

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling 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 Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. An “Environmental Analysis Check List” and “Categorical Exclusion Determination (CED)” are available in the docket where indicated under ADDRESSES.

List of Subjects 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L.

107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 165.T14–149 to read as follows:

§ 165.T14–149 Safety zone; Kealakekua Bay, HI.

(a) *Location.* The following area, in U.S. navigable waters within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10), from the surface of the water to the ocean floor, is a safety zone: All waters of Kealakekua Bay from the shore to a line drawn from the Captain Cook Monument to the Hikiau Heiau landmark on Napo‘opo‘o Beach.

(b) *Effective dates.* This safety zone is effective from 10 a.m. (HST) on October 25, 2006 until 12 a.m. (HST) on April 18, 2007.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary safety zone.

(e) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: October 25, 2006.

V.B. Atkins,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu.

[FR Doc. E6–19557 Filed 11–17–06; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM13

Phase-In of Full Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation for Certain Military Retirees

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations concerning concurrent receipt of military retired pay and veterans’

disability compensation. This final rule implements section 641 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). This law permits certain veterans who are entitled to military retired pay and are receiving disability compensation for a service-connected disability (or a combination of service-connected disabilities) rated at 50 percent or higher to receive disability compensation as well as their military retired pay. The intended effect of the regulation is to clearly state who is eligible for concurrent receipt of disability compensation and military retired pay, who must waive military retired pay to receive disability compensation, and how to file such a waiver.

DATES: *Effective Date:* This amendment is effective November 20, 2006.

FOR FURTHER INFORMATION CONTACT:

Maya Ferrandino, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: On July 7, 2005, VA published in the **Federal Register** (70 FR 39213) a proposal to revise VA’s rules concerning concurrent receipt of military retired pay and veterans’ disability compensation. Interested persons were invited to submit written comments on or before September 6, 2005. We received comments from six members of the public. Subsequently, on January 6, 2006, Congress further amended section 1414 of title 10, United States Code, by enacting section 663 of Public Law 109–163, the National Defense Authorization Act for Fiscal Year 2006. This Notice first explains why we have made changes based on the comments to the July 7, 2005, notice of proposed rulemaking, and then explains changes necessitated by section 663 of Public Law 109–163.

Comments to July 7, 2005, Notice of Proposed Rulemaking

Three commenters stated support for concurrent receipt. These commenters did not suggest any changes to the proposed rule, and we make no change based on these comments.

Two commenters questioned the 20-year service requirement for the program, and why those who are medically retired from the military, with less than 20 years of service, have to give up their retired pay in order to receive disability compensation. Title 10 U.S.C. 1414(b)(2) clearly precludes persons medically retired with less than 20 years of service from concurrently

receiving retired pay and VA benefits. Thus, in this rulemaking, VA is simply implementing existing law passed by Congress. VA does not have authority to change the eligibility requirements provided by statute regarding the concurrent receipt of retired pay and VA benefits for retired veterans. However, we have removed the general 20-year-service requirement from proposed § 3.750(b)(1) because 10 U.S.C. 1414 contains no such requirement.

Moreover, because we believe that several of the comments, as well as our own internal review during the comment period, suggest a need for some clarification as to the waivers required by 10 U.S.C. 1414 of persons retired under chapter 61 of title 10, U.S.C., we have slightly modified the structure and language of § 3.750(b)(2). Paragraph (b)(2) now clearly states that persons retired under chapter 61 must comply with any waivers required by § 3.750(c) as well as any waivers required by 38 U.S.C. 5304 and 5305, which are explicitly applicable to chapter 61 retirees under 10 U.S.C. 1414(b)(1). We also clarify in paragraph (c) the types of waivers applicable to persons who are eligible for both retired pay and disability compensation. These changes directly implement statutory language, which is not susceptible to a different interpretation, and simply clarify the regulation previously proposed, without changing the rights and obligations governed by that regulation.

One commenter stated that the amendment to 10 U.S.C. 1414 made by section 641 of Public Law 108–136 will also affect 10 U.S.C. 1408, The Uniformed Services Former Spouses Protection Act, Public Law 97–252, 96 Stat. 730 (1982)), which is administered by the Department of Defense (DoD). The commenter asserted that, in affecting section 1408, the new provisions will affect State, local or tribal governments as they independently adjudicate civil court marital separation agreements and divorce decrees, which are required to address protection of a military service person's rights. This comment is outside of the scope of the proposed regulation. The commenter suggested no changes to the regulation; the comment questioned a statute's effect on another, tangentially related statute that is outside VA's authority. Therefore, we make no change based on this comment.

In paragraph (a), we changed, "For the purposes of this section," to read, "For the purposes of this part," because all part 3 references to military retired pay meet this definition. Also in paragraph (a), we changed "classified as military

retired pay" to "classified as retired pay" to clarify that the service department need not use the specific adjective "military" in its classification. No substantive change is intended by this clarification.

Changes Necessitated by Section 663 of Public Law 109–163

On January 6, 2006, section 663 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, amended section 1414 of title 10, United States Code. Section 663 permits certain veterans who are eligible for military retired pay and for veterans' disability compensation for 100-percent disability based on a determination of individual unemployability to receive concurrent payment of both military retired pay and disability compensation subject to the phase-in period during the period beginning on January 1, 2004, and ending on September 30, 2009. VA adjudicates individual unemployability claims under 38 CFR 4.16. Based on this change in law, we have included veterans receiving disability compensation based on a VA determination of individual unemployability under 38 CFR 4.16 in section (b)(1), and added language to section (c)(ii) concerning the phase-in period to incorporate this provision into the rule.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted as a final rule with the changes noted above.

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. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could 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

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 Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is 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 rulemaking are 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

Approved: August 10, 2006.

Gordon H. Mansfield,
Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

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. Revise § 3.750 to read as follows:

§ 3.750 Entitlement to concurrent receipt of military retired pay and disability compensation.

(a) *Definition of military retired pay.* For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration.

(b) *Payment of both military retired pay and disability compensation or improved pension—(1) Compensation.* Subject to paragraphs (b)(2) and (b)(3) of this section, a veteran who is entitled to military retired pay and disability compensation for a service-connected disability rated 50 percent or more, or a combination of service-connected disabilities rated at 50 percent or more, under the schedule for rating disabilities (38 CFR part 4, subpart B), or based on a determination of individual unemployability under 38 CFR 4.16, is entitled to receive both payments subject to the phase-in period described in paragraph (c) of this section.

(2) *Chapter 61 disability retirees retiring with 20 or more years of service.* Disability retired pay payable under 10 U.S.C. Chapter 61 to a veteran with 20 or more years of creditable service may be paid concurrently with disability compensation to a qualifying veteran subject to the following:

(i) Any waiver required during the phase-in period under paragraph (c)(1)(ii) of this section; and

(ii) If the veteran's disability retired pay exceeds the amount of retired pay the veteran would have received had the veteran retired based on length of service, the veteran must waive that excess amount of disability retired pay in order to receive VA disability compensation.

(3) *Chapter 61 disability retirees retiring with less than 20 years of service.* Veterans who receive disability retired pay under 10 U.S.C. Chapter 61 with less than 20 years of creditable service are not eligible for concurrent receipt.

(4) *Improved Pension.* A veteran may receive improved pension and military retired pay at the same time without having to waive military retired pay. However, in determining entitlement to improved pension, VA will treat

military retired pay in the same manner as countable income from other sources.

(c) *Waiver—(1) When a waiver is necessary.* (i) A waiver of military retired pay is necessary in order to receive disability compensation when a veteran is eligible for both military retired pay and disability compensation but is not eligible under paragraphs (b)(1) or (b)(2) of this section to receive both benefits at the same time.

(ii) All veterans who are eligible to receive both military retired pay and disability compensation at the same time under paragraphs (b)(1) or (b)(2) of this section, except those receiving compensation for a disability rated 100 percent, must file a waiver in order to receive the maximum allowable amount of disability compensation during the phase-in period. For veterans receiving disability compensation based on a VA determination of individual unemployability, the phase-in period ends on December 30, 2009. For all other veterans, the phase-in period ends on December 31, 2013. After the phase-in period, veterans retired under 10 U.S.C. chapter 61 who are eligible for concurrent receipt must still file a waiver under the circumstances described in paragraph (b)(2)(ii) of this section.

(Authority: 10 U.S.C. 1414, 38 U.S.C. 5304, 5305)

(2) *How to file a waiver of military retired pay.* A veteran may request a waiver of military retired pay in any written, signed statement, including a VA form, which reflects a desire to waive all or some military retired pay. The statement must be submitted to VA or to the Federal agency that pays the veteran's military retired pay. VA will treat as a waiver an application for VA compensation filed by a veteran who is entitled to military retired pay.

(d) *Elections and the right to reelect either benefit.* (1) A veteran who has filed a waiver of military retired pay under this section has elected to receive disability compensation. A veteran may reelect between benefits covered by this section at any time by submitting a written, signed statement to VA or to the Federal agency that pays the veteran's military retired pay.

(2) An election filed within 1 year from the date of notification of Department of Veterans Affairs entitlement will be considered as "timely filed" for effective date purposes. See § 3.401(e)(1). If the veteran is incompetent, the 1-year period will begin on the date that notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if

the claimant was not advised of his or her right of election and its effect.

(Authority: 38 U.S.C. 5304(a), 5305)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AZ-06-01; FRL-8243-8]

Notice of Resolution of Notice of Deficiency for Clean Air Operating Permits Program; Maricopa County, AZ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of resolution.

SUMMARY: EPA issued a notice of deficiency on May 17, 2005, in which EPA identified problems with Maricopa County's Clean Air Act title V operating permits program and a timeframe for the County to correct these deficiencies. The Maricopa County Air Quality Department submitted corrections to its permit program in quarterly updates beginning in February 2006 and in a final submittal dated October 20, 2006. This notice announces that, based on information provided by Maricopa County Air Quality Department, EPA concludes that Maricopa County has resolved all of the issues identified in the May 17, 2005 Notice of Deficiency. As a result, EPA will not impose sanctions set forth under the mandatory sanctions provisions of the Clean Air Act. In addition, EPA will not promulgate, administer, and enforce a whole or partial operating permit program pursuant to the title V regulations of the Clean Air Act within two years after the date of the finding of deficiency.

DATES: *Effective Date:* November 9, 2006. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Anna Yen, EPA, Region 9, Air Division (AIR-3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3976, or r9airpermits@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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