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for Book B of your set of  
Federal Regulations**

Title 38, Part 3

*Adjudication*

**Veterans Benefits Administration**

Supplement No. 98

Covering period of *Federal Register* issues  
through December 1, 2011

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# GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

## Supplemental Materials for *Book B*

Code of Federal Regulations

Title 38, Part 3

*Adjudication*

## Veterans Benefits Administration

Supplement No. 98

5 December 2011

Covering the period of Federal Register issues  
through December 1, 2011

When **Book B** was originally prepared, it was current through final regulations published in the *Federal Register* of 9 August 1991. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which begins on page B-5 of Book B, *Adjudication*.

**To ensure accuracy and timeliness of your materials,  
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page B-5) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page B-4.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page B-5)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

<b>FILING INSTRUCTIONS</b>
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**Book B, Supplement No. 98  
December 5, 2011**

*Remove these  
old pages*

*Add these  
new pages*

*Section(s)  
Affected*

**Do not file this supplement until you confirm that  
all prior supplements have been filed**

3.810-1 to 3.811-3

3.810-1 to 3.811-2

§3.810

**Be sure to complete the  
*Supplement Filing Record* (page B-5)  
when you have finished filing this material.**

## HIGHLIGHTS

### Book B, Supplement No. 98 December 5, 2011

**Note:** Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

**Supplement frequency:** This Book B (*Adjudication*) was originally supplemented four times a year, in February, May, August, and November. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

### **Modifications in this supplement include the following:**

1. On 16 November 2011, the VA published a final rule, effective 16 December 2011, to amend its regulations regarding clothing allowances. Change:
  - In §3.810, revised paragraph (a).



**§3.810 Clothing allowance.**

(a) Except as provided in paragraph (d) of this section, a veteran who has a service-connected disability, or a disability compensable under 38 U.S.C. 1151 as if it were service connected, is entitled, upon application therefore, to an annual clothing allowance, which is payable in a lump sum, as specified in this paragraph.

(1) *One clothing allowance.* A veteran is entitled to one annual clothing allowance if—

(i) A VA examination or a hospital or examination report from a facility specified in § 3.326(b) establishes that the veteran, because of a service-connected disability or disabilities due to loss or loss of use of a hand or foot compensable at a rate specified in § 3.350(a), (b), (c), (d), or (f), wears or uses one qualifying prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) which tends to wear or tear clothing; or

(ii) The Under Secretary for Health or a designee certifies that—

(A) A veteran, because of a service-connected disability or disabilities, wears or uses one qualifying prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) which tends to wear or tear clothing; or

(B) A veteran uses medication prescribed by a physician for one skin condition, which is due to a service-connected disability, that causes irreparable damage to the veteran's outergarments.

(2) *More than one clothing allowance; multiple types of garments affected.* A veteran is entitled to an annual clothing allowance for each prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) or medication used by the veteran if each appliance or medication—

(i) Satisfies the requirements of paragraph (a)(1) of this section; and

(ii) Affects more than one type of article of clothing or outergarment.

(3) *Two clothing allowances; single type of garment affected.* A veteran is entitled to two annual clothing allowances if a veteran uses more than one prosthetic or orthopedic appliance, (including, but not limited to, a wheelchair), medication for more than one skin condition, or an appliance and a medication, and the appliance(s) or medication(s)—

(i) Each satisfy the requirements of paragraph (a)(1) of this section; and

(ii) Together tend to wear or tear a single type of article of clothing or irreparably damage a type of outergarment at an increased rate of damage to the clothing or outergarment due to a second appliance or medication.

(b) Effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. Subsequent annual payments for those meeting the eligibility requirements of paragraphs (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement.

(c) (1) Except as provided in paragraph (c)(2) of this section, the application for clothing allowance must be filed within 1 year of the anniversary date (August 1) for which entitlement is initially established, otherwise, the application will be acceptable only to effect payment of the clothing allowance becoming due on any succeeding anniversary date for which entitlement is established, provided the application is filed within 1 year of such date. The 1-year period for filing application will include the anniversary date and terminate on July 31 of the following year.

(2) Where the initial determination of service connection for the qualifying disability is made subsequent to an anniversary date for which entitlement is established, the application for clothing allowance may be filed within 1 year from the date of notification to the veteran of such determination. (Authority: 38 U.S.C. 1162)

(d) If a veteran is incarcerated in a Federal, State, or local penal institution for a period of more than 60 days and is furnished clothing without charge by the institution, VA shall reduce the amount of the annual clothing allowance by 1/365th of the amount otherwise payable for each day the veteran was incarcerated during the 12-month period preceding the anniversary date for which entitlement is established. No reduction shall be made for the first 60 days of incarceration. (Authority: 38 U.S.C. 5313A)

[37 FR 19134, Sept. 19, 1972, as amended at 39 FR 2362, Jan. 21, 1974; 49 FR 28242, July 11, 1984; 56 FR 5756, Feb. 13, 1991; 62 FR 35422, July 1, 1997; 76 FR 70885, Nov. 16, 2011]

**Supplement *Highlights* reference:** 30(1), 98(1).

**§3.811 Minimum income annuity and gratuitous annuity.**

(a) *Eligibility for minimum income annuity.* The minimum income annuity authorized by Public Law 92-425 as amended is payable to a person:

(1) Whom the Department of Defense or the Department of Transportation has determined meets the eligibility criteria of section 4(a) of Pub. L. 92-425 as amended other than section 4(a)(1) and (2); and

(2) Who is eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) *Computation of the minimum income annuity payment:*

(1) *Annual income.* VA will determine a beneficiary's annual income for minimum income annuity purposes under the provisions of §§3.271 and 3.272 of this part for beneficiaries receiving improved pension, or under §§3.260 through 3.262 of this part for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) VA will determine the minimum income annuity payment for beneficiaries entitled to improved pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) VA will determine the minimum income annuity payment for beneficiaries receiving old law and section 306 pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b), and whenever there is a change in the beneficiary's income.

(c) An individual otherwise eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 shall be considered eligible for pension for purposes of determining eligibility for the minimum income annuity even though as a result of adding the amount of the minimum income annuity authorized under Public Law 92-425 as amended to any other countable income, no amount of pension is due.

(d) If the Department of Defense or the Department of Transportation determines that a minimum income annuitant also is entitled to the gratuitous annuity authorized by Pub. L. 100-456 as amended, which is payable to certain surviving spouses of servicemembers who died before November 1, 1953, and were entitled to retired or retainer pay on the date of death, VA will combine the payment of the gratuitous annuity with the minimum income annuity payment.

(e) *Termination.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date. (Authority: §4, Pub. L. 92-425, 86 Stat. 706, 712, as amended (10 U.S.C. 1448 note))

[62 FR 35971, July 3, 1997, as amended at 63 FR 412, Jan. 6, 1998; 63 FR 62943, Nov. 10, 1998]

**Supplement *Highlights* references:** 30(3), 32(1), 35(1).