

**V. List of Subjects in 30 CFR Part 944**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 1995.

**Charles E. Sandberg,**

*Acting Assistant Director, Western Support Center.*

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 3**

RIN 2900-AH12

**Exclusions from Income (RECA Payments)**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning income and net worth exclusions. The purpose of the rule is to implement legislation excluding from consideration as countable income and net worth amounts paid to claimants under the Radiation Exposure Compensation Act (RECA). The intended effect of this amendment is to have VA regulations conform to the requirements of that statute.

**EFFECTIVE DATE:** This amendment is effective October 15, 1990, the date specified in Pub. L. 101-426.

**FOR FURTHER INFORMATION CONTACT:** Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** Public Law 101-426, the Radiation Exposure Compensation Act (RECA), was enacted by Congress to compensate individuals who may have suffered adverse health effects from working in uranium mines or living downwind of above-ground nuclear tests. Section 6(h) of that law provides that RECA payments shall not be included as income or resources for

purposes of determining eligibility for benefits described in section 3803(c)(2)(C) of Title 31, United States Code. Title 31 U.S.C. 3803(c)(2)(C)(viii) lists benefits under chapters 11, 13 and 15 of Title 38, United States Code, which governs payment of VA benefits.

VA administers several income-based benefit programs under which a claimant's countable income determines the rate of VA benefits payable. Net worth may also affect eligibility. Those affected by RECA are death compensation (38 U.S.C. chapter 11), Parents' Dependency and Indemnity Compensation (38 U.S.C. chapter 13) and the Improved Pension program (38 U.S.C. chapter 15). Other VA benefits which are income-based, notably the prior pension programs known as the Section 306 and Old Law pension programs, are no longer authorized under those chapters of 38 U.S.C. listed in Public Law 101-426.

VA regulations at 38 CFR 3.271 state that payments of any kind from any source shall be counted as income for purposes of the Improved Pension program unless specifically excluded under 38 CFR 3.272. 38 CFR 3.261(a) indicates whether various categories of income are included or excluded when determining eligibility for Parents Dependency and Indemnity Compensation or pension programs which were in effect prior to January 1, 1979. It also indicates whether various categories of income are included or excluded when determining whether a parent qualifies as a dependent parent for purposes of 38 U.S.C. chapter 11. 38 CFR 3.274 states that Improved Pension shall be denied or discontinued when the corpus of a claimant's estate is such that it is reasonable that some of the estate be used for the claimant's maintenance.

We are amending 38 CFR 3.261, 3.262, and 3.272 to show that RECA payments are excludable from countable income for Parents' Dependency and Indemnity Compensation, the Improved Pension program, and in determining whether a parent is dependent for purposes of 38 U.S.C. chapter 11. We are amending 38 CFR 3.275 to show that

RECA payments are not to be included in computing an Improved Pension claimant's net worth. Net worth is not a factor for Parents' Dependency and Indemnity Compensation. The purpose of this rule is to amend the regulations to be consistent with the provisions of section 6 of Public Law 101-426.

This final rule is made effective without notice and comment since it makes changes merely to reflect statutory requirements.

The Secretary 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 rule will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

**List of Subjects in 38 CFR Part 3**

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

Approved: December 22, 1994.

**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. In § 3.261, a new paragraph (a)(38) is added to read as follows:

**§ 3.261 Character of income; exclusions and estates.**

(a) *Income*

*	*	*	*	*	*	*	*
(38) Income received under Section 6 of the Radiation Exposure Compensation Act (Pub. L. 101-426)	Excluded	Excluded	Included	Included	3.262(w)		
*	*	*	*	*	*	*	*

3. In § 3.262, paragraph (w) and its authority citation are added to read as follows:

**§ 3.262 Evaluation of income.**

\* \* \* \* \*

(w) *Radiation Exposure Compensation Act.* For the purposes of parents' dependency and indemnity

compensation, there shall be excluded from income computation payments under Section 6 of the Radiation Exposure Compensation Act of 1990. (Authority: 42 U.S.C. 2210 note)

4. In § 3.272, paragraph (s) and its authority citation are added to read as follows:

**§ 3.272 Exclusions from income.**

\* \* \* \* \*

(s) *Radiation Exposure Compensation Act*. Any payment made under Section 6 of the Radiation Exposure Compensation Act of 1990.

(Authority: 42 U.S.C. 2210 note)

5. In § 3.275, paragraph (h) and its authority citation are added to read as follows:

**§ 3.275 Criteria for evaluating net worth.**

\* \* \* \* \*

(h) *Radiation Exposure Compensation Act*. There shall be excluded from the corpus of estate or net worth of a claimant any payment made under Section 6 of the Radiation Exposure Compensation Act of 1990.

(Authority: 42 U.S.C. 2210 note)

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OAQPS No. CA-102-3-6756b; FRL-5135-6]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Interim Final Determination That State Has Corrected the Deficiency

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** Elsewhere in today's **Federal Register** EPA has published a notice of proposed rulemaking for full approval of revisions to the California State Implementation Plan. The revisions concern rules from the Placer County Air Pollution Control District (PCAPCD) and the San Diego County Air Pollution Control District (SDCAPCD): PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations. The proposed rulemaking provides the public with an opportunity to comment on EPA's action approving PCAPCD Rules 223 and 410, and SDCAPCD Rule 67.4. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for

which sanctions clocks began on June 16, 1993. This action will defer the application of the offset sanctions and defer the application of the highway sanctions. Although the interim final action is effective upon publication, EPA will take comment. If no comments are received on this action or EPA's proposed approval of the State's submittal, EPA will finalize its determination that the State has corrected the deficiencies that started the sanctions clocks by publishing a notice of final rulemaking in the **Federal Register**. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

**DATES:** Effective Date: January 10, 1995.

**Comments:** Comments must be received by February 9, 1995.

**ADDRESSES:** Comments should be sent to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The State submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

**FOR FURTHER INFORMATION CONTACT:** Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744-1185.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 5, 1991, the State submitted PCAPCD Rule 223, Can Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations, for which EPA published limited disapprovals in the **Federal Register** on June 16, 1993. 58 FR 33196. EPA's disapproval actions started 18-month clocks for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and 24-month clocks for promulgation

of Federal Implementation Plans (FIP) under section 110(c) of the Act. The State subsequently submitted revised rules on October 19, 1994, November 30, 1994, and December 21, 1994. In the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State of California's submittal of PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on the action deferring application of sanctions and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this interim final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clocks that started for these areas on June 16, 1993. However, this action will defer the application of the offsets sanctions and will defer the application of the highway sanctions. See 59 FR 39832 (Aug. 4, 1994). If EPA publishes a notice of final rulemaking fully approving the State's submittal, such action will permanently stop the sanctions clocks and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the proposed full approval based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, to be codified at 40 CFR 52.31.

##### II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the