Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942". The effect of this action is to confer veteran status for VA benefit purposes on former members of these groups who were discharged under honorable conditions.

DATES: The effective dates are April 8, 1991, for § 3.7(x)(20) and May 3, 1991, for § 3.7(x)(21), the respective dates on which the Secretary of the Air Force determined that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 401 of Public Law 95-202 authorized the Secretary of Defense to determine whether the service of members of civilian or contractual groups shall be considered active duty for the purposes of all laws administered by VA.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of May 20, 1991, page 23054: Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of June 6, 1991, page 26072: Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942.

VA is issuing a final rule to amend the provisions of 38 CFR 3.7(x). This change is necessary to expand the regulatory provisions in accordance with the April 8, 1991, and May 3, 1991, determinations of the Secretary of the Air Force, which are binding on VA. Because this amendment does not constitute a substantive change, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 18, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 3.7, paragraphs (x) (20) and (21) are added and the authority citation at the end of § 3.7(x) is revised to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95-202.* * * *

(20) Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945.

(21) Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942.

(Authority: Pub. L. 95-202, Sec. 401)

[FR Doc. 91-30276 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AE92

Reduction Because of Hospitalization

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on reductions of pensions of certain veterans receiving institutional care. These amendments are based on recently enacted legislation and further consideration of previous legislation. The intended effect of these amendments is to minimize pension reductions when VA provides institutional care.

EFFECTIVE DATE: The amendments that pertain to Improved Pension rates for certain veterans receiving institutional care are effective February 1, 1990, the date provided by legislation. The amendments pertaining to veterans receiving Section 306 pension who are institutionalized are effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.454 and 3.551 in the **Federal Register** of February 25, 1991 (56 FR 7630-2). Interested persons were invited to submit written comments, suggestions or objections on or before March 27, 1991. As no comments were received, the proposed amendments are adopted with only minor technical changes. Additionally, 38 CFR 3.501(i), concerning the effective dates for reductions based on institutional care, is amended to provide effective dates for reduction upon readmission, and to conform with the newly adopted amendments to 38 CFR 3.551.

Since the publication of the proposed regulation, section 101 of Veterans' Benefits Programs Improvement Act of 1991, Public Law 102-86, amended 38 U.S.C. 5503 (formerly 3203) to provide for reduction of improved pension to $90 rather than $60 monthly for veterans without dependents effective the first of the month following readmission to a domiciliary or nursing home by VA or at VA expense when the readmission is within six months of a period during which there was a required reduction. This technical amendment to section 111 of the Veterans' Benefits Amendments of 1989, Public Law 101–237, is effective the same date as that legislation, February 1, 1990 (See 56 FR 7630–2). The proposed change to § 3.551(e)(2) has been amended to implement this new statutory provision. Because this amendment implements a statutory change, publication as a proposal for public notice and comment is unnecessary.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

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

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.501, paragraphs (i)(3) and (4) are redesignated as paragraphs (6) and (7) respectively, new paragraphs (3), (4) and (5) are added, and paragraphs (1) and (2) are revised to read as follows:

§ 3.501 Veterans.

* * * * *

(i) *Hospitalization.* (1) *Section 3.551(b).* Last day of the sixth calendar month following admission if veteran without dependents.

(2) *Section 3.551(c).* (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (ii) Last day of the third 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. (iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(c)(1), the last day of the month of such readmission.

(3) *Section 3.552(b)* Upon readmission to hospital care within 6 months of a period of hospital care for which pension was affected by the provisions of § 3.552(b)(1) and (2) or § 3.552(k) and discharge or release was against medical advice or was the result of disciplinary action, the day preceding the date of such readmission.

(4) *Section 3.551(d)* (i) Last day of the second 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. (ii) Last day of the third calendar month following admission for hospitalization or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(d)(1) or (2), the last day of the month of such readmission.

(5) *Section 3.551(e)* (i) Last day of the third calendar month following admission to domiciliary or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Upon readmission to domiciliary or nursing home care within 6 months of a period of domiciliary or nursing home care for which pension was reduced under § 3.551(e)(1), the last day of the month of such readmission.

* * * * *

3. In § 3.551 the heading of paragraph (b) is revised, the existing text in paragraph (b) is designated as paragraph (b)(1), and new paragraphs (b)(2) and (b)(3) are added to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(b) *Old-law pension.* * * *

(2) *Readmission following regular discharge.* Where a veteran has been given an approved discharge or release, readmission the next day to the same or any other VA institution begins a new period of hospitalization, unless the veteran was released for purposes of admission to another VA institution.

(3) *Readmission following irregular discharge.* When a veteran whose award is subject to reduction under this paragraph has been discharged or released from a VA institution against medical advice or as a result of disciplinary action, reentry within 6 months from the date of previous admission constitutes a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release shall be considered a new admission.

* * * * *

4. In § 3.551 paragraphs (d), (f), and (g) are redesignated as (f), (g), and (h), respectively, a new paragraph (d) is added, paragraph (e) is revised, and the introductory text of redesignated paragraph (h)(1) is revised to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(d) *Improved pension prior to February 1, 1990.* (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 VA, 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 furnished hospital or

nursing home care by VA, 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 for which pension was reduced under paragraph (d)(1) or (2) of this section. (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) The provisions of paragraphs (d)(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).

(6) For the purpose of paragraphs (d)(1), (2), and (3) of this section, if a veteran is furnished hospital or nursing home care by VA 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 VA 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.

(e) *Improved pension after January 31, 1990.* (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 furnished domiciliary or nursing home care by VA, no pension in excess of $90 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.

(Authority: 38 U.S.C. 3203(a))

(2) No pension in excess of $90 monthly shall be paid to 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 six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) 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).

(Authority: 38 U.S.C. 3203(a))

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e)(1) and (2) 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).

* * * * *

(h) *Hospitalization.* (1) *General.* The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

* * * * *

§ 3.551 [Amended]

5. In § 3.551(a) in the first sentence after the word "reduction" and before the word "when" add the words "as specified below".

§ 3.551 [Amended]

6. In newly redesignated § 3.551(b)(1) remove the phrase "*, and service pension based on entitlement prior to July 1, 1960*" from the heading.

§ 3.551 [Amended]

7. In the heading to § 3.551(c) remove the words "*, improved pension, and service pension based on entitlement after June 30, 1960*". In § 3.551(c)(1) after the word "furnished" and before the word "domiciliary" add the words "hospital, nursing home or", remove the dollar amount "$60" and add in its place the dollar amount "$50".

§ 3.551 [Amended]

8. In § 3.551 remove paragraphs (c)(2) and (4), (6) and (7), and redesignate paragraphs (c)(3) and (c)(5) as (c)(2) and (c)(3), respectively. In the newly redesignated paragraph (c)(2), remove the words "or (2)".

§ 3.551 [Amended]

9. In newly redesignated § 3.551(c)(2) and (c)(3) remove the dollar amount "$60" wherever it appears, and add in its place the dollar amount "$50".

§ 3.551 [Amended]

10. In newly redesignated § 3.551(h)(2) remove the paragraph designations "(c)(2)", "(c)(3)", and "(g)(1)" wherever they appear, and add, in their place, the paragraph designations "(d)", "(e)", and "(h)(1)", respectively.

§ 3.551 [Amended]

11. In newly redesignated § 3.551(h)(3) after the word "monthly" and before the word "payable" add the phrase "or $90, if reduction is under paragraph (e)(1)".

§ 3.454 [Amended]

12. In § 3.454(b)(1) and (c) remove the dollar amount "$60", wherever it appears, and add, in its place, the dollar amount "$50".

§ 3.454 [Amended]

13. In § 3.454(b)(2) and (d) remove "§ 3.551(c)" and add, in its place, "§ 3.551(d) or (e)(2)".

§ 3.454 [Amended]

14. In § 3.454(d) after the word "monthly" add the words "if reduction is under § 3.551(d) or (e)(2), or $90 monthly if reduction is under § 3.551(e)(1)".

15. In § 3.454 add paragraph (b)(3) and its authority citation to read as follows:

§ 3.454 Veterans disability pension.

* * * * *

(b) * * *

(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 521(b) is reduced to $90 monthly under § 551(e)(1) 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 $90 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.

(Authority: 38 U.S.C. 3203(a))

* * * * *

[FR Doc. 91-30274 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

---

38 CFR Part 3

RIN 2900-AE99

Headstone Allowance; Temporary Program of Vocational Training

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning payment of a monetary allowance in lieu of a government-furnished headstone or marker and eligibility for the temporary program of vocational training available to certain pension beneficiaries. These amendments are based on statutory changes which affect these programs. The intended effect of these changes is to expand and extend benefit eligibility.

EFFECTIVE DATE: The amendments are effective December 18, 1989, the date the legislation was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.342 and 3.1612 in the **Federal Register** of May 3, 1991 (56 FR 20394-5). Interested persons were invited to submit written comments, suggestions or objections on or before June 3, 1991. It should be noted that section 8041 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, eliminated the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. As no comments were received, the proposed amendments are adopted with only minor technical amendments.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101 and 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3, subpart A is amended as follows:

PART 3—ADJUDICATION

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

1. The authority citation for part 3, subpart A is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 3.342, in paragraphs (c)(1) and (c)(2) remove the words "age 50" where they appear and add, in their place, the words "age 45"; the authority citation at the end of paragraph (c)(2) is removed; a new paragraph (c)(3) and a new authority citation are added to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(c) * * *

(3) If a veteran secures employment within the scope of a vocational goal identified in his or her individualized written vocational rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, not later than one year after eligibility to counseling under § 21.6040(b)(1) of this chapter expires, the veteran's permanent and total evaluation for pension purposes shall not be terminated by reason of the veteran's capacity to engage in such employment until the veteran has maintained that employment for a period of not less than 12 consecutive months.

(Authority: 38 U.S.C. 1524(c))

3. In § 3.1612, paragraph (e)(3) is redesignated as paragraph (e)(4), and paragraph (e)(2)(iii) is redesignated as paragraph (e)(3); paragraphs (b)(3), (c), (e)(1) and (e)(2)(i) are revised and new authority citations are added at the end of those paragraphs to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(b) * * *

(3) The headstone or marker was purchased to mark the otherwise unmarked grave of the deceased veteran or, if death occurred prior to December 18, 1989, the veteran's identifying information was added to an existing headstone or marker.

(Authority: 38 U.S.C. 2306(d))

* * * * *

(c) *Person entitled to request a Government-furnished headstone or marker.* For purposes of this monetary allowance, the term "person entitled to request a headstone or marker" includes, but is not limited to, the person who purchased the headstone or marker (or if death occurred prior to December 18, 1989, the person who paid for adding the veteran's identifying information to an existing headstone or marker), or the executor, administrator or person representing the deceased's estate.

(Authority: 38 U.S.C. 2306(d))

* * * * *

(e) *Payment and amount of the allowance.*

(1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker If funds

of the deceased's estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent's personal domicile.

(Authority: 38 U.S.C. 2306(d))

(2) * * *

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(Authority: 38 U.S.C. 2306(d))

* * * * *

[FR Doc. 91-30280 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

---

38 CFR Parts 3 and 13

RIN 2900-AF07

Limitation on Compensation Benefits for Certain Incompetent Veterans; Computation of Estate

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication and fiduciary activities regulations concerning the payment of compensation benefits to or for certain incompetent veterans, and the computation of those veterans' estates. This amendment is necessary to implement recently enacted legislation. The intended effect of this amendment is to prohibit the payment of compensation to incompetent veterans without dependents whose estates exceed $25,000, and to clarify how VA will compute the value of the estates of these incompetent veterans.

EFFECTIVE DATE: This amendment is effective November 1, 1990, the date specified in the enacting legislation.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to add a new § 3.853 to 38 CFR and to amend §§ 3.501 and 13.109(d)(5) in the **Federal Register** of June 4, 1991 (56 FR 25399-400). Interested persons were invited to submit written comments, suggestions or objections on or before July 5, 1991. We received one comment from a private individual.

The commenter objected to the proposed regulatory amendments because he believes that, in effect, the statute they implement forces an affected veteran to purchase a home to avoid having his or her benefits terminated. The commenter feels that the regulations should delay termination of benefits until such time as the veteran or his or her fiduciary has exhausted the veteran's procedural due process and appellate rights, or the veteran has an opportunity to purchase a home.

VA does not concur. Section 8001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, added section 5505 (formerly 3205) to title 38, United States Code to prohibit the payment of compensation benefits to or for an incompetent veteran, having neither spouse, child nor dependent parent, whose estate, excluding the value of the veteran's home, exceeds $25,000 until the estate has been reduced to less than $10,000. By excluding the value of the veteran's home from the estate computation, Congress has expressed its intention that no veteran who owns a home should be forced to sell it in order to have sufficient available assets to meet living expenses until the estate has been reduced to less than $10,000. VA finds no sound basis, however, for inferring that Congress intended different effective dates of termination based on whether or not a veteran owns or purchases a home, whether or not, or to what extent, a veteran elects to exercise his or her procedural due process and appellate rights, or any other reason.

The provisions of 38 CFR 3.105(h)(1) specify that if a request for predetermination hearing is received by VA within 30 days from the date of the notice, benefit payments will continue at the previously established level pending a final determination. If the final determination is that the facts warrant the termination of benefit payments, however, the effective date of termination is governed by the applicable provisions of §§ 3.500 through 3.503. Terminating benefits on the last day of the month in which all factors requiring a statutory termination are present is consistent with VA's regulatory policy for other statutory purposes, e.g., incompetent veterans who are hospitalized, institutionalized or domiciled by the United States under the provisions of § 3.557.

The commenter also believes that these regulations should treat estates that exceed $25,000 by a large amount differently than those that exceed $25,000 by only a small amount since large estates will survive until September 30, 1992, the date that 38 U.S.C. 5505 (formerly 3205) expires, relatively intact.

VA does not concur. The Secretary has broad authority under 38 U.S.C. 501(a) (formerly 210(c)) to make all regulations necessary or appropriate to carry out the laws administered by VA, but only to the extent that these regulations are consistent with the governing statutes. Since 38 U.S.C. 5505 (formerly 3205) makes no distinction based on the amount by which estates exceed $25,000, it is beyond VA's authority to create such a distinction in the implementing regulations.

The proposed regulation (See 56 FR 25399-400), in error, referred to the resumption of compensation payments when the affected veteran's estate was reduced to $10,000. The statutory language is clear (See 38 U.S.C. 5505 (formerly 3205)). Compensation payments are to resume when the affected veteran's estate is reduced to less than $10,000. The final regulation has been appropriately amended.

VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the amendment described above and other minor technical amendments.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity,