

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 3****RIN 2900–AR74****Updating Presumptive Radiation Locations Based on the PACT Act****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulations to add more presumptive exposure locations for radiation, as legislated in the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (the PACT Act). The PACT Act expands and extends eligibility for VA benefits for Veterans with toxic exposures, and Sections 401 and 402 specifically ease the evidentiary burden for Veterans who file claims with VA based on radiation exposure in certain locations. This final rule chronicles those sections of the PACT Act in VA regulations.

**DATES:** This final rule is effective March 13, 2023.

**Applicability Date:** This final rule merely restates, in VA regulations, provisions of the PACT Act that took effect on August 10, 2022. Pursuant to that statutory authority, the provisions restated in this final rule shall apply to all applications for benefits received by VA on or after August 10, 2022 or that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on August 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Bryant Coleman, Regulations Analyst; Robert Parks, Chief, Regulations Staff (211), Compensation Service (21C), 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:****I. PACT Act Background**

On August 10, 2022, President Biden signed into law the PACT Act, Public Law 117–168, to improve access to VA benefits for Veterans who were exposed to toxic substances during military service. Specifically, the PACT Act expands and extends eligibility for VA benefits for Veterans with certain toxic exposures. Based on the PACT Act, the following regulations will be updated.

**II. Changes Based on Section 401**

Section 401 of the PACT Act amends 38 U.S.C. 1112(c)(3)(B) by adding a new

clause (v), which adds the cleanup of Enewetak Atoll during the period beginning on January 1, 1977, and ending on December 31, 1980, as a radiation-risk activity. To that effect, VA will add 38 CFR 3.309(d)(3)(ii)(F) to cover the Veterans who participated in cleanup of Enewetak Atoll during this period as radiation exposed Veterans for purposes of presumptions of service connection of certain disabilities by VA. This addition makes VA regulation consistent with 38 U.S.C. 1112(c)(3)(B)(v).

**III. Changes Based on Section 402**

Section 402 of the PACT Act amends 38 U.S.C. 1112(c)(3)(B) by adding a new clause (vi), which adds participation in nuclear response efforts in the vicinity of Palomares, Spain, during the period beginning January 17, 1966, and ending March 31, 1967, as a radiation-risk activity. To that effect, VA will add 38 CFR 3.309(d)(3)(ii)(G) to cover Veterans who participated in this nuclear response near Palomares, Spain, during this period as radiation exposed Veterans for purposes of presumptions of service connection of certain disabilities by VA. This addition makes VA regulation consistent with 38 U.S.C. 1112(c)(3)(B)(vi).

Additionally, Section 402 of the PACT Act adds a new clause (vii) to 38 U.S.C. 1112(c)(3)(B), which adds participation in nuclear response efforts in the vicinity of Thule Air Force Base, Greenland, during the period beginning January 21, 1968, and ending September 25, 1968, as a radiation-risk activity. To that effect, VA will add 38 CFR 3.309(d)(3)(ii)(H) to cover Veterans who participated in this nuclear response near Thule Air Force Base, Greenland, during this period as radiation exposed Veterans for purposes of presumptions of service connection of certain disabilities by VA. This addition makes VA regulation consistent with 38 U.S.C. 1112(c)(3)(B)(vii).

**Administrative Procedure Act**

Because this rule merely restates statutory text enacted by Congress, the Administrative Procedure Act's requirements of notice and an opportunity for public comment, and of a delayed effective date, do not apply. See 5 U.S.C. 553(b)(A); *id.* 553(d)(2). To the extent that notice and comment and a delayed effective date would otherwise be required, the Secretary of Veterans Affairs finds good cause under the provisions of 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule without prior opportunity for public comment and with an immediate effective date. Pursuant to 5 U.S.C. 553(b)(B), notice

and opportunity for public comment are not required with respect to a rulemaking when an agency finds good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Because this rule is limited to incorporating text already enacted by Congress, without change or addition, advance notice and public comment beyond that provided in the legislation itself is unnecessary. Similarly, because this rule merely chronicles in regulation what is already law, there is good cause for the rule to be effective immediately. 5 U.S.C. 553(d)(3).

**Executive Orders 12866 and 13563**

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under E.O. 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

Although this final rule contains collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this

rulemaking constituting any new collection of information or any revisions to the existing collection of information. Specifically, the information collection requirements associated with this final rule are related to the filing of disability benefits claims (VA Form 21–526EZ) as well as Disability Benefits Questionnaires (DBQs) (Groups 3 and 4) which enable claimants to gather the necessary information from treating physicians as to the current symptoms and severity of a disability. The collection of information for 38 CFR 3.309(d)(3)(ii) is currently approved by Office of Management and Budget (OMB) and has been assigned OMB control number 2900–0747.

#### *Assistance Listing*

The Assistance Listing numbers and titles for this rule are 64.101, Burial Expenses Allowance for Veterans; 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

#### *Congressional Review Act*

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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

Claims, disability benefits, health care, pensions, radioactive materials, Veterans, Vietnam.

#### **Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on January 23, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as set forth below:

## **PART 3—ADJUDICATION**

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

■ 1. The authority citation for subpart A continues to read as follows:

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

■ 2. Amend § 3.309 by adding paragraphs (d)(3)(ii)(F) through (H) to read as follows:

#### **§ 3.309 Disease subject to presumptive service connection.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(F) Cleanup of Enewetak Atoll during the period beginning on January 1, 1977, and ending on December 31, 1980.

(G) Onsite participation in the response effort following the collision of a United States Air Force B–52 bomber and refueling plane that caused the release of four thermonuclear weapons in the vicinity of Palomares, Spain, during the period beginning January 17, 1966, and ending March 31, 1967.

(H) Onsite participation in the response effort following the on-board fire and crash of a United States Air Force B–52 bomber that caused the release of four thermonuclear weapons in the vicinity of Thule Air Force Base, Greenland, during the period beginning January 21, 1968, and ending September 25, 1968.

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**BILLING CODE 8320–01–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 86 and 1037**

**[EPA–HQ–OAR–2019–0055; FRL–7165–04–OAR]**

**RIN 2060–AU41**

### **Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** EPA is issuing a correction to a final rule published in the **Federal Register** of Tuesday, January 24, 2023, which will be effective March 27, 2023. The final rule established new emission standards for heavy-duty highway engines, along with several amendments

for a wide range of highway and nonroad engines and vehicles. This document corrects two amendatory instructions. These corrections do not include any substantive change to the final rule.

**DATES:** This correction is effective March 27, 2023.

**ADDRESSES:** Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0055. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at [www.epa.gov/dockets](http://www.epa.gov/dockets).

#### **FOR FURTHER INFORMATION CONTACT:**

Alan Stout, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4805; email address: [stout.alan@epa.gov](mailto:stout.alan@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is making two corrections for inadvertent errors in the amendatory instructions for the final rule:

- Instruction 42 refers to removing 40 CFR part 86, subpart I, for smoke test procedures, but mistakenly identifies section numbers associated with 40 CFR part 86, subpart L, instead of the section numbers associated with 40 CFR part 86, subpart I.

- Instruction 104 refers to amending 40 CFR 1037.125(a), but should have referred more specifically to amending 40 CFR 1037.125 (a) introductory text. Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal