



**DATES:** The regulations in 33 CFR 165.845 will be enforced from 8:30 p.m. until 10 p.m. on April 7, 2020.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Lieutenant Commander Corinne Plummer, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2375, email [Corinne.M.Plummer@uscg.mil](mailto:Corinne.M.Plummer@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone located in 33 CFR 165.845 for the Viking Cruise Lines—Paradigm Fireworks Display event from 8:30 p.m. to 10 p.m. on April 7, 2020. This action is being taken to provide for the safety of life on navigable waterways during this event, which will be located between MM 95.6 and MM 96.6 above Head of Passes, Lower Mississippi River, LA. During the enforcement periods, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: March 10, 2020.

**K.M. Luttrell,**

*Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 9

RIN 2900-AQ49

#### Servicemembers' Group Life Insurance—Definition of Member's Stillborn Child for Purposes of Coverage

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending the definition of “member’s stillborn child” for purposes of Servicemembers’ Group Life Insurance (SGLI) to mean a fetus whose fetal weight is 350 grams or more or whose duration in utero is 20 completed weeks of gestation. As a result, a fetus whose duration in utero is 20 completed weeks of gestation but who weighs less than 350 grams qualifies as a “member’s stillborn child.”

**DATES:** *Effective Date:* This rule is effective March 16, 2020.

*Applicability Date:* VA will apply this rule to stillbirths occurring on or after March 16, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Ruth Berkheimer, Department of Veterans Affairs Insurance Center (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842-2000, ext. 4275. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On June 26, 2019, VA published a proposed rule in the **Federal Register** (84 FR 30060), which would amend the Family SGLI definition of the term “member’s stillborn child.” VA provided a 60-day comment period on the proposed rule, which ended on August 26, 2019. VA received more than 300 comments, all of which supported the rulemaking. However, forty-two of the comments, while supporting the proposed rule, included suggestions to revise the proposed rule. VA has organized the issues raised by these commenters by topic.

#### A. Eliminate Weight/Gestation Requirements

Some commenters stated that the final rule should eliminate weight and gestation requirements and cover all stillbirths, while other commenters suggested eliminating the weight requirement in the rule. When section 402 of the Veterans’ Benefits Improvement Act of 2008, Public Law 110-389, 122 Stat. 4145, 4174, was enacted, authorizing Family SGLI for a “member’s stillborn child,” Congress indicated that Family SGLI coverage is not intended to cover all stillborn children. Rather, S. Rep. No. 110-449, at 41 (2008), stated that the Senate “Committee [on Veterans’ Affairs] expects VA to . . . define the term [“member’s stillborn child”] . . . consistent with the 1992 recommended reporting requirements” of fetal deaths of the Model State Vital Statistics Act and Regulations as drafted by the Centers for Disease Control and Prevention’s National Center for Health Statistics. The Model Act recommends a state reporting requirement of fetal deaths involving fetuses weighing 350 grams or more, or if weight is unknown, of 20 completed weeks or more of gestation, calculated from the date the last normal menstrual period began to the date of delivery. Model Act section 15. A regulatory definition of “member’s stillborn child” that contains no weight and/or gestational requirements would be inconsistent with Congressional intent. VA therefore will not make any changes based on these comments.

#### B. Retroactive Family SGLI Coverage

Ten commenters stated that the final rule should provide insurance coverage for stillbirths occurring before promulgation of this regulation. The Administrative Procedure Act generally contemplates rulemaking to apply prospectively, and the term “rule” is defined at 5 U.S.C. 551(4) to mean, in pertinent part, “an agency statement of general or particular applicability and future effect.” It is well-settled that agencies generally lack authority to issue retroactive regulations to implement a new policy absent an express statutory grant of such authority. Although agencies must be free to make and change policies within the boundaries established by Congress, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863-64 (1984), the Supreme Court has held that “[r]etroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

Further, “a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless the power is conveyed by Congress in express terms.” *Id.* “The standard for finding such unambiguous direction is a demanding one.” *Bernklau v. Principi*, 291 F.3d 795, 805 (Fed. Cir. 2002) (quoting *Immigration & Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 316-317 (2001)). For example, in *Liesegang v. Secretary of Veterans Affairs*, 312 F.3d 1368, 1377 n.1 (Fed. Cir. 2002), the U.S. Court of Appeals for the Federal Circuit stated that “settled and binding precedent” precluded the court from giving retroactive effect to a VA regulation creating a presumption of service connection for type-2 diabetes for Vietnam veterans exposed to herbicides. The court stated that 38 U.S.C. 1116, which authorized the regulation at issue, did not contain “express and unambiguous permission” for VA to promulgate a retroactive regulation. *Id.*

VA declines to make this amendment to section 9.1(k)(1) retroactive for the following reasons. VA promulgated 38 CFR 9.1(k)(1) pursuant to 38 U.S.C. 501(a), which provides the Secretary of Veterans Affairs with the authority to prescribe all “necessary” and “appropriate” rules, including interpretative rules, to carry out the laws administered by the VA. That