

Plain Language Summary Documents

AR44(F) Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate Matter (Final Rule – This rule is effective November 3, 2023)

[Federal Register](#)

What does the regulation do? This final rule amends Department of Veterans Affairs regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposure to fine particulate matter.

Are the provisions, services, or benefits associated with this rulemaking current practice or new to Veterans? Please explain. The provisions, services and benefits of this final rule became current practice with the publication of the Interim Final Rule ([87 FR 24421](#) April 26, 2022.) The procedures manual has also been updated to reflect the changes ([M21-1 Part VIII, Subpart ii, Chapter 2, Section A, Topic 1h.](#))

Who does it impact? These presumptions would apply to Veterans with a qualifying period of service, *i.e.*, who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War (hereinafter Gulf War), from August 2, 1990, onward, as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War.

Why is it happening/important? The intended effect of this amendment is to ease the evidentiary burden of this population of Veterans who file claims with the VA for these nine rare respiratory cancers.

Why are we doing it? This amendment is necessary to implement a decision by the Secretary of Veterans Affairs that determined there is sufficient evidence to support these cancers as presumptive based on exposure to fine particulate matter during service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary

gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung.

RIN 2900-AR88 Commemorative Plaques and Urns (Proposed Rule)

[Federal Register](#)

What does the regulation do? This proposed rulemaking would implement new statutory authority (by adding 38 C.F.R. § 38.634) for the National Cemetery Administration (NCA) to furnish upon request, either a commemorative plaque or a commemorative urn for a veteran whose cremated remains are not interred in a national cemetery, a state veterans' cemetery, a tribal cemetery, a county cemetery, or a private cemetery. This new benefit was authorized by section 2207 of P. L. 116-315, the "Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020."

Once a commemorative plaque or urn is furnished, the statute prohibits the Department of Veterans Affairs (VA) from interring that veteran in a VA national cemetery or providing a government headstone, marker, or medallion for that veteran in any cemetery. For example, a family may receive a VA commemorative plaque or commemorative urn for the cremated remains of an eligible veteran whose remains are not interred. At the request of the spouse who could not part with the remains, the family purposely deferred interment. When the veteran's eligible spouse dies, the family requests burial in a VA national cemetery for the spouse and veteran. By law, VA is prohibited from interment of the veteran's cremated remains with the spouse in a VA national cemetery and can only inter the spouse, if in those circumstances the family chooses to proceed. Similarly, if a family receives a VA commemorative plaque or urn for the cremated remains of an eligible veteran whose remains are not interred, and the family later inter the veteran in a private cemetery, VA is prohibited from furnishing a VA headstone, marker, and medallion. These examples demonstrate the limitations families must be aware of when requesting a VA commemorative urn or plaque for an eligible deceased veteran whose cremated remains are not interred.

Are the provisions, services, or benefits associated with this rulemaking current practice or new to Veterans? Please explain. Commemorative plaques and urns are new benefits which provide an alternative memorialization for families that do not seek to inter their loved ones. Previously, the only NCA benefit available for deceased veterans if the family of the veteran wanted to retain possession of the remains was a Presidential Memorial Certificate (PMC). Important distinctions exist between the Commemorative Plaque and Urn and NCA's PMC program in that VA

could issue multiple PMCs to multiple individuals on behalf of one veteran, and issuance of the PMC would not have an effect on eligibility for other burial and memorial benefits.

Who does it impact? This rulemaking, which implements 38 U.S.C. § 2306(h), would impact members of a deceased veteran's family who would request either the commemorative plaque or commemorative urn. Some families may find the commemorative plaque or urn commemorating their veteran's service to be a desirable benefit.

NCA anticipates, however, that since receipt of a commemorative plaque or urn for a veteran makes that veteran statutorily ineligible for burial in a VA national cemetery or for a VA provided government headstone, marker or medallion, there will be negative impacts to families if they make an uninformed decision or one member of the family elects the commemorative plaque or urn when other family members desired a more traditional interment option (e.g., burial in a national or state veterans' cemetery with standard government headstone/marker/medallion).

The rulemaking, which implements 38 U.S.C. § 2306(h), would also impact national cemeteries (which will be required to deny burial requests received subsequently for veterans who have been given this benefit) and all other cemeteries (including Arlington National Cemetery and VA grant funded cemeteries) which rely on VA to provide government markers for the graves of veterans. Many of these partners in service to veterans have already expressed their concerns to NCA about how their business practices might be impacted. Arlington National Cemetery, for example, has determined it will not inter veterans who have received a commemorative plaque or urn from VA. (NCA has designed systems to enable all cemeteries to be able to check to see if a plaque or urn has been issued on behalf of a veteran.)

If the benefit becomes popular it could negatively impact businesses that sell urns for the remains of veterans.

Why is it happening/important? Congress created the benefit for veterans whose cremated remains are not interred in a national cemetery, a state veterans' cemetery, a tribal cemetery, a county cemetery, or a private cemetery. VA proposes to make corresponding amendments to its regulations under Part 38, which govern memorialization benefits, to implement the new authority.

Why are we doing it? VA must amend its regulation to be consistent with the law authorizing commemorative urns and plaques. NCA deliberated extensively with the assistance of the Office of General Counsel Benefits Law Group to draft the proposed

rule so that the benefit could be clearly understood by potential applicants and to minimize the potential hazard of unintended forfeitures of benefits, family disputes and duplicate claims.

**2900-AR76 Reevaluation of Claims for Dependency and Indemnity
Compensation
(Final Rule - This rule is effective January 23, 2024)**

[Federal Register](#)

What does the regulation do?

This final rule amends VA's regulations for certain awards of Dependency and Indemnity Compensation (DIC) to incorporate statutory amendments made under Section 204 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 or the Honoring our PACT Act of 2022 (PACT Act). As a result, relevant claimants can elect to have VA reevaluate certain previously denied DIC determinations based on changes that establish or modify a presumption of service connection. Any award following a reevaluation may be made retroactively, as if the new or modified presumption of service connection had been in effect when the original claim was submitted.

Are the provisions, services, or benefits associated with this rule current practice or new to Veterans? Please explain.

The provisions, services or benefits associated with this rule constitute current practice. This rule will only impact the potential effective date for benefits awarded to eligible survivors of Veterans eligible for the PACT Act.

Who does it impact?

This amendment impacts individuals who elect to have VA reevaluate a previously denied claim for DIC benefits that might have been evaluated differently if the new or modified presumption of service connection from a new law or regulation would have been applicable to their claim. Additionally, this amendment also impacts individuals eligible to submit a claim for substitution for a deceased claimant if the deceased claimant had elected to have VA reevaluate their previously denied DIC claim.

Why is it happening/important?

The PACT Act was signed into law on August 10, 2022, which expands eligibility to DIC benefits for certain survivors. This final rule updates VA's regulations to conform with the legislative changes in the PACT Act and allows relevant claimants the option of having VA reevaluate certain previously denied DIC claims based on a new or modified presumption of service connection.

Why are we doing it?

This regulation is needed to appropriately determine DIC eligibility for relevant claimants and to align VA's regulations with the applicable changes enacted by the PACT Act. VA has created FAQs to provide further information regarding the impact of this new regulation. VA would like to highlight the following FAQs:

1. What is the relationship of this new regulation to the PACT Act?

This new regulation, 38 CFR 3.33, codifies Section 204 of the PACT Act. Section 204 added new section 1305 to 38 of the United States Code which states that whenever a law, regulation, or Federal court decision establishes or modifies a presumption of service connection, VA will identify claims that were submitted and denied prior to the date on which the law went into effect and notify potentially entitled beneficiaries. This regulation would allow for the reevaluation of previously denied claims for DIC at the election of the claimant, and award benefits "as if the establishment or modification of the presumption of service connection had been in effect on the date of the submission of the original claim." Therefore, if VA is able to award benefits as a result of a request for reevaluation, the effective date of the award will be based on the date that the original claim was submitted to maximize the retroactive benefit due to the survivor.

2. Are there limitations on claims that are eligible for a reevaluation under this regulation?

The provisions within the new regulation based on Section 204 of the PACT Act are limited to the reevaluation of a previously denied claim for DIC. These provisions do not apply to a pending claim for DIC which was received by VA but not yet decided, nor do they apply to a claim for disability compensation submitted by a Veteran. Due to the limitations in the PACT Act itself, this regulation cannot extend retroactivity to the original filing date following a request to reevaluate a pending claim for DIC that has not yet been decided nor for a Veteran's disability compensation claim.

VA identifies that exceptions to this requirement are provided in Section 404 of the PACT Act. This section prescribes two service-connected presumptive diseases related to herbicide exposure, hypertension and Monoclonal Gammopathy of Undetermined Significance, which would allow VA to pay retroactive benefits for an initial DIC claim which was received, but not yet decided, prior to the enactment of the PACT Act. The effective date in this scenario would be the earlier of the following dates: the date the initial claim was received, or the first day of the month of the Veteran's death if the claim is received within a year of the Veteran's death.

Finally, VA does wish to provide that a separate rulemaking by VA will address disability compensation benefits for Veterans. The separate rulemaking on disability compensation benefits will have its own public notice-and-comment periods.

3. How does this regulation impact a claim for accrued or substitution?

The PACT Act did not include any provisions which would amend the legal constraints for the accrued or substitution process. Therefore, any request for the reevaluation of a previously denied DIC claim would follow the regular processes regarding accrued benefits and substitution.

The language within the PACT Act specifically allows for a reevaluation only at the election of the original claimant who was previously denied their DIC claim. Therefore, a potential substitute cannot elect a reevaluation if the original claimant had not made such an election prior to their death. As such, an individual seeking accrued benefits or substitution could continue a claim for DIC reevaluation only if an election for reevaluation of a previously denied DIC claim was pending at the time of the original claimant's death.