

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This final rule will not affect any entity since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Claims, Courts, Freedom of information, Government contracts, Privacy, Reporting and recordkeeping requirements.

38 CFR Part 3

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

38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: May 19, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 1, 3, and 9 are amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Part 1 is amended by removing "Servicemen's" wherever it appears, and adding, in its place, "Servicemembers".

PART 3—ADJUDICATION

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

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

4. Part 3 is amended by removing "Servicemen's" wherever it appears, and adding, in its place, "Servicemembers".

PART 9—SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

5. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965-1979, unless otherwise noted.

6. In § 9.2, paragraphs (a) and (b)(1) are revised to read as follows:

§ 9.2 Effective date; applications.

(a) The effective date of Servicemembers' Group Life Insurance will be in accordance with provisions set forth in 38 U.S.C. 1967.

(b) * * *

(1) For members whose Servicemembers' Group Life Insurance coverage ceases under 38 U.S.C. 1968 (a)(1)(A) and 38 U.S.C. 1968(a)(4), the effective date shall be the 121st day after termination of duty. An application and the initial premium must be received by the administrative office within 120 days following termination of duty or separation or release from such assignment.

* * * * *

§ 9.8 [Amended]

7. In § 9.8, paragraph (b) is amended by removing "38 U.S.C. 1968 (a)(4)(B) or".

8. Part 9 is amended by removing "Servicemen's" wherever it appears, and adding, in its place, "Servicemembers".

[FR Doc. 97-17412 Filed 7-2-97; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-A183

Minimum Income Annuity

AGENCY: Department of Veterans Affairs.
ACTION: Interim rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations to provide for payment of the minimum income annuity, authorized by Pub. L. 92-425 as amended, to certain surviving spouses. This amendment is necessary to reflect statutory revisions contained in the National Defense Authorization Act for Fiscal Year 1997 that transfers the responsibility for paying this benefit from the Department of Defense (DoD) to VA.

DATES: *Effective date:* July 1, 1997.

Comment Date: Comments must be received by VA on or before September 2, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A183." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: Pub. L. 92-425 section 4, 86 Stat. 706, 712 (1972) (10 U.S.C. 1448 note), provides for payment of a guaranteed minimum annual income (the so-called minimum-income-widow annuity, hereinafter referred to as the minimum income annuity) to certain surviving spouses of persons entitled to military retired or retainer pay at the time of their death. To be eligible, a person must: (1) Be the surviving spouse of a military retiree who died prior to March 24, 1974; (2) be eligible for VA nonservice-connected death pension; (3) have annual income that is less than the maximum annual rate of pension under 38 U.S.C. 1541(b); and (4) be ineligible to receive an annuity under the Survivor Benefit Plan (10 U.S.C. 1447-1455).

Section 638 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104-201, sec. 638, 110 Stat. 2422, 2581, transfers responsibility for the payment of the minimum income annuity to the Secretary of Veterans Affairs from DoD. However, DoD remains responsible for funding this benefit and determining basic eligibility. This transfer is effective on July 1, 1997, and applies with respect to payments of benefits for any month after June 1997.

Pub. L. 104-201 also provides that the minimum income annuity shall not affect the pension eligibility of the surviving spouse even though, as a result of including the amount of the annuity as pension income, no amount of pension is due. We interpret this provision to mean that an individual is still to be considered "eligible for pension" from VA for purposes of determining basic eligibility for the minimum income annuity even if that

individual's income is excessive for VA pension purposes when the minimum income annuity is added to any other countable income.

We are adding a new section, 3.811, to title 38, Code of Federal Regulations, to reflect these statutory provisions.

Under DoD procedures (DoD Financial Management Regulation, Chapter 10, 91001), the minimum income annuity is payable to surviving spouses receiving Spanish-American War pension without regard to income. Since the pension paid to survivors of Spanish-American War veterans under 38 U.S.C. 1536 is not an income-based program, we will continue to pay the minimum income annuity to those beneficiaries in the same manner as DoD.

Pub. L. 92-425, as amended, specifies that annual income for minimum income annuity purposes is to be determined in the same manner as VA determines income for pension purposes. Consistent with that requirement, we will determine a beneficiary's annual income for the purpose of the minimum income annuity under the provisions of §§ 3.271 and 3.272 for beneficiaries receiving improved pension, or under §§ 3.260 through 3.262 for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

38 U.S.C. 5123 requires VA to round down the amounts of section 306 pension and pension payable under 38 U.S.C. 1521, 1541 and 1542 to the nearest dollar. There is no similar requirement in title 10, United States Code, for computing the minimum income annuity. Therefore, we will not round the monthly minimum income benefit to the nearest whole dollar.

Pub. L. 92-425, as amended, provides that the amount of the minimum income annuity is calculated by subtracting the income of the surviving spouse, exclusive of VA pension, but including benefits payable under 10 U.S.C. 1431-1436 (Retired Servicemen's Family Protection Plan (RSFPP)) from the maximum annual pension rate under 38 U.S.C. 1541(b). Since RSFPP benefits are countable as income for improved pension purposes, for beneficiaries receiving improved pension, VA will determine the minimum income annuity payment by subtracting the annual income for pension purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

Since RSFPP benefits are not countable income for old law and section 306 pensions (See 38 CFR 3.261(a)(14)), for beneficiaries receiving

old law and section 306 pensions, VA will determine the minimum income annuity payment by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of benefits payable under the RSFPP, if any, that the beneficiary receives from DoD and the annual income for pension purposes.

VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b) and whenever there is a change in the beneficiary's income.

Since a beneficiary must be eligible for VA pension in order to be entitled to the minimum income annuity, if the beneficiary's eligibility to nonservice-connected death pension terminates for any reason, VA will terminate the minimum income annuity effective the same date.

We are making this document effective on July 1, 1997. The document contains restatements of statute and interpretive rules which under the provisions of 5 U.S.C. 553 are exempt from prior notice and public comment and delayed effective date provisions.

The Secretary hereby certifies that this regulatory amendment 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. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program number is 64.105.)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: June 4, 1997.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 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, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.811 is added to read as follows:

§ 3.811 Minimum income annuity.

(a) *Eligibility.* The minimum income annuity authorized by Pub. L. 92-425, as amended, is payable to a person:

(1) Who the Department of Defense has determined meets the eligibility criteria of section 4(a) of Pub. L. 92-425, as amended, other than section 4(a)(1) and (2); and

(2) Who is eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) *Computation of the minimum income annuity payment.*—(1) *Annual income.* VA will determine a beneficiary's annual income for minimum income annuity purposes under the provisions of §§ 3.271 and 3.272 of this part for beneficiaries receiving improved pension, or under §§ 3.260 through 3.262 of this part for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) VA will determine the minimum income annuity payment for beneficiaries entitled to improved pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) VA will determine the minimum income annuity payment for beneficiaries receiving old law and section 306 pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b) and whenever there is a change in the beneficiary's income.

(c) An individual otherwise eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, shall be considered eligible for pension for purposes of determining eligibility for the minimum income

annuity even though as a result of adding the amount of the minimum income annuity authorized under Pub. L. 92-425 as amended to any other countable income, no amount of pension is due.

(d) *Termination.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date.

(Authority: Pub. L. 92-425 as amended (10 U.S.C. 1448 note); Sec. 638, Pub. L. 104-201, 110 Stat. 2581)

[FR Doc. 97-17413 Filed 7-2-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Region II, Docket No. 146; NJ23-1-7243(d), FRL-5852-9]

Designation of Areas for Air Quality Planning Purposes; State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the direct final approval, which EPA published on December 7, 1995 (60 FR 62741-62748). Specifically, this document corrects entries to the table in section 81.331 of the Code of Federal Regulations (CFR) for "New Jersey-Carbon Monoxide" which were not made at the time of the final action. The correction does not affect the decisions made in the original final action.

EFFECTIVE DATE: This rule will be effective July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION: EPA published a final action on December 7, 1995 to approve a request by the State of New Jersey to redesignate to attainment of the Carbon Monoxide National Ambient Air Quality Standards (NAAQS) Camden County and the nine not classified areas in New Jersey. The December 7, 1995 final action described the changes to be made to the table entitled "New Jersey-Carbon Monoxide" in § 81.331 of the CFR. However, not all of the changes were made to the table. The updated attainment status for Camden County was made while the changes for the nine not-classified areas in New Jersey were not. This rulemaking, therefore, corrects the table by including the correct attainment status for the nine not-classified areas.

Three of these not-classified areas, the City of Trenton, the City of Burlington and the Borough of Penns Grove (part), are located within the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (CMSA). Five of the not-classified areas, the Borough of Freehold, the City of Morristown, the City of Perth Amboy, the City of Toms River and the Borough of Somerville, are located in the New York-Northern New Jersey-Long Island CMSA. The remaining not-classified area is the City of Atlantic City, which is not contained within a CMSA.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995

(Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

Dated: June 18, 1997.

William J. Muszynski, P.E.

Deputy Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.331, the table for "New Jersey-Carbon Monoxide" is revised to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY-CARBON MONOXIDE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Atlantic City Area: Atlantic County (part): The City of Atlantic City	2/5/96	Attainment.		
Burlington Area: Burlington County (part): City of Burlington	2/5/96	Attainment.		
Freehold Area: Monmouth County (part); Borough of Freehold	2/5/96	Attainment.		
Morristown Area: Morris County (part): City of Morristown	2/5/96	Attainment.		
New York-N. New Jersey-Long Island Area:				