

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary zone § 165.T11–176 to read as follows:

#### § 165.T11–176 Safety Zone; Coronado Fourth of July Fireworks; San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone are all the navigable waters within 1200 feet of the fireworks barge located in Glorietta Bay at approximately 32°40.68' N, 117°10.18' W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: May 5, 2009.

T.H. Farris,

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. E9–13107 Filed 6–4–09; 8:45 am]

BILLING CODE 4910–15–P

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

RIN 2900–AN25

#### Severance Pay, Separation Pay, and Special Separation Benefits

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations to incorporate relevant statutory provisions regarding severance pay, separation pay, and special separation benefits. These amendments are necessary to conform the regulation to statutory provisions.

#### DATES:

*Effective Date:* These amendments are effective June 5, 2009.

*Applicability Date:* The amendment to 38 CFR 3.700(a)(3) applies to members of the Armed Forces separated under 10 U.S.C. chapter 61 on or after January 28,

2008. The amendment to 38 CFR 3.700(a)(5) applies to payments of special separation benefits made on or after December 5, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725.

**SUPPLEMENTARY INFORMATION:** We are amending 38 CFR 3.700 to implement statutory changes.

#### 38 CFR 3.700(a)(3)—Disability Severance Pay

Section 1212 of title 10, United States Code, which authorizes disability severance pay, generally requires that the amount of disability severance pay received for a disability be deducted from any VA compensation awarded for the same disability. However, the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, Div. A, Title XVI, Subtitle D, section 1646(b), amended 10 U.S.C. 1212 to provide that no deduction may be made from VA compensation for disability severance pay received for disabilities incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Department of Defense (DoD). The DoD designation of whether a disability was incurred in a combat zone or incurred during performance of duty in combat-related operations will govern only whether a deduction may be made from VA compensation paid for the disability for which disability severance pay was received. VA will continue to determine whether the disability resulted from disease or injury incurred or aggravated in line of duty in active service for purposes of determining entitlement to VA disability compensation. The amendment applies to members of the Armed Forces separated from the Armed Forces under Chapter 61 of title 10, United States Code, on or after January 28, 2008.

Section 3.700(a)(3) is VA's regulation governing offset of disability severance pay from VA compensation. Generally, an award of compensation will be made subject to recoupment of any disability severance pay received for the same disability. We are adding to the regulation a new provision specifying that there will be no recoupment of disability severance pay for disabilities identified by the DoD as being incurred in combat zones or during performance of duty in combat-related operations.

Because of the amendments to 38 U.S.C. 1212 made by the National Defense Authorization Act for Fiscal Year 2008, the authority for § 3.700(a)(3) has changed from section 1212(c) to section 1212(d). We are making this change in the authority citation in the regulation.

### **38 CFR 3.700(a)(5)—Separation Pay and Special Separation Benefits**

In Public Law 102–190, section 661(a)(1), effective December 5, 1991, Congress added the special separation benefits program to be carried out by the DoD. See 10 U.S.C. 1174a.

To avoid duplication of benefits resulting from the special separation benefits program, section 1174a(g) makes the provisions of 10 U.S.C. 1174(h)(2) applicable to special separation benefits. Section 1174(h)(2) states that a member who has received separation pay based on service in the Armed Forces shall not be deprived, by reason of his receipt of such pay, of any disability compensation to which he is entitled under the laws administered by VA, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay received. In Public Law 104–201, section 653, Congress amended section 1174(h)(2) by providing that the amount deducted from disability compensation would be the total amount of separation pay received less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding). This amendment was made applicable to payments of separation pay made after September 30, 1996.

In 1998, Congress enacted Public Law 105–178, section 8208, which extended the applicability of the amendment made by Public Law 104–201 to any payment of special separation benefits under section 1174a made during the period beginning on December 5, 1991, and ending on September 30, 1996.

In 2002, VA revised its regulation concerning concurrent benefits, 38 CFR 3.700, to incorporate the offset requirements, including the reduction of the amount of offset by the amount of Federal income tax withheld from separation pay or special separation benefits. 67 FR 60867 (Sept. 27, 2002). However, VA did not specify that the reduction for Federal income tax withheld was applicable to payments of special separation benefits made on or after December 5, 1991. Nonetheless, VA's practice has been to recoup the after-tax amount since December 5, 1991. We are now amending the regulation to conform to the statute and

current practice. We are amending § 3.700(a)(5) by creating a new § 3.700(a)(5)(iii) that will address special separation benefits, and we will remove the special separation benefits references from current § 3.700(a)(5)(i).

We will also add a clarification in § 3.700(a)(5) for both separation pay and special separation benefits that the Federal income tax withholding amount is at the flat withholding rate for Federal income tax withholding, to ensure the regulations accurately reflect the statute.

### **Administrative Procedures Act**

This final rule merely restates statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and the delayed effective date provisions of 5 U.S.C. 553.

### **Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

### **Regulatory Flexibility Act**

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### **Executive Order 12866**

Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of

recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action.

### **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 year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

### **Catalog of Federal Domestic Assistance Numbers and Titles**

The Catalog of Federal Domestic Assistance program number and title for this rule is 64.109, Veterans Compensation for Service-Connected Disability.

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

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

Approved: April 29, 2009.

**John R. Gingrich,**

*Chief of Staff, Department 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.

■ 2. Amend § 3.700 as follows:

■ a. In paragraph (a)(3), add a sentence at the end of the paragraph and revise its authority citation.

■ b. In paragraph (a)(5)(i), remove “or special separation benefits” and “under section 1174a” each place it appears, and add a sentence at the end of the paragraph.

■ c. Remove the authority citation at the end of paragraph (a)(5)(ii).

■ d. Add paragraph (a)(5)(iii) and an authority citation.

The revision and additions read as follows:

**§ 3.700 General.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \* For members of the Armed Forces who separated under Chapter 61 of title 10, United States Code, on or after January 28, 2008, no recoupment of severance pay will be made for disabilities incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Department of Defense.

(Authority: 10 U.S.C. 1174(h)(2) and 1212(d))

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \* The Federal income tax withholding amount is the flat withholding rate for Federal income tax withholding.

\* \* \* \* \*

(iii) Where payment of special separation benefits under 10 U.S.C. 1174a was made on or after December 5, 1991, VA will recoup from disability compensation an amount equal to the total amount of special separation benefits less the amount of Federal income tax withheld from such pay. The Federal income tax withholding amount is the flat withholding rate for Federal income tax withholding.

(Authority: 10 U.S.C. 1174 and 1174a)

\* \* \* \* \*

[FR Doc. E9-13212 Filed 6-4-09; 8:45 am]

BILLING CODE 8320-01-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3 and 4

RIN 2900-AN22

#### Pension Management Center Manager

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) regulations to add the Pension Management Center Manager as a person who, in addition to the Veterans Service Center Manager, is authorized to review decisions on benefit claims and authorized to approve permanent and total disability evaluations on an extraschedular basis for pension purposes. These changes are made to reflect the duties of the Pension Management Center Manager.

**DATES:** *Effective Date:* June 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Kniffen, Chief, Regulations

Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9725.

**SUPPLEMENTARY INFORMATION:** In fiscal year 2002, all VA pension management activities were consolidated from the VA's Regional Offices to three Pension Management Centers (PMCs), which are located in Philadelphia, Pennsylvania, Milwaukee, Wisconsin, and St. Paul, Minnesota. Recently, VA has decided to consolidate nearly all of its pension activities (including original pension claims processing), which were previously done at regional office Veterans Service Centers (VSCs), to the PMCs.

Therefore, most activities involving pension that would previously have been within the duties of the Veterans Service Center Manager (VSCM) at the VSC will be transferred to the Pension Management Center Manager (PMCM) at the PMC. This rulemaking amends 38 CFR 3.2600, as well as 38 CFR 3.321 and 4.17, to reflect the position of the PMCM as the person authorized to perform these activities. Specifically, these activities are reviewing benefit decisions under § 3.2600 and determining entitlement to permanent and total disability ratings, on an extraschedular basis, for pension purposes under § 3.321(b)(2) and § 4.17(b). Adding the PMCM as a person authorized to perform these activities allows claims involving both compensation and pension to be processed at either the PMC or the VSC, as appropriate.

We are not intending any substantive change to the regulations, merely including the new position of the PMCM in VA's regulations.

#### Administrative Procedure Act

This document is being published as a final rule pursuant to 5 U.S.C. 553, which excepts matters pertaining to internal agency management and personnel from its notice, comment, and delayed effective date requirements.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule would not affect any small entities.

Only VA's internal procedures for processing claims of individuals will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Executive Order 12866-Regulatory Planning and Review

Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### 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 year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.104, Pension for