls and standards.

(3) Alternatives, including the *No Action* alternative.

(4) Environmental effects of the proposed action and alternative. The most important or significant environmental consequences of the areas listed below should be discussed. Only those areas which are relevant to the proposal should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

(i) Natural/ecological features (such as floodplains, wetlands, coastal zones, wildlife refuges, and endangered species);

(ii) Air quality;

(iii) Sound levels;

(iv) Water supply, wastewater treatment and storm water runoff;

(v) Energy requirements and conservation;

(vi) Solid waste;

(vii) Transportation;

(viii) Community facilities and services;

(ix) Social and economic;

(x) Historic and aesthetic; and

(xi) Other relevant factors.

(5) Listing of agencies and persons consulted in preparation of the assessment.

(d) Consistent with CEQ Regulations 1501.8 and 1506.10, the responsible Corporation official may set time limits for environmental review appropriate to each development proposal that requires the preparation of an EIS.

(e) The responsible Corporation official shall at the earliest possible time ensure that the Corporation commences its environmental review on a proposed development project and shall provide to a private developer any policies or information deemed appropriate in order to permit effective and timely review by the Corporation of a development proposal once it is submitted to the Board of Directors for approval. The official shall designate, for the benefit of the developer, staff members of the Corporation to advise the developer with regard to information which may be required in order to accomplish the Corporation's environmental review.

§ 907.11 Actions where lead agency designation is necessary.

(a) Consistent with CEQ Regulations, § 1501.5, where a proposed action by the Corporation involves one or more other Federal agencies, or where a group of actions by the Corporation and one or more other Federal agencies are directly related to each other because of their functional interdependence or geographical proximity, the Corporation will seek designation as lead agency for those actions that directly relate to implementation of the Plan and those actions that relate solely to the development area.

(b) For an action which qualifies as one for which the Corporation will seek designation as lead agency, the Corporation will promptly consult with the appropriate Federal agencies such as the National Capital Planning Commission, the Department of the Interior, and the General Services Administration to establish lead agency and cooperating agency designations.

(c) Where appropriate, the Corporation shall seek a memorandum of agreement with each of the agencies named in § 907.10(b) to obtain blank designation as lead agency for broad action categories which require environmental review.

Signed in Washington, D.C., dated: July 30, 1979.

Joseph B. Danzansky,

Chairman.

[FR Doc. 79-24226 Filed 8-3-79; 8:45 am]

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VETERANS ADMINISTRATION

38 CFR Part 3

Pension, Compensation, and Dependency and Indemnity Compensation; Improved Pension Program

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is issuing final regulations to implement the Veterans' and Survivors' Pension Improvement Act of 1978. The new law provides for major reform of the nonservice-connected pension program. Major provisions of the new law assure all veteran pensioners a level of income above the poverty level and provide that pension benefits will never be reduced solely as a result of cost-of-living increases in social security benefits. In addition to implementing the new law, minor changes have been made in various regulations to eliminate gender reference or to indicate that the regulations are applicable to persons of both sexes.

EFFECTIVE DATES: The regulations are effective January 1, 1979, the effective date specified by Pub. L. 95-588, except that monetary rates and income limitations reflect the increased rates payable on June 1, 1979, by reason of the social security cost-of-living increase which is also effective on June 1, 1979.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr. (202-389-3005).

SUPPLEMENTAL INFORMATION: On pages 12694-12708 of the **Federal Register** of March 8, 1979, there was published proposed regulations to implement Pub. L. 95-588, the Veterans' and Survivors' Pension Improvement Act of 1978.

Interested persons were given 60 days to submit comments, suggestions or objections to the proposed regulations. Two comments were received.

One commentator believes that § 3.272 is deficient in that it fails to exclude from countable income under the improved pension program income received under the Retired Servicemen's Family Protection Plan (RSFPP). The commentator's position is based on 10 U.S.C. 1441 which exempts RSFPP income from countable income under any law administered by the Veterans Administration.

We do not believe that RSFPP income should be excluded. The improved pension program (Pub. L. 95-588) was enacted after 10 U.S.C. 1441 and, therefore, we believe that only the income exclusions specifically listed in Pub. L. 95-588 should be given effect in § 3.272.

The other commentator feels that the proposed § 3.3(b)(3)(ii) and (4)(ii) are not in conformity with 38 U.S.C. 541 since he believes that the statute does not require that compensation or retired pay be based on wartime service. We have carefully reviewed 38 U.S.C. 541, as amended by Pub. L. 95-588, and find that the requirement that the receipt of compensation or retired pay be based on service during a period of war is clearly stated in the statute.

This commentator says that he disagrees with the regulations governing determination of a child's income and net worth. Since these regulations closely follow the provisions of Pub. L. 95-588, and the intent of Congress in enacting this law, we are unable to change them.

Finally, this commentator said he had difficulty in understanding the amendment to § 3.660(b)(2). There was no substantive change made in this section. The wording was changed to eliminate obsolete section 306 pension terminology. Section 3.660(b)(2) will continue to be applied essentially as it has in the past.

Based on our own review, we have made a number of changes in the proposed regulations. Some of the changes are of a very minor nature and are being made without comment. The major changes are discussed below.

Section 3.23 has been amended to delete the rates for surviving children. This section now contains just the rates for veterans and surviving spouses.

The rates for surviving children have been placed in § 3.24. In addition this section has been amended to state that its provisions apply to children of a deceased veteran not in custody of a surviving spouse who has basic eligibility to receive improved pension. The term "basic eligibility to receive improved pension" is defined in § 3.24. In addition, § 3.24 now states that children in custody of a surviving spouse who has basic eligibility to receive improved pension do not have separate entitlement to pension. This section has also been amended to provide rules for determining the combined rate of pension payable to multiple children in custody of a person legally responsible for support. This will permit use of a consolidated award for all entitled children, an easier and more economical procedure.

Section 3.57(d) has been revised to more clearly define the term "child custody". In addition, a definition of the term "person legally responsible for support" has been added to this section. Section 3.57(d) has been further amended to indicate that a person who has custody of a child at age 18 will be presumed to retain custody for periods after the child's 18th birthday. This latter provision applies only for the purpose of determining whether pension is payable under §§ 3.23 and 3.24.

The rules for rate computation contained in § 3.273 have been simplified. Calendar year computations have been eliminated. The rate of improved pension will be determined on an annual rate of income basis for both initial and running awards.

To accommodate the annual rate of income concept, amendments have been made to § 3.272 to provide that the amount of medical expenses to be excluded must exceed 5 percent of the maximum annual rate or rates of pension for the beneficiary during the year in which the medical expenses were paid.

We have amended § 3.551(c) to provide rules for reduction because of hospitalization when a veteran is transferred from a domiciliary to hospital or nursing home or vice-versa. This section has also been amended to provide that a veteran who has a child for whom no pension is being paid by reason of the size of the child's estate (38 U.S.C. 522(b)) is not subject to reduction for hospitalization or domiciliary care.

In our amendment of § 3.551(d) we unintentionally said that periods of 60 consecutive days of treatment would be considered two calendar months of hospitalization and 90 consecutive days, three calendar months. The final regulation has been changed to substitute the word "total" for "consecutive".

Section 3.656(d) has been amended to make its provisions applicable to the improved pension program. No amendment was made to this section in the proposed regulations.

Section 3.701(a) is amended to provide that the election of improved pension by a surviving spouse controls the claims of all children including those over age 18 and those not in the custody of the surviving spouse provided that the election of improved pension by the surviving spouse shall not prejudice the rights of any children receiving an apportionment on December 31, 1978.

Section 3.713 has been amended to provide that an election of improved pension filed prior to October 1, 1979, may be effective later than January 1, 1979, if to the claimant's advantage.

The Veterans' and Survivors' Pension Improvement Act of 1978, Pub. L. 95-588, provides that whenever there is a cost-of-living increase under section 215(i) of Title II of the Social Security Act, the Veterans Administration shall, effective on the date the cost-of-living increase becomes effective, increase by the same percentage (1) the maximum annual rates of pension authorized by Pub. L. 95-588, (2) the maximum annual income limitations applicable to the pension programs in effect on June 30, 1960, and December 31, 1978, (3) the amount of the exclusion of a veteran's spouse's income in determining a couple's countable income under the provisions of the pension program in effect on December 31, 1978, and (4) the maximum annual income limitations and rate formulae applicable to parents' dependency and indemnity compensation (DIC). The Social Security Administration reported that the cost-of-living increase will be 9.9 percent and the aforementioned rates and income limitations will be increased by that percentage, effective June 1, 1979.

These increases were announced on Tuesday, May 15, 1979 (44 FR 28328). The announcement, however, failed to state that the additional $800 payable to Mexican border or World War I veteran is to be increased to $880 effective June 1, 1979. In addition, the announcement incorrectly stated that the maximum DIC rate for one parent was $179 and the maximum rate for two parents not living together was $126. The correct rates are $180 and $127, respectively.

The rate and income limitations set forth in §§ 3.23, 3.24, 3.25, 3.26 and 3.262(b)(2) are those that are effective June 1, 1979. The omission and errors noted above have been corrected in §§ 3.23 and 3.25.

The final regulations are set forth below.

Approved: July 27, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

1. Section 3.1 is amended as follows:

(a) By deleting the cross reference "(See § 3.3(c)(1))" and inserting "(See § 3.3(b)(4) (iii))" in paragraph (d)(2).

(b) By adding paragraphs (u), (v), (w) and (x) to read as follows:

§ 3.1 Definitions.

* * * * *

(u) *"Section 306 pension"* means those disability and death pension programs in effect on December 31, 1978, which arose out of Pub. L. 86-211; 73 Stat. 432.

(v) *"Old-Law pension"* means the disability and death pension programs that were in effect on June 30, 1960. Also known as protected pension, i.e. protected under section 9(b) of the Veteran's Pension Act of 1959 (Pub. L. 86-211; 73 Stat. 432).

(w) *"Improved pension"* means the disability and death pension programs becoming effective January 1, 1979, under authority of Pub. L. 95-588; 92 Stat. 2497.

(x) *"Service pension"* is the name given to Spanish-American War pension. It is referred to as a service pension because entitlement is based solely on service without regard to nonservice-connected disability, income and net worth. (38 U.S.C. 512, 536)

2. Section 3.2 is amended as follows:

(a) By deleting "(See § 3.3(b))" in paragraph (a).

(b) By adding an introductory portion preceding paragraph (a) to read as follows:

§ 3.2 Periods of war.

This section sets forth the beginning and ending dates of each war period beginning with the Indian wars. Note that the term "period of war" in reference to pension entitlement under 38 U.S.C. 521, 541 and 542 means all of the war periods listed in this section except the Indian wars and the Spanish-American War. See § 3.3(a)(3) and (b)(4)(i).

* * * * *

3. Section 3.3 is revised and cross references are added to read as follows:

§ 3.3 Pension.

(a) *Pension for veterans*—(1) *Service pension; Spanish-American War.* A benefit payable monthly by the Veterans Administration because of service in the Spanish-American War. Basic entitlement exists if a veteran:

(i) Had 70 (or 90) days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability adjudged service connected without benefit of presumptive provisions of law, or at the time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability. (38 U.S.C. 512)

(2) *Section 306 pension.* A benefit payable monthly by the Veterans Administration because of nonservice-connected disability or age. Basic entitlement exists if a veteran:

(i) Served 90 days or more in either the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, or served an aggregate of 90 days or more in separate periods of service during the same or during different war periods, including service during the Spanish-American War (Pub. L. 87-101, 75 Stat. 218; Pub. L. 90-77, 81 Stat. 178; Pub. L. 92-198, 85 Stat. 663); or

(ii) Served continuously for a period of 90 consecutive days or more and such period ended during the Mexican border period or World War I, or began or ended during World War II, the Korean conflict or the Vietnam era (Pub. L. 87-101, 75 Stat. 218; Pub. L. 88-664, 78 Stat. 1094; Pub. L. 90-77, 81 Stat. 178; Pub. L. 91-588, 84 Stat. 1580; Pub. L. 92-198, 85 Stat. 663; Pub. L. 94-169, 89 Stat. 1013; Pub. L. 95-204, 91 Stat. 1455); or

(iii) Was discharged or released from such wartime service, before having served 90 days, for a disability adjudged service connected without the benefit of presumptive provisions of law, or at the time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability; and

(iv) Is permanently and totally disabled (*a*) from nonservice-connected disability not due to the veteran's own willful misconduct or vicious habits, or (*b*) by reason of having attained the age of 65 years or by reason of having become unemployable after age 65; and

(v) (*a*) Is in receipt of section 306 pension or (*b*) has an application for pension pending on December 31, 1978, or (*c*) meets the age or disability requirements for such pension on December 31, 1978, and files a claim within 1 year of that date and also within 1 year after meeting the age or disability requirements.

(vi) Meets the income and net worth requirements of 38 U.S.C. 521 and 522 as in effect on December 31, 1978, and all other provisions of title 38, United States Code, in effect on December 31, 1978, applicable to section 306 pension.

Note.—The pension provisions of title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.

(3) *Improved pension; Pub. L. 95–588 (92 Stat. 2497).* A benefit payable by the Veterans Administration to veterans of a period or periods of war because of nonservice-connected disability or age. The qualifying periods of war for this benefit are the Mexican border period, World War I, World War II, the Korean conflict and the Vietnam era. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if a veteran:

(i) Served in the active military, naval or air service for 90 days or more during a period of war (38 U.S.C. 521(j)); or

(ii) Served in the active military, naval or air service during a period of war and was discharged or released from such service for a disability adjudged service-connected without presumptive provisions of law, or at time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability (38 U.S.C. 521(j)); or

(iii) Served in the active military, naval or air service for a period of 90 consecutive days or more and such period began or ended during a period of war (38 U.S.C. 521(j)); or

(iv) Served in the active military, naval or air service for an aggregate of 90 days or more in two or more separate periods of service during more than one period of war (38 U.S.C. 521(j)); and

(v) Is permanently and totally disabled (*a*) from nonservice-connected disability not due to the veteran's own willful misconduct or vicious habits, or (*b*) by reason of having attained age 65 or by reason of having become unemployable after age 65 (38 U.S.C. 502); and

(vi) Meets the net worth requirements under § 3.274 and does not have an annual income in excess of the applicable maximum annual pension rate specified in § 3.23.

(b) *Pension for survivors*—(1) *Indian war death pension.* A monthly benefit payable by the Veterans Administration to the surviving spouse or child of a deceased veteran of an Indian war. Basic entitlement exists if a veteran had qualifying service as specified in 38 U.S.C. 511. Indian war death pension rates are set forth in 38 U.S.C. 534 and 535.

(2) *Spanish-American War death pension.* A monthly benefit payable by the Veterans Administration to the surviving spouse or child of a deceased veteran of the Spanish-American War, if the veteran:

(i) Had 90 days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability service-connected without benefit of presumptive provisions of law, or at time of discharge had such a service-connected disability, as shown by official service records, which in medical judgment would have justified a discharge for disability. (38 U.S.C. 536, 537)

(3) *Section 306 death pension.* A monthly benefit payable by the Veterans Administration to a surviving spouse or child because of a veteran's nonservice-connected death. Basic entitlement exists if:

(i) The veteran had qualifying service as specified in paragraph (a)(2) (i), (ii) or (iii) at this section; or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for service-connected disability based on wartime service; or

(iii) The veteran died in active service and the requirements of § 3.1(d)(2) are met; and

(iv) The surviving spouse or child (*a*) was in receipt of section 306 pension on December 31, 1978, or (*b*) had a claim for pension pending on that date, or (*c*) filed a claim for pension after that date but within 1 year after the veteran's death, if the veteran died before January 1, 1979; and

(v) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 541, 542 or 543 as in effect on December 31, 1978, and all other provisions of title 38, United States Code in effect on December 31, 1978, applicable to section 306 pension.

Note.—The pension provisions of title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.

(4) *Improved death pension, Pub. L. 95–588.* A benefit payable by the Veterans Administration to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if:

(i) The veteran's service meets the requirements of paragraph (a)(3) (i), (ii), (iii) or (iv) of this section (38 U.S.C. 541(a)); or

(ii) The veteran was at time of death receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. (The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 541(a)); or

(iii) The veteran died in service and the requirements of § 3.1(d)(2) are met; and

(iv) The surviving spouse or child meets the net worth requirements of § 3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in § 3.23 and § 3.24.

Cross References: Section 306 pension. See § 3.1(u). Improved pension. See § 3.1(w). Improved pension rates. See § 3.23. Improved pension rates-surviving children. See § 3.24. Frequency of payment of improved pension. See § 3.30. Relationship of net worth to pension entitlement. See § 3.274.

§ 3.16 [Amended]

4. Section 3.16 is amended by deleting "§ 3.3(b)" and inserting "§ 3.3(a)" in the first sentence.

§ 3.17 [Amended]

5. Section 3.17 is amended by deleting "by § 3.3(c)" and inserting "for pension entitlement (see § 3.3)" in the first sentence.

6. Section 3.21 is revised and cross references are added to read as follows:

§ 3.21 Monetary rates.

The rates of compensation, dependency and indemnity compensation for surviving spouses and children, and section 306 and old-law disability and death pension, are published in tabular form in appendix B of the Department of Veterans Benefits Manual M21–1 and are to be given the same force and effect as if published in the regulations (Title 38, Code of Federal Regulations). The maximum annual rates of improved pension payable under Pub. L. 95–588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents' dependency and indemnity compensation are set forth in § 3.25.

Cross References: Section 306 pension. See § 3.1(u). Old-law pension. See § 3.1(v). Improved pension. See § 3.1(w).

7. Sections 3.23, 3.24, 3.25, 3.26, 3.27, 3.28, 3.29 and 3.30 and cross references are added to read as follows:

§ 3.23 Improved pension rates.

(a) *Maximum annual rates of improved pension*—(1) *Veterans permanently and totally disabled (38 U.S.C. 521).* (i) Veteran with no dependents, $3,902; (ii) Veteran with one dependent, $5,112; (iii) For each additional dependent, $660.

(2) *Veterans in need of aid and attendance.* (i) Veteran with no dependents, $6,243; (ii) Veteran with one dependent, $7,453; (iii) For each additional dependent, $660.

(3) *Veterans who are housebound.* (i) Veteran with no dependents, $4,770; (ii) Veteran with one dependent, $5,980; (iii) For each additional dependent, $660.

(4) *Two veterans married to one another; combined rates.* (i) Neither veteran in need of aid and attendance or housebound, $5,112; (ii) Either veteran in need of aid and attendance, $7,453; (iii) Both veterans in need of aid and attendance, $9,794; (iv) Either veteran housebound, $5,980; (v) Both veterans housebound, $6,848; (vi) One veteran housebound and one veteran in need of aid and attendance, $8,321; (vii) For each child, $660.

(5) *Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse. (38 U.S.C. 541).* (i) Surviving spouse alone, $2,615; (ii) Surviving spouse and one child in his or her custody, $3,425; (iii) For each additional child in his or her custody, $660.

(6) *Surviving spouses in need of aid and attendance.* (i) Surviving spouse alone, $4,183; (ii) Surviving spouse with one child in his or her custody, $4,993; (iii) For each additional child in his or her custody, $660.

(7) *Surviving spouses who are housebound.* (i) Surviving spouse alone, $3,196; (ii) Surviving spouse and one child in his or her custody, $4,006; (iii) For each additional child in his or her custody, $660.

(See § 3.24 for entitlement criteria and rate applicable to a child of a deceased veteran not in custody of a surviving spouse who has basic eligibility to receive improved pension. The term "basic eligibility to receive improved pension" is defined in § 3.24.)

(b) *Reduction for income.* The maximum rates of improved pension in paragraph (a) of this section shall be reduced by the amount of the countable annual income of the veteran or surviving spouse. (38 U.S.C. 521, 541.)

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by $880. (38 U.S.C. 521(g).)

(d) *Definitions of terms used in this section*—(1) *Dependent.* A veteran's spouse or child. A veteran's spouse who resides apart from the veteran and is estranged from the veteran may not be considered the veteran's dependent unless the spouse receives reasonable support contributions from the veteran. (Note that under § 3.60 a veteran and spouse who reside apart are considered to be living together unless they are estranged.) A child of a veteran not in custody of the veteran and to whose support the veteran is not reasonably contributing, may not be considered the veteran's dependent. (38 U.S.C. 521(b).)

(2) *In need of aid and attendance.* As defined in § 3.351(b).

(3) *Housebound.* As defined in § 3.351(d)(2), (f). This term also includes a veteran who has a disability or disabilities evaluated as 60 percent or more disabling in addition to a permanent and totally disabling condition. See § 3.351(d)(1).

(4) *Veteran's annual income.* This term includes the veteran's annual income, the annual income of the veteran's dependent spouse, and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 522(b)) in the veteran's custody or to whose support the veteran is reasonably contributing (to the extent such child's income is reasonably available to or for the veteran, unless in the judgment of the Veterans Administration to do so would work a hardship on the veteran.) There is a rebuttable presumption that all of such a child's income is reasonably available to or for the veteran. (38 U.S.C. 521 (c), (h).)

(5) *Surviving spouse's annual income.* This term includes the surviving spouse's annual income and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 543(a)(2)) in the custody of the surviving spouse to the extent that such child's income is reasonably available to or for the surviving spouse, unless in the judgment of the Veterans Administration to do so would work a hardship on the surviving spouse. There is a rebuttable presumption that all of such a child's income is available to or for the surviving spouse. (38 U.S.C. 541 (c), (h).)

Cross References: Improved pension. See §3.1(w). Child. See § 3.57(d). Definition of "living with". See § 3.60. Exclusions from income. See § 3.272.

§ 3.24 Improved pension rates; surviving children.

(a) *General.* The provisions of this section apply to children of a deceased veteran not in the custody of a surviving spouse who has basic eligibility to receive improved pension. Children in custody of a surviving spouse who has basic eligibility to receive improved pension do not have separate entitlement. Basic eligibility to receive improved pension means that the surviving spouse is in receipt of improved pension or could become entitled to receive improved pension except for the amount of the surviving spouse's countable annual income or the size of the surviving spouse's estate (See § 3.274(c)). Under § 3.23(d)(5) the countable annual income of a surviving spouse includes the countable annual income of each child of the veteran in custody of the surviving spouse to the extent the child's income is reasonably available to or for the surviving spouse, unless in the judgment of the Veterans Administration to do so would work a hardship on the surviving spouse.

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (See §3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate of $660 reduced by the amount of the child's countable annual income.

(c) *Child in the custody of person legally responsible for support*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's supprt at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5)(ii), and the sum of the annual income of such child and the annual income of such person. The amount payable, however, may not exceed the amount by which $660 exceeds the child's countable annual income.

(2) *More than one child.* Pension shall be paid to children in the custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than $660) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or

greater than $660). The combined amount payable, however, may not exceed the amount by which $660 times the number of eligible children exceeds the sum of the children's countable annual income. (38 U.S.C. 542.)

Cross References: Child. See § 3.57(d). Exclusions from income. See§ 3.272.

§ 3.25 Parents' dependency and indemnity compensation rates.

Dependency and indemnity compensation (DIC) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415)

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent the monthly rate of DIC paid to such parent shall be $180 reduced on the basis of the parent's annual income according to the following formula:

For Each $1 Of Annual Income

	Which is more than—	But not more than—
The $180 monthly rate shall be reduced by:		
$0.00	0	$800
.03	$800	900
.04	900	1,000
.06	1,000	1,200
.07	1,200	1,500
.08	1,500	4,438

No DIC is payable under this paragraph if annual income exceeds $4,438.

(b) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (a) or under paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) *Two parents not living together.* The rates in this paragraph apply to (1) two parents who are not living together, or (2) an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $127, reduced on the basis of each parent's annual income, according to the following formula:

For Each $1 Of Annual Income Of Each Parent

	Which is more than—	But not more than—
The $127 monthly rate shall be reduced by:		
$0.00	0	$800
.02	$800	1,000
.04	1,000	1,100
.05	1,100	1,400
.06	1,400	2,000
.07	2,000	2,700
.08	2,700	4,438

No DIC is payable under this paragraph if annual income exceeds $4,438.

(d) *Two parents living together or remarried parents living with spouses.* The rates in this paragraph apply to (1) each parent living with another parent; and (2) each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $120, reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

For Each $1 Of Combined Annual Income

	Which is more than—	But not more than—
The $120 monthly rate shall be reduced by:		
$0.00	0	$1,000
.02	$1,000	1,700
.03	1,700	2,300
.04	2,300	3,300
.05	3,300	5,968

No DIC is payable under this paragraph if combined annual income exceeds $5,968.

The rates in this paragraph are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in paragraph (a) of this section for one parent.

(e) The monthly rate of DIC payable to a parent under this section shall be increased by $94 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) The monthly rate of DIC payable to any parent under this section shall not be less than $5.

§ 3.26 Section 306 and old-law pension annual income limitations.

(a) *Section 306 pension income limitations.* (1) Veteran or surviving spouse with no dependents, $4,438.

(2) Veteran with no dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $4,938.

(3) Veteran or surviving spouse with one or more dependents, $5,968.

(4) Veteran with one or more dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $6,468.

(5) Child (no entitled veteran or surviving spouse), $3,626.

(b) *Old-law pension income limitations.* (1) Veteran or surviving spouse without dependents, or an entitled child $3,884.

(2) Veteran or surviving spouse with one or more dependents, $5,603.

§ 3.27 Automatic adjustment of benefit rates.

(a) *Improved pension.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, the Veterans Administration shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of pension specified in § 3.23 and § 3.24. (38 U.S.C. 3112(a))

(b) *Parents' dependency and indemnity compensation*—(1) *Maximum annual income limitation and maximum monthly rates.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, the Veterans Administration shall, effective on the dates such increases become effective, increase by the same percentage the maximum monthly rates of dependency and indemnity compensation for parents specified in § 3.25(a), (c) and (d), the monthly rate specified in § 3.25(e), and the annual income limitations prescribed in § 3.25(a), (c) and (d). (38 U.S.C. 3112(b)(1))

(2) *Formula adjustment.* Whenever there is an increase in the rates and income limitations applicable to parents' dependency and indemnity compensation under paragraph (b)(1) of this section, the Veterans Administration shall, effective on the date of such increase, adjust correspondingly the formulas for determining the rates of parents' dependency and indemnity compensation as specified in § 3.25(a) and (c) for a parent whose countable annual income is more than $800 but not more than the maximum specified therein, and in § 3.25(d) for a parent whose countable annual income is more than $1,000 but not more than the maximum specified therein. (38 U.S.C. 3112(b)(2)(A))

(c) *Publishing requirements.* Increases in pension rates and parents' dependency and indemnity compensation rates and income limitation made under this section shall be published in the **Federal Register.** (38 U.S.C. 3112(c)(1))

§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.

Whenever the maximum rates of pension specified in § 3.23 are increased by reason of the provisions of 38 U.S.C. 3112, the following will be increased by the same percentage effective the same date:

(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and

(b) The dollar amount of a veteran's spouse's income specified in § 3.262(b)(2) as excludable in determining the income of a veteran for section 306 pension purposes.

These increases shall be published in the **Federal Register** at the same time that increases in the rates specified in § 3.23 and § 3.24 are so published. (Section 306, Pub. L. 95–588, 92 Stat. 2497.)

Cross References: Section 306 and old-law pension rates. See § 3.26. Section 306 and old-law pension protection. See § 3.960.

§ 3.29 Rounding.

Where the computation of an increase in improved pension rates under §§ 3.23 and 3.24 would otherwise result in a figure which includes a fraction of a dollar, the benefit rate will be adjusted to the next higher dollar amount. This method of computation will also apply to increases in old-law and section 306 pension annual income limitations under § 3.26, including the income of a spouse which is excluded from a veteran's countable income, and parents' dependency and indemnity compensation benefit rates and annual income limitations under § 3.25. (38 U.S.C. 3112(c)(2)).

§ 3.30 Frequency of payment of improved pension.

(a) *Monthly.* Payment shall be made monthly if the annual rate payable is $120 or more.

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $40 but less than $120.

(c) *Semiannually.* Payment shall be made every 6 months on or about June 1, and December 1, if the annual rate payable is at least $20 but less than $40.

(d) *Annually.* Payment shall be made annually on or about June 1, if the annual rate payable is less than $20.

(e) *Payment of less than one dollar.* Payments of less than $1 shall not be made.

Cross Reference: Pension. See § 3.3(a)(3), (b)(4).

8. Section 3.57 is amended as follows:

(a) Section 3.57 is amended by adding the words "or her" after the word "his" in paragraphs (a)(1), (c)(1) and (c)(3).

(b) By adding paragraph (d) as set forth below:

§ 3.57 Child.

* * * * *

(d) *Definition of "child custody".* The provisions of this paragraph are for the purpose of determining entitlement to improved pension under §§ 3.23 and 3.24.

(1) Custody of a child shall be considered to rest with a veteran, surviving spouse of a veteran or person legally responsible for the child's support if that person has the legal right to exercise parental control and responsibility for the welfare and care of the child. A child of the veteran residing with the veteran, surviving spouse of the veteran who is the child's natural or adoptive parent, or person legally responsible for the child's support shall be presumed to be in the custody of that individual. Where the veteran, surviving spouse, or person legally responsible for the child's support has not been divested of legal custody, but the child is not residing with that individual, the child shall be considered in the custody of the individual for purposes of Veterans Administration benefits.

(2) The term "person legally responsible for the child's support" means a person who is under a legally imposed obligation (e.g., by statute or court order) to provide for the child's support, as well as a natural or adoptive parent who has not been divested of legal custody. If the child's natural or adoptive parent has remarried, the stepparent may also be considered a person legally responsible for the child's support. A child shall be considered in the joint custody of his or her stepparent and natural or adoptive parent so long as the natural or adoptive parent and the stepparent are not estranged and residing apart, and the natural or adoptive parent has not been divested of legal custody. When a child is in such joint custody the combined income of the natural or adoptive parent and the stepparent shall be included as income of the person legally responsible for support under § 3.24(c).

(3) A person having custody of a child prior to the time the child attains age 18 shall be considered to retain custody of the child for periods on and after the child's 18th birthday, unless the person is divested of legal custody. This applies without regard to when a child reaches the age of majority under applicable State law. This also applies without regard to whether the child was entitled to pension prior to age 18, or whether increased pension was payable to a veteran or surviving spouse on behalf of the child prior to the child's 18th birthday. If the child's custodian dies after the child has attained age 18, the child shall be considered to be in custody of a successor custodian provided the successor custodian has the right to exercise parental control and responsibility for the welfare and care of the child. (38 U.S.C. 210(c), 521(c), 541(c).)

Cross References: Improved pension rates. See § 3.23. Improved pension rates—surviving children. See § 3.24. Child's relationship. See § 3.210. Helplessness. See § 3.403(a). Helplessness. See § 3.503(c). School attendance. See § 3.667. Helpless children—Spanish-American and prior wars. See § 3.950.

§ 3.59 [Amended]

9. Section 3.59 is amended by adding the words "or her" following the word "his" in paragraph (a).

10. Section 3.60 is added to read as follows:

§ 3.60 Definition of "living with".

For the purposes of determining entitlement to pension under 38 U.S.C. 521, a person shall be considered as living with his or her spouse even though they reside apart unless they are estranged. (38 U.S.C. 521(h)(2)).

11. Immediately preceding § 3.250 and following the centerhead "DEPENDENCY, INCOME AND ESTATE" add "Regulations Applicable to Programs in Effect Prior to January 1, 1979".

12. In § 3.252, paragraph (a) is revised to read as follows:

§ 3.252 Annual income; pension; Mexican border period and later war periods.

(a) *Annual income limitations; old-law pension.* Where the right to old-law pension is payable under section 306(b) of Pub. L. 95–588 (92 Stat. 2497), pension is not payable if the pensioner's annual income exceeds the income limitations prescribed by § 3.26(b).

* * * * *

13. Section 3.262 is amended as follows:

(a) By deleting the word "widow" and inserting "surviving spouse" in the first sentence of paragraph (e)(1).

(b) By deleting the word "widow" and inserting "surviving spouse" in the first sentence and by inserting the words "or her" after the word "his" in the third sentence of paragraph (e)(2).

(c) By inserting the words "or her" following the word "his" in the third sentence of paragraph (e)(4).

(d) By deleting the word "Widows" and inserting "Surviving Spouses" in the headnote of paragraph (g)(1).

(e) By revising paragraph (b)(2) to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(b) *Income of spouse.* Income of the spouse will be determined under the rules applicable to income of the claimant.

* * * * *

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under Section 306(a) of Pub. L. 95-588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, $1,413 ($1,285 after December 31, 1978, and prior to June 1, 1979) or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); Sec. 306(a)(2)(B) of Pub. L. 95-588, 92 Stat. 2497)

* * * * *

§ 3.263 [Amended]

14. Section 3.263 is amended as follows:

(a) By inserting the words "or her" following the word "his" twice in paragraph (d).

(b) By deleting the cross reference "Children: no widow entitled. See § 3.662" following § 3.263.

15. Sections 3.270 through 3.277 and a center title are added to read as follows:

§ 3.270 Applicability of various dependency, income and estate regulations.

(a) *Sections 3.250 to 3.270.* These sections are applicable to dependency, income and estate determinations needed to determine entitlement or continued entitlement for the following programs:

(1) Parents' death compensation.

(2) Old-law pension.

(3) Section 306 pension.

(4) Parents' dependency and indemnity compensation.

Note.—Citations to title 38, United States Code in §§ 3.250 to 3.270 referring to section 306 or old-law pension generally refer to provisions of law in effect on December 31, 1978.

(b) *Sections 3.271 to 3.300.* These sections apply to income and estate determinations of entitlement to the improved disability and death pension program which became effective January 1, 1979.

Regulations Applicable to the Improved Pension Program Which Became Effective January 1, 1979

§ 3.271 Computation of income.

(a) *General.* Payments of any kind from any source shall be counted as income in the year in which received unless specifically excluded under § 3.272.

(b) *Salary.* Salary means the gross amount of a person's earnings or wages before any deductions are made for such things as taxes, insurance, retirement plans, social security, etc.

(c) *Business, farm or professional income.* (1) This includes gross income from a business, farm or profession as reduced by the necessary operating expenses such as cost of goods sold, or expenditures for rent, taxes, and upkeep, or costs of repairs or replacements. The value of an increase in stock inventory of a business is not considered income.

(2) Depreciation is not a deductible expense.

(3) A loss sustained in operating a business, profession, farm, or from investments, may not be deducted from income derived from any other source.

(d) *Income from property.* Income from real or personal property is countable as income of the property's owner. The terms of a recorded deed or other evidence of title shall constitute evidence of ownership. This includes property acquired through purchase, gift, devise, or descent. If property is owned jointly, income of the various owners shall be determined in proportion to shares of ownership of the property. The owner's shares of income held in partnership shall be determined on the basis of the facts found.

(e) *Installments.* Income shall be determined by the total amount received or anticipated during the calendar year.

(f) *Deferred determinations.* When an individual is unable to predict with certainty the amount of countable annual income, the annual rate of improved pension shall be reduced by the greatest amount of anticipated countable income until the end of the year, when total income received during the year will be determined and adjustments in pension payable made accordingly.

(g) *Compensation (civilian) for injury or death.* Compensation paid by the United States Department of Labor, Office of Workers' Compensation Programs, Social Security Administration, or the Railroad Retirement Board, or pursuant to any worker's compensation or employer's liability statute, or damages collected because of personal injury or death, will be considered income as received. However, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the amount of the award or settlement, may be deducted. The criteria in § 3.272(g) apply as to all medical expenditures after the award or settlement. (38 U.S.C. 210(c))

(h) *Fractions of dollars.* Fractions of dollars will be disregarded in computing annual income.

§ 3.272 Exclusions from income.

The following shall be excluded from countable income for the purpose of determining entitlement to improved pension:

(a) *Welfare.* Donations from public or private relief, welfare, or charitable organizations. (38 U.S.C. 503(a)(1))

(b) *Maintenance.* The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the individual is maintained in a rest home or other community institution or facility, public or private, because of impaired health or advanced age, money paid to the home or the individual to cover the cost of maintenance will not be considered income, regardless of whether it is furnished by a relative, friend, or charitable organization. The expense of maintenance is not deductible if it is paid from the individual's income. (38 U.S.C. 210(c), 503(a)(1))

(c) *Veterans Administration pension benefits.* Payments under chapter 15 of title 38, United States Code. (38 U.S.C. 503(a)(2))

(d) *Fire insurance.* Proceeds of fire insurance policies. (38 U.S.C. 503(a)(5))

(e) *Profit from sale of property.* Profit realized from the disposition of real or personal property other than in the course of business, except amounts received in excess of the sales price, for example, interest on deferred sales is included as income. In installment sales, any payments received until the sales price is recovered are not included as income, but any amounts received which exceed the sales price are included, regardless of whether they represent principal or interest. (38 U.S.C. 503(a)(6))

(f) *Joint accounts.* Amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner. (38 U.S.C. 503(a)(7))

(g) *Medical expenses.* Within the provisions of the following subparagraphs, there will be excluded from the amount of an individual's annual income any unreimbursed amounts which have been paid within the year for medical expenses regardless of the year the indebtedness was incurred. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate, or after the end of the year upon receipt of an income questionnaire. (38 U.S.C. 503(a)(8))

(1) *Veteran's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a veteran or spouse for medical expenses of the veteran, spouse, children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the veteran's or spouse's household; and

(iii) They were or will be in excess of 5% of the applicable maximum annual pension rate or rates for the veteran (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the year in which the medical expenses were paid.

(2) *Surviving spouse's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a surviving spouse for medical expenses of the spouse, veteran's children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the spouse's household; and

(iii) They were or will be in excess of 5% of the applicable maximum annual pension rate or rates for the spouse (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the year in which the medical expenses were paid.

(3) *Children's income.* Unreimbursed amounts paid by a child for medical expenses of self, parents, brothers and sisters, to the extent that such amounts exceed 5% of the maximum annual pension rate or rates payable to the child during the year in which the medical expenses were paid.

(h) *Expenses of last illnesses, burials and just debts.* The expenses specified in paragraphs (h) (1) and (2) of this section shall be deducted from annual income for the year in which their payment is made. However if payment is made during the year following that in which the death occurred, the deduction may be taken from the annual rate of income for the year of the last illness or burial if to do so is advantageous to the beneficiary. (38 U.S.C. 210(c))

(1) *Veteran's final expenses.* (i) Amounts paid by a spouse or child before a veteran's death for expenses of the veteran's last illness will be deducted from the income of the surviving spouse or child.

(ii) Amounts paid by a surviving spouse or child of a veteran for the veteran's just debts, expenses of last illness and burial (to the extent such burial expenses are not reimbursed under chapter 23 of title 38, United States Code) will be deducted from the income of the surviving spouse or child. (38 U.S.C. 503(a)(3))

(2) *Spouse or child's final expenses.* (i) Amounts paid by a veteran for the expenses of the last illness and burial of the veteran's deceased spouse or child will be deducted from the veteran's income.

(ii) Amounts paid by a veteran's spouse or surviving spouse for expenses of the last illness and burial of the veteran's child will be deducted from the spouse's or surviving spouse's income. (38 U.S.C. 503(a)(4))

(i) *Educational expenses.* Amounts equal to expenses paid by a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, to include amounts paid for tuition, fees, books, and materials, and in the case of a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of such course. Unusual transportation expenses are those exceeding the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation, if reasonably available). (38 U.S.C. 503(a)(9))

(j) *Child's income.* In the case of a child, any current work income received during the year, to the extent that the total amount of such income does not exceed an amount equal to the sum of the following:

(1) The lowest amount of gross income for which a Federal income tax return must be filed, as specified in section 6012(a) of the Internal Revenue Code of 1954, by an individual who is not married (as determined under section 143 of such Code), and is not a surviving spouse (as defined in section 2(a) of such Code), and is not a head of household (as defined in section 2(b) of such Code); and

(2) If the child is pursuing a course of postsecondary education or vocational rehabilitation or training, the amount paid by the child for those educational expenses including the amount paid for tuition, fees, books, and materials. (38 U.S.C. 503(a)(10))

§ 3.273 Rate computation.

(a) *Initial award.* For the purpose of determining initial entitlement, or for resuming payments on an award which was previously discontinued, the monthly rate of pension payable to a beneficiary shall be computed by reducing the beneficiary's applicable maximum pension rate by the beneficiary's annual rate of countable income on the effective date of entitlement and dividing the remainder by 12.

(b) *Running awards.*—(1) *Change in maximum annual pension rate.* Whenever there is a change in a beneficiary's applicable maximum annual pension rate, the monthly rate of pension payable shall be computed by reducing the new applicable maximum annual pension rate by the beneficiary's annual rate of countable income on the effective date of the change in the applicable maximum annual pension rate, and dividing the remainder by 12.

(2) *Change in annual rate of income.* Whenever there is a change in a beneficiary's annual rate of countable income the monthly rate of pension payable shall be computed by reducing the beneficiary's applicable maximum annual pension rate by the beneficiary's new annual rate of countable income on the effective date of the change in the annual rate of income, and dividing the remainder by 12.

(c) *Nonrecurring income.* The amount of any nonrecurring countable income (e.g. an inheritance) received by a beneficiary shall be added to the beneficiary's annual rate of income for a 12-month period commencing on the effective date on which the nonrecurring income is countable. (38 U.S.C. 210(c))

§ 3.274 Relationship of net worth to pension entitlement.

(a) *Veteran.* Pension shall be denied or discontinued when the corpus of the estate of the veteran, and of the veteran's spouse, are such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance. (38 U.S.C. 522(a))

(b) *Increased pension payable to a veteran for a child.* Increased pension payable to a veteran on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances including consideration of the veteran's and spouse's income and the income of the veteran's child or children, it is reasonable that some part of the corpus of such child's estate be consumed for the child's maintenance. (38 U.S.C. 522(b))

(c) *Surviving spouse.* Pension payable to a surviving spouse shall be denied or discontinued when the corpus of the estate of the surviving spouse is such that under all the circumstances, including consideration of the surviving spouse's income and the income of any child for whom the surviving spouse is receiving pension, it is reasonable that some part of the corpus of the surviving spouse's estate be consumed for the surviving spouse's maintenance. (38 U.S.C. 543(a)(1))

(d) *Increased pension payable to a surviving spouse for a child.* Increased pension payable to a surviving spouse on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the surviving spouse and child and the income of any other child for whom the surviving spouse is receiving increased pension, it is reasonable that some part of the corpus of the child's estate be consumed for the maintenance of the child. (38 U.S.C. 543(a)(2))

(e) *Child.* Pension payable to a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the child, the income of any person with whom the child is residing who is legally responsible for such child's support, and the corpus of estate of such person, it is reasonable that some part of the corpus of such estates be consumed for the child's maintenance. (38 U.S.C. 543(b))

§ 3.275 Criteria for evaluating net worth.

(a) *General.* The following rules are for application in determining the corpus of estate or net worth of a veteran, surviving spouse or child under § 3.274.

(b) *Definition.* The terms "corpus of estate" and "net worth" mean the market value, less mortgages or other encumbrances, of all real and personal property owned by the claimant, except the claimant's dwelling (single family unit), including a reasonable lot area, and personal effects suitable to and consistent with the claimant's reasonable mode of life.

(c) *Ownership.* See § 3.271(d).

(d) *Evaluation.* In determining whether some part of the claimant's estate (or combined estates under § 3.274 (a) and (e)) should be consumed for the claimant's maintenance, consideration will be given to the amount of the claimant's income together with the following: whether the property can be readily converted into cash at no substantial sacrifice; life expectancy; number of dependents who meet the definition of "member of the family" (the definition contained in § 3.250(b)(2) is applicable to the improved pension program); potential rate of depletion, including unusual medical expenses under the principles outlined in § 3.272(g) for the claimant and the claimant's dependents.

(e) *Educational expenses.* There shall be excluded from the corpus of estate or net worth of a child reasonable amounts for actual or prospective educational or vocational expenses. The amount so excluded shall not be such as to provide for education or training beyond age 23. (38 U.S.C. 210(c))

§ 3.276 Certain transfers or waivers disregarded.

(a) *Waiver of receipt of income.* Potential income, not excludable under § 3.272 and whose receipt has been waived by an individual, shall be included as countable income of that individual for Veterans Administration pension purposes.

(b) *Transfer of assets.* For pension purposes, a gift of property made by an individual to a relative residing in the same household shall not be recognized as reducing the corpus of the grantor's estate. A sale of property to such a relative shall not be recognized as reducing the corpus of the seller's estate if the purchase price, or other consideration for the sale, is so low as to be tantamount to a gift. A gift of property to someone other than a relative residing in the grantor's household will not be recognized as reducing the corpus of the grantor's estate unless it is clear that the grantor has relinquished all rights of ownership, including the right of control of the property. (38 U.S.C. 210(c))

§ 3.277 Income and net worth reports.

(a) *Evidence of entitlement.* As a condition of granting or continuing pension, the Veterans Administration may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as is necessary to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child for whom the person is receiving or is to receive increased pension (such child is hereinafter in this section referred to as a "dependent child"), and, in the case of a child applying for or in receipt of pension in his or her own behalf (hereinafter in this section referred to as a "surviving child"), of any person with whom such child is residing who is legally responsible for such child's support.

(b) *Required annual report.* It is required that every pension applicant or beneficiary file a report each year, showing:

(1) The annual income which such applicant or beneficiary (and any such person's spouse or dependent child) received during the preceding year, the corpus of the estate of such applicant or beneficiary (and of any such person's spouse or dependent child) at the end of such year, and in the case of a surviving child, the income and corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support;

(2) The applicant's or beneficiary's estimate for the then current year of the annual income such applicant or beneficiary (and any such person's spouse or dependent child) expects to receive and of any expected increase in the value of the corpus of the estate of such applicant or beneficiary (and for any such person's spouse or dependent child); and in the case of a surviving child, an estimate for the then current year of the annual income of any person with whom such child is residing who is legally responsible for such child's support, and of any expected increase in the value of the corpus of the estate of such person;

(c) *Required revised report.* It is required that any pension applicant or beneficiary promptly file a revised report whenever there is a material change in the estimated annual income of such applicant or beneficiary (or of any such person's spouse or dependent child) or a material change in such applicant's or beneficiary's estimate of the value of the corpus of the estate of such applicant or beneficiary (or of any such person's spouse or dependent child), and in the case of a surviving child, a material change in the estimated annual income or value of the corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support; it is also required that any such applicant or beneficiary applying for or in receipt of increased pension on account of a person who is a spouse or child of such applicant or beneficiary promptly notify the Veterans Administration if such person ceases to meet the applicable definition of spouse or child. (38 U.S.C. 506(a))

16. Section 3.351 is revised to read as follows:

§ 3.351 Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings.

(a) *General.* This section sets forth criteria for determining whether:

(1) Increased pension is payable to a veteran by reason of need for aid and attendance or by reason of being housebound. (38 U.S.C. 521(d), (e))

(2) Increased compensation is payable to a veteran by reason of the veteran's spouse being in need of aid and attendance. (38 U.S.C. 315(1)(I))

(3) Increased dependency and indemnity compensation is payable to a surviving spouse or parent by reason of being in need of aid and attendance. (38 U.S.C. 411(c), 415(h))

(4) Increased dependency and indemnity compensation is payable to a surviving spouse who is not in need of aid and attendance but is housebound. (38 U.S.C. 411(d))

(5) Increased pension is payable to a surviving spouse by reason of need for aid and attendance, or if not in need of aid and attendance, by reason of being housebound. (38 U.S.C. 541(d), (e))

(6) Increased death compensation is payable to a surviving spouse by reason of being in need of aid and attendance. (38 U.S.C. 322)

(b) *Aid and attendance; need.* Need for aid and attendance means helplessness or being so nearly helpless as to require the regular aid and attendance of another person. The criteria set forth in paragraph (c) of this section will be applied in determining whether such need exists.

(c) *Aid and attendance; criteria.* The veteran, spouse, surviving spouse or parent will be considered in need of regular aid and attendance if he or she:

(1) Is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; or

(2) Is a patient in a nursing home because of mental or physical incapacity; or

(3) Establishes a factual need for aid and attendance under the criteria set forth in § 3.352(a). (38 U.S.C. 502(b))

(d) *Housebound, or permanent and total plus 60 percent; disability pension.* The rate of pension payable to a veteran who is entitled to pension under 38 U.S.C. 521 and who is not in need of regular aid and attendance shall be as prescribed in 38 U.S.C. 521(e) if, in addition to having a single permanent disability rated 100 percent disabling under the Schedule for Rating Disabilities (not including ratings based upon unemployability under § 4.17 of this chapter) the veteran:

(1) Has additional disability or disabilities independently ratable at 60 percent or more, separate and distinct from the permanent disability rated as 100 percent disabling and involving different anatomical segments or bodily systems, or

(2) Is "permanently housebound" by reason of disability or disabilities. This requirement is met when the veteran is substantially confined to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical area, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime. (38 U.S.C. 502(c), 521(e))

(e) *Housebound; dependency and indemnity compensation.* The monthly rate of dependency and indemnity compensation payable to a surviving spouse who does not qualify for increased dependency and indemnity compensation under 38 U.S.C. 411(c) based on need for regular aid and attendance shall be increased by the amount specified in 38 U.S.C. 411(d) if the surviving spouse is permanently housebound by reason of disability. The "permanently housebound" requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse's lifetime. (38 U.S.C. 411(d))

(f) *Housebound; improved pension; death.* The annual rate of death pension payable to a surviving spouse who does not qualify for an annual rate of death pension payable under § 3.23(a)(6) based on need for aid and attendance shall be as set forth in § 3.23(a)(7) if the surviving spouse is permanently housebound by reason of disability. The "permanently housebound" requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse's lifetime. (38 U.S.C. 541(e))

17. Section 3.450 is amended as follows:

(a) By deleting "his wife" and inserting "the spouse" in paragraph (a)(1)(i).

(b) By deleting "widow" and inserting "surviving spouse" in paragraph (g).

(c) By revoking paragraph (h).

(d) By revising paragraph (a)(1)(ii) and (2), (c), and (e) to read as follows:

§ 3.450 General.

(a)(1) All or any part of the pension, compensation, or emergency officers' retirement pay payable on account of any veteran may be apportioned.

* * * * *

(ii) If the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.

(2) Where any of the children of a deceased veteran are not living with the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned. (38 U.S.C. 3107)

* * * * *

(c) No apportionment will be made where the veteran, the veteran's spouse (when paid "as wife" or "as husband"), surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, spouse, surviving spouse, or fiduciary.

* * * * *

(e) The amount payable for a child in custody of and residing with the surviving spouse shall be paid to the surviving spouse. Amounts payable to a surviving spouse for a child in the surviving spouse's custody but residing with someone else may be apportioned if the surviving spouse is not reasonably contributing to the child's support.

* * * * *

(h) [Revoked]

18. Section 3.451 is revised (gender changes only) to read as follows:

§ 3.451 Special apportionments.

Without regard to any other provision regarding apportionment where hardship is shown to exist, pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation may be specially apportioned between the veteran and his or her dependents or the surviving spouse and children on the basis of the facts in the individual case as long as it does not cause undue hardship to the other persons in interest, except as to those cases covered by § 3.458(b) and (c). In determining the basis for special apportionment, consideration will be given such factors as: Amount of Veterans Administration benefits payable; other resources and income of the veteran and those dependents in whose behalf apportionment is claimed; and special needs of the veteran, his or her dependents, and the apportionment claimants. The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee.

19. In § 3.452, paragraphs (a) and (c) are revised to read as follows:

§ 3.452 Veterans benefits apportionable.

Veterans benefits may be apportioned:

(a) If the veteran is not residing with his or her spouse or his or her children and a claim for apportionment is filed for or on behalf of the spouse or children.

* * * * *

(c)(1) Where an incompetent veteran without a fiduciary is receiving institutional care by the United States or a political subdivision, his or her benefit may be apportioned for a spouse or child, or, except as provided in paragraph (c)(3), for a dependent parent, unless such benefit is paid to a spouse ("as wife" or "as husband") for the use of the veteran and his or her dependents.

(2) Where benefits for an incompetent veteran are discontinued under the provisions of § 3.557(b), because of hospitalization by the U.S. Government or any political subdivision, there may be paid to his or her dependent parent or parents on the basis of need as determined by the Veterans' Services Officer all or any part of the benefit which would otherwise be payable. (38 U.S.C. 3203(b)(2))

(3) Where a married veteran is receiving section 306 or improved pension and the amount payable is reduced under § 3.551(c) because of hospitalization, an apportionment may be paid to the veteran's spouse as provided in § 3.454(b). (38 U.S.C. 3203(a))

* * * * *

20. Section 3.454 is amended as follows:

(a) By deleting "wife, husband" and inserting "spouse" in the first and last sentence of paragraph (a).

(b) By revising the introductory portion preceding paragraph (a) and paragraphs (b) and (c) and adding paragraph (d) so that the added and revised material reads as follows:

§ 3.454 Veterans disability pension.

Apportionment of disability pension will be as follows:

* * * * *

(b) (1) Where the amount of section 306 pension payable to a married veteran under 38 U.S.C. 521(b), as in effect on December 31, 1978, is reduced to $60 monthly under § 3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $60 and the total amount of pension payable on December 31, 1978. (38 U.S.C. 3203(a))

(2) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 521(b) is reduced to $60 monthly under § 3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $60 and the rate payable if pension was being paid under 38 U.S.C. 521(c) including the additional amount payable under 38 U.S.C. 521(e) if the veteran is so entitled. (38 U.S.C. 3203(a))

(c) Where section 306 pension for an incompetent veteran is subject both to reduction under § 3.551(c), and to discontinuance under § 3.557(b) because of hospitalization by the U.S. Government or any political subdivision, the rate authorized for a parent or parents will not exceed $60 monthly. (Pub. L. 86–146, 73 Stat. 297; Pub. L. 86–211, 73 Stat. 432; Pub. L. 93–177, 87 Stat. 694; Pub. L. 95–588, 92 Stat. 2497)

(d) Where improved pension for an incompetent veteran is subject both to reduction under § 3.551(c), and to discontinuance under § 3.557(b) because of hospitalization by the U.S. Government or any political subdivision, the rate authorized for a parent or parents will not exceed $60 monthly. (38 U.S.C. 3203(a), (b))

§ 3.458 [Amended]

21. Section 3.458 is amended as follows:

(a) By deleting "wife or husband" and inserting "spouse" in paragraph (b).

(b) By deleting "wife, husband," and inserting "spouse," in the first and last sentence of paragraph (c).

(c) By deleting "wife or husband" and inserting "spouse" in the first sentence of paragraph (e).

(d) By deleting "wife, husband" and inserting "spouse" in the first sentence of paragraph (f)(1).

(e) By deleting "widow or widower," and inserting "or surviving spouse," in paragraph (f)(2).

(f) By deleting "wife or husband" and inserting "spouse" in the first sentence of paragraph (g).

§ 3.459 [Amended]

22. Section 3.459 is amended by deleting "widow or widower" and inserting "surviving spouse" in paragraphs (a) and (b).

23. Section 3.460 is amended as follows:

(a) By deleting "wife or husband" and inserting "spouse" in the introductory portion preceding paragraph (a).

(b) Paragraph (b) is revised and paragraph (c) is added so that the revised and added material reads as follows:

§ 3.460 Death pension.

* * * * *

(b) *Section 306 and old-law death pension.* Appointment of benefits provided under these pension programs will be at rates approved by the Chief Benefits Director except when the facts and circumstances in a case warrant special apportionment under § 3.451. (38 U.S.C. 3107)

(c) *Improved death pension.* Apportionment of the benefits provided under this program shall be made under the special apportionment provision of § 3.451. (38 U.S.C. 3107)

24. In § 3.501, paragraph (i)(2) is revised to read as follows:

§ 3.501 Veterans.

The effective date of discontinuance of pension or compensation to or for a veteran will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

* * * * *

(i) *Hospitalization.* * * *

(2) § *3.551(c).* (i) First day of the third calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (38 U.S.C. 3203(a))

(ii) First day of the fourth calendar month following admission for hospital or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (38 U.S.C. 3203(a))

* * * * *

25. Section 3.551 is amended as follows:

(a) By deleting "wife, husband" and inserting "spouse" in the first sentence of paragraph (f).

(b) By revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 3.551 Reduction because of hospitalization.

(a) *General.* Pension payable under the section 306, the old-law and the improved pension programs is subject to reduction when a veteran who has neither spouse, child nor dependent parent is hospitalized, unless the veteran is hospitalized, for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitalization. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in § 3.552 and for discontinuance of awards for incompetent veterans in § 3.557. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§ 3.551 through 3.559 mean:

(1) Hospital treatment in a Veterans Administration hospital or in any hospital at Veterans Administration expense.

(2) Institutional, domiciliary or nursing home care in a Veterans Administration institution or domiciliary or at Veterans Administration expense.

(b) *Old-law pension.* Old-law pension in excess of $30 monthly for a veteran who has neither spouse, child nor dependent parent shall continue at the full monthly rate until the end of the sixth calendar month following the month of admission for hospitalization. The rate payable will be reduced effective the first of the seventh calendar month to $30 monthly or 50 percent of the amount otherwise payable, whichever is greater. The reduced rate will be effective the first day of the seventh calendar month following admission. Payment of the amount withheld may be made on termination of hospitalization, as provided in § 3.556. (Sec. 306(b), Pub. L. 95–588; 92 Stat. 2497

(c) *Section 306 and improved pension.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished domiciliary care by the Veterans Administration, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(2) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents is being furnished hospital or nursing home care by the Veterans Administration, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(3) No pension in excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care of not less than 2 full calendar months. (38 U.S.C. 3203(a))

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b). (38 U.S.C. 3203(a))

(5) Where section 306 pension is being paid to a married veteran at a rate for a veteran without dependents all or any part of the monthly amount of pension withheld in excess of $60 may be apportioned for a spouse as provided in § 3.454(b).

(6) The provisions of paragraphs (c) (1), (2) and (3) of this section are not applicable to any veteran who has a child but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

(7) For the purposes of paragraphs (c) (1), (2) and (3) of this section, if a veteran is furnished hospital or nursing home care by the Veterans Administration and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by the Veterans Administration and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(d) *Computation of period.* For purposes of computing periods of hospitalization in paragraph (c) of this section, authorized absences of 96 hours or less will be included as periods of hospitalization, and those of over 96 hours excluded. Also, for purposes of that paragraph, periods of treatment or care of 60 total days will be considered two calendar months of hospitalization and periods of 90 total days considered three calendar months, exclusive of authorized absences in excess of 96 hours.

* * * * *

26. In § 3.552, paragraphs (e) and (j) are revised to read as follows:

§ 3.552 Adjustment of allowance for aid and attendance.

* * * * *

(e) Where a veteran is in receipt of section 306 pension, the aid and attendance allowance shall be reduced to the housebound rate of $61 monthly (or $76.25 if the veteran was age 78 or older on December 31, 1978). Where a veteran is in receipt of old-law pension, the total amount payable shall be reduced to $100 monthly. Where a veteran is in receipt of improved pension, the applicable aid and attendance rate shall be reduced to the otherwise applicable rate under 38 U.S.C. 521(e). No reduction shall be made, however, for any case involving the disabilities specified in paragraph (a)(2) of this section.

* * * * *

(j) The section 306 pension aid and attendance allowance authorized by § 3.252(f) is subject to reduction for hospitalization under the provisions of this section in the same manner as the regular section 306 pension aid and attendance allowance. The amount payable shall not be reduced to less than the housebound rate of $61 monthly (or $76.25 monthly if the veteran was age 78 or older on December 31, 1978).

§ 3.556 [Amended]

26a. Section 3.556 is amended by deleting the words "an estranged spouse" and inserting the words "a spouse" in the second sentence.

26b. In § 3.656, the introductory portion of paragraph (a) preceding subparagraph (1) and paragraph (d) are revised to read as follows:

§ 3.656 Disappearance of veteran.

(a) When any veteran has disappeared for 90 days or more and his or her whereabouts remain unknown to the members of his or her family and the Veterans Administration, disability compensation which he or she was receiving or entitled to receive may be paid to or for his or her spouse, 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:

* * * * *

(d) When any veteran has disappeared for 90 days or more and the veteran's whereabouts remain unknown to members of the veteran's family and the Veterans Administration, any improved pension, section 306 or service pension which the veteran was receiving or entitled to receive may be paid to or for the spouse or children. The status of the veteran at the time of disappearance, with respect to permanent and total disability, income and net worth will be presumed to continue unchanged. Payment for the spouse or children will be 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 date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) The service death pension rate if the veteran was receiving service pension or the improved death pension rate if the veteran was receiving section 306 or improved pension.

(2) The amount of pension payable to the veteran at the time of disappearance. (38 U.S.C. 507)

§ 3.657 [Amended]

26c. Section 3.657 is amended by deleting the words "Widow (Widower)" and inserting the words "Surviving Spouse" in the headnote; and by deleting the words "widow (widower)" and inserting the words "surviving spouse" wherever they appear in the introductory paragraph preceding paragraph (a), paragraph (a), (a)(1) and (2), (b)(1), (b)(1)(i) and (ii), (b)(2) and (b)(2)(i) and (ii).

27. In § 3.660, paragraphs (a)(1) and (2), (b) (introductory portion preceding subparagraph (1)), (b)(2), (c) and (d) are revised to read as follows:

§ 3.660 Dependency, income and estate.

(a) *Reduction or discontinuance*—(1) *General.* A veteran, surviving spouse or child who is receiving pension, or a parent who is receiving compensation or dependency and indemnity compensation must notify the Veterans Administration of any material change or expected change in his or her income or other circumstances which would affect his or her entitlement to receive, or the rate of, the benefit being paid. Such notice must be furnished when the recipient acquires knowledge that he or she will begin to receive additional income or when his or her marital or dependency status changes. In pension claims subject to § 3.252(b) or § 3.274 and in compensation claims subject to § 3.250(a)(2), notice must be furnished of any material increase in corpus of the estate or net worth.

(2) *Contingency.* Where reduction or discontinuance of a running award of section 306 pension or old-law pension is required because of an increase in income, which increase could not reasonably have been anticipated based on the amount actually received from that source the year before, the reduction or discontinuance shall be made effective the end of the year in which the increase occurred. Where reduction or discontinuance of a running award of improved pension or dependency and indemnity compensation is required because of an increase in income, the reduction or discontinuance shall be made effective the end of the month in which the increase occurred. Where reduction or discontinuance of a running award of any benefit is required because of an increase in net worth or corpus of estate, because dependency of a parent ceased, or because dependency of another person ceased due to marriage, annulment, divorce or death, the award shall be reduced or discontinued effective the last day of the calendar year in which the increase occurred or dependency ceased. (38 U.S.C. 3012(b))

* * * * *

(b) *Award or increase; income.* Where pension or dependency and indemnity compensation was not paid for a particular year because the claim was disallowed, an award was deferred under §§ 3.260(b) or 3.271(f), payments were discontinued or made at a lower rate based on anticipated or actual income, benefits otherwise payable may be authorized commencing the first of a calendar year as provided in this paragraph. (38 U.S.C. 3010(h).) In all other cases, benefits may not be authorized for any period prior to the date of receipt of a new claim.

* * * * *

(2) *Actual income.* Where the claimant's actual income did not permit payment, or payment was made at a lower rate, for a given year, pension or dependency and indemnity compensation may be awarded or increased, effective the beginning of the next year, if satisfactory evidence is received within that year.

(c) *Increases; change in status.* Where there is change in the payee's marital status or status of dependents which would permit payment at a higher rate and the change in status is by reason of the claimant's marriage or birth or adoption of a child, the effective date of the increase will be the date of the event if the required evidence is received within 1 year of the event. Where there is a change in dependency status for any reason other than marriage, or the birth or adoption of a child, which would permit payment at a higher rate, the increased rate will be effective the date of receipt of notice constituting an informal claim if the required evidence is received within 1 year of Veterans Administration request. The rate payable for each period will be determined, as provided in §§ 3.260(f) or 3.273(c). (See § 3.651 as to increase due to termination of payments to another payee. Also see § 3.667 as to increase based on school attendance.)

(d) *Corpus of estate; net worth.* Where a claim has been finally disallowed or terminated because of the corpus of estate and net worth provisions of §§ 3.263 or 3.274 and entitlement is established on the basis of a reduction in estate or net worth, or a change in circumstances such as health, acquisition of a dependent, or increased rate of depletion of the estate, benefits or increased benefits will not be paid for any period prior to the date of receipt of a new claim.

§ 3.661 [Amended]

28. Section 3.661 is amended by adding "or § 3.271(f)" following "§ 3.260(b)" in paragraph (a)(2).

§ 3.662 [Revoked]

29. Section 3.662 is revoked.

30. Section 3.666 is amended to read as follows:

(a) By deleting "wife, (husband)" and inserting "spouse" in the introductory portion of paragraph (a).

(b) By deleting "widow (widower)" and inserting "surviving spouse" in paragraph (b) (introduction), (b)(1), (b)(2) and in the second sentence of paragraph (c).

(c) By deleting "He (she)" and inserting "The veteran" in paragraph (d) (1) and (2).

(d) By revising paragraph (a)(2) to read as follows:

§ 3.666 Penal institutions.

* * * * *

(a) *Disability pension.* * * *

(2) If the annual income of the spouse or child is such that death pension would be payable.

* * * * *

31. Section 3.700 is amended as follows:

(a) By deleting "of the 1957 looseleaf edition of the Schedule for Rating Disabilities, 1945" and inserting "of the Schedule for Rating Disabilities" in the fourth sentence of paragraph (a)(3).

(b) By adding paragraph (a)(4) and revising paragraph (b) (1) and (2) so that the added and revised material reads as follows:

§ 3.700 General.

* * * * *

(a) Veterans. * * *

(4) *Improved pension.* If a veteran is entitled to improved pension on the basis of the veteran's own service and is also entitled to pension under any pension program currently or previously in effect on the basis of any other person's service, the Veterans Administration shall pay the veteran only the greater benefit. (38 U.S.C. 521(i))

(b) *Dependents.*—(1) *Surviving spouse.* Subject to the provisions of paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse because of the death of any veteran, or receipt of pension or compensation because of his or her own service, shall not bar the payment to the surviving spouse of pension, compensation, or dependency and indemnity compensation because of the death or disability of any other veteran; however, other than insurance, concurrent benefits under laws administered by the Veterans Administration may not be authorized to a surviving spouse by reason of the death of more than one veteran to whom the surviving spouse has been married. The surviving spouse may elect to receive benefits based on the death of one such spouse and the election places the right to benefits based on the deaths of other spouses in suspense. The suspension may be lifted at any time by another election based on the death of another spouse. Benefits payable in the elected case will be subject to prior payments for the same period based on the death of the other spouse where, under the provisions of § 3.400(c), there is entitlement in the elected case prior to date of receipt of the election. (38 U.S.C. 3104)

(2) *Children.* Except as provided in § 3.703 and paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a child on account of the death of a veteran or the receipt by the child of pension or compensation on account of his or her own service will not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other veteran.

* * * * *

32. In § 3.701, paragraph (a) is revised to read as follows:

§ 3.701 Elections of pension or compensation.

(a) *General.* Except as otherwise provided, a person entitled to receive pension or compensation under more than one law or section of a law administered by the Veterans Administration may elect to receive whichever benefit, regardless of whether it is the greater or lesser benefit, even though the election reduces the benefits payable to his or her dependents. Such person may at any time elect or reelect the other benefit. An election by a veteran controls the rights of all dependents in that case. An election by a surviving spouse controls the claims of all children including children over 18 and children not in the custody of the surviving spouse. The election of improved pension by a surviving spouse, however, shall not prejudice the rights of any child receiving an apportionment on December 31, 1978. Termination of a marriage or marital relationship which had been the reason for terminating an award of section 306 or old-law pension does not restore to the surviving spouse the right to receive section 306 or old-law pension. The claimant's entitlement, if otherwise established, is under the current provisions of 38 U.S.C. 541. (38 U.S.C. 210(c))

* * * * *

§ 3.702 [Amended]

33. Section 3.702 is amended by deleting "widow or widower" and inserting "surviving spouse" in the first and second sentence of paragraph (b).

§ 3.708 [Amended]

34. Section 3.708 is amended as follows:

(a) By deleting "widow or widower" and inserting "surviving spouse" in the first sentence of paragraph (a)(3).

(b) By deleting "widow's or widower's" and "widow or widower" and inserting "surviving spouse's" and "surviving spouse" in the last sentences of paragraphs (a)(3) and (b)(1).

35. Section 3.711 is revised to read as follows:

§ 3.711 Improved pension elections.

Except as otherwise provided by this section and § 3.712, a person entitled to receive section 306 or old-law pension on December 31, 1978, may elect to receive improved pension under the provisions of 38 U.S.C. 521, 541, or 542 as in effect on January 1, 1979. An election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit. There is no right of reelection. Any veteran eligible to make an election under this section who is married to a veteran who is also eligible to make such an election may not receive improved pension unless the veteran's spouse also elects to receive improved pension. (Section 306(a)(1) of Pub. L. 95-588, 92 Stat. 2497)

36. Sections 3.712 and 3.713 are added to read as follows:

§ 3.712 Improved pension elections; Spanish American War pensioners.

(a) *Veterans*—(1) *General.* A veteran of the Spanish-American War who meets the service requirements of 38 U.S.C. 512(a) may elect to receive improved pension under 38 U.S.C. 521. A Spanish-American War veteran who elects to receive improved pension is not entitled to the additional rate authorized by 38 U.S.C. 521(g), however. An election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit. There is no right of reelection.

(2) *Aid and attendance.* A veteran of the Spanish-American War who meets the service requirements of 38 U.S.C. 512(a) and who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 512(a) or the monthly rate authorized by 38 U.S.C. 521 as in effect on December 31, 1978,

based on the veteran's current income and net worth. Pension under 38 U.S.C. 521, as in effect on December 31, 1978, is not payable if the current size of the veteran's estate is a bar to payment under § 3.252(b) or if the veteran's income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not required for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change. (38 U.S.C. 512)

(b) *Surviving spouses*—(1) *General.* A surviving spouse of a Spanish-American War veteran eligible for pension under 38 U.S.C. 536 may elect to receive improved pension under 38 U.S.C. 541. An election of improved pension is final when the payee (or the payee's fiduciary) negotiates one benefit check. There is no right of reelection.

(2) *Aid and attendance.* A surviving spouse of a Spanish-American War veteran who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 536 (a) and (b) and 544 or the monthly rate authorized by 38 U.S.C. 541 and 544, as 38 U.S.C. 541 and 544 were in effect on December 31, 1978, based on the surviving spouse's current income and net worth. Pension under 38 U.S.C. 541 and 544, as in effect on December 31, 1978, is not payable if the current size of the surviving spouse's net worth is a bar to payment under § 3.252(b) or if the surviving spouse's income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not required for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change. (38 U.S.C. 536)

§ 3.713 Effective dates of improved pension elections.

(a) *General.* Except as provided in paragraph (b) of this section an election to receive improved pension shall be effective the date of receipt of the election.

(b) *Persons entitled to pension on December 31, 1978.* The effective date of an election to receive improved pension filed before October 1, 1979, by a person entitled to receive either old-law pension or section 306 pension on December 31, 1978, shall be January 1, 1979, or if to the beneficiary's advantage, at any date after January 1, 1979, and before October 1, 1979. The amount of improved pension payable from the effective date of the election shall be reduced by the amount of old-law pension or section 306 pension paid to the beneficiary for such period. (Section 306(d) of Pub. L. 95-588, 92 Stat. 2497.)

§§ 3.955 and 3.956 [Revoked]

37. Sections 3.955 and 3.956 are revoked.

38. Sections 3.960, 3.961 and 3.962 are added to read as follows:

§ 3.960 Section 306 and old-law pension protection.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, any person eligible to elect improved pension under § 3.711 or 3.712 who is in receipt of section 306 or old-law pension on December 31, 1978, shall in the absence of an election to receive improved pension, continue to receive such pension at the monthly rate payable on December 31, 1978.

(b) *Termination.* Pension payable under paragraph (a) of this section shall be terminated for any one of the following reasons:

(1) A veteran pensioner ceases to be permanently and totally disabled.

(2) A surviving spouse pensioner ceases to meet the definition of "surviving spouse" in 38 U.S.C. 101(3).

(3) A child pensioner ceases to meet the definition of "child" in 38 U.S.C. 101(4).

(4) A section 306 pensioner's countable annual income, determined under §§ 3.250 to 3.270, exceeds the applicable amount stated in § 3.26(a).

(5) An old-law pensioner's countable annual income determined under §§ 3.250 to 3.270 exceeds the applicable amount stated in § 3.26(b).

(6) A section 306 pensioner has a net worth of such size that it is reasonable that some part of it be consumed for the pensioner's maintenance. Evaluation of net worth shall be made under § 3.263.

(c) *Reduction.* The pension rate payable under paragraph (a) of this section shall be reduced by the amount of any additional pension payable by reason of a dependent upon the loss of such dependent. A veteran or surviving spouse who no longer has any dependents shall not continue to receive either section 306 pension or old-law pension if countable annual income exceeds the appropriate rate in § 3.26(a)(1) or (2) or (b)(1).

(d) *Finality of termination.* Termination of section 306 pension or old-law pension for one of the reasons listed in paragraph (b) of this section precludes a person from thereafter establishing entitlement under any other pension program except the improved pension program. (Sec. 306 of Pub. L. 95-588, 92 Stat. 2497)

§ 3.961 Claims pending on December 31, 1978.

A claim for pension filed by a veteran, surviving spouse or child which is pending in the Veterans Administration on December 31, 1978, shall be adjudicated under title 38, United States Code as in effect on December 31, 1978. Any benefits determined to be payable are subject to § 3.960. (Sec. 306(c) of Pub. L. 95-588, 92 Stat. 2497)

§ 3.962 Claims filed after December 31, 1978.

(a) *No entitlement prior to January 1, 1979.* A claim for pension filed after December 31, 1978, by a veteran who became totally and permanently disabled after December 31, 1978, or by a surviving spouse or child based on the death of a veteran occurring after December 31, 1978, shall be adjudicated under the provisions of title 38, United States Code as in effect on January 1, 1979 or thereafter.

(b) *Entitlement prior to January 1, 1979.* A claim for pension filed by a veteran after December 31, 1978, and within 1 year after the date on which the veteran became permanently and totally disabled, shall be adjudicated under the provisions of title 38, United States Code as in effect on December 31, 1978, if the veteran became permanently and totally disabled prior to January 1, 1979. A claim for pension filed by a surviving spouse or by a child after December 31, 1978, and within 1 year after the date of death of the veteran through whose relationship claim is made shall be adjudicated under the provisions of title 38, United States Code as in effect on December 31, 1978, if the veteran's death occurred before January 1, 1979. Any benefits determined to be payable to a veteran, surviving spouse or child are subject to § 3.960. (Sec. 306(c) of Pub. L. 95-588, 92 Stat. 2497).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 408

[FRL 1280-6]

Amendment to Final Rule and Response to Petition for Modification for the Tuna Processing Subcategory of the Canned and Preserved Seafood Processing Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to Regulations.