

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 3**

RIN 2900-AK84

**Exclusion from Countable Income of Expenses Paid for Veteran's Last Illness Subsequent to Veteran's Death but Prior to Date of Death Pension Entitlement****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations governing exclusion of expenses of the veteran's last illness, burial, and just debts from countable income for death pension purposes. This amendment eliminates the prohibition against reducing countable income by the amount of these expenses that the surviving spouse paid after the date of death but prior to the date of his or her entitlement. The intended effect of this amendment is to bring the regulations into conformance with the governing statute as interpreted by VA's General Counsel.

**DATES:** *Effective Date:* February 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, 575 N. Pennsylvania St., Suite 309, Indianapolis, IN 46237, (317) 226-5209 extension 3058.

**SUPPLEMENTARY INFORMATION:** VA death pension is a needs-based benefit available to surviving spouses and unmarried children of deceased veterans with qualifying wartime service. In order for an individual to be eligible for death pension, his or her income from all sources must be less than the maximum annual pension rate established by law. The annual benefit is reduced, dollar for dollar, by the amount of the beneficiary's countable income. All income from any source is counted unless specifically excluded by statute or regulation.

Section 1503(a)(3) of 38 U.S.C. provides for certain exclusions from countable income for death pension entitlement, including an amount equal to the expenses of the veteran's last illness, burial and just debts paid by the spouse or by the surviving spouse or child of a deceased veteran. VA implemented the provisions of 38 U.S.C. 1503(a)(3) at 38 CFR 3.272(h). The last sentence of § 3.272 (h) provides that the amount of expenses of the veteran's last illness, burial, and just debts "paid

subsequent to death but prior to date of entitlement are not deductible."

In a precedent opinion dated March 28, 2000 (VAOPGCPREC 1-2000), VA's General Counsel held that the last sentence of § 3.272(h) is inconsistent with 38 U.S.C. 1503(a)(3) because the statute does not limit the period in which expenses of a veteran's last illness may be deducted in calculating the surviving spouse's death pension entitlement. The General Counsel determined that VA may not deny a death pension claim or reduce the amount of benefits payable based on the last sentence of § 3.272(h) and that VA must revise § 3.272(h) to eliminate the prohibition against reducing the surviving spouse's countable income by the amount of expenses of the veteran's last illness, just debts and burial when paid after the veteran's death but before the date of the surviving spouse's entitlement to death pension. Pursuant to 38 CFR 14.507, a General Counsel precedent opinion is binding on VA. Accordingly, we are amending § 3.272(h) to make it consistent with that General Counsel opinion.

This final rule brings the regulations into conformance with the governing statute as interpreted by VA's General Counsel in a precedent opinion that under 38 CFR 14.507 is binding on VA and the public. Accordingly, since there is no discretion in this matter, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

**Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this regulatory amendment will not directly affect any small entities. 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 flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers are 64.101 and 64.105.

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

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

Approved: November 19, 2001.

**Anthony J. Principi,***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.

**§ 3.272 [Amended]**

2. Section 3.272 is amended by removing the last sentence of paragraph (h) introductory text.

[FR Doc. 02-4687 Filed 2-27-02; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA 169-0323; FRL-7148-8]

**Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 14, 1998 and concerns oxides of nitrogen (NO<sub>x</sub>) emissions from internal combustion engines; stationary gas turbines; and from boilers, steam generators, and process heaters. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

**EFFECTIVE DATE:** This rule is effective on April 1, 2002.**ADDRESSES:** You can inspect copies of the administrative record for this action