

In order to protect the safety of life and property on the navigable waters during this event, the Coast Guard is establishing a safety zone around the fireworks launching barge on the waters of the Willamette River from river mile 12.8 to river mile 13.1 between the Morrison and Hawthorne Bridges. Entry into this zone will be prohibited unless authorized by the captain of the Port. This safety zone will be enforced by representatives of the Captain of the Port Portland. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the entry into the safety zone will only be restricted for less than 3 hours on the day of the event. The entities most likely to be affected by this action are commercial tug and barge operators on the Willamette River. Most of these entities are aware of the fireworks display and the safety zone, and they can schedule their transits accordingly. If safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact of this final rule to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule

will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule and has concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T13015 is added to read as follows:

§ 165.T13015 Safety Zone; Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: All waters on the Willamette River between the Morrison and Hawthorne Bridges from river mile 12.8 to river mile 13.1, Portland, Oregon.

(b) The designated representative of the Captain of The Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer

on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates:* This section becomes effective on June 2, 1995, at 8:45 p.m. (PDT) and terminate on June 2, 1995, at 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port. If inclement weather causes the fireworks display to be postponed, the regulation will be effective on June 4, 1995, from 8:45 p.m. (PDT) to 11:10 p.m. (PDT), unless sooner terminated by the Captain of the Port.

Dated: May 9, 1995.

C.E. Bills,

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

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF03

Line of Duty

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

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning service connection for disabilities incurred or aggravated in line of duty. This amendment is necessary to implement legislation which precludes the establishment of service connection for any condition that results from the abuse of alcohol or drugs by the person on whose service benefits are claimed.
EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 8052 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Pub. L. 101-508, amended 38 U.S.C. 105(a), 110 (recodified as 1110) and 331 (recodified as 1131) to provide that injuries or diseases resulting from the abuse of alcohol or drugs by the person on whose service benefits are claimed will not be considered incurred in line of duty and thus are not compensable by VA as service-connected disabilities.

On March 1, 1994, VA published a proposal in the **Federal Register** (59 FR 9719) to amend its adjudication regulations at 38 CFR 3.1 and 3.301 to provide that injuries or diseases incurred or aggravated during service as a result of the abuse of alcohol or drugs will not be considered incurred or aggravated in line of duty for purposes of service connection. Interested persons were invited to submit written comments, suggestions or objections on or before May 2, 1994. We received two comments: One from the Disabled American Veterans and one from a concerned individual.

One commenter expressed agreement with the amendment as proposed and suggested no changes.

The other commenter recommended that VA include within the body of the regulations the statutory direction that the amendments apply only to claims filed after October 31, 1990. We concur with that recommendation and have added appropriate language to the regulations at 38 CFR 3.1(m) and 3.301(a).

The same commenter noted that the *Veterans Benefits Administration Manual M 21-1* and VBA Circular 21-90-12 provide that alcohol- or drug-related disabilities will be considered service-connected if alcohol abuse is a manifestation of a service-connected disability such as post traumatic stress disorder, or if drug abuse arose out of therapy for a service-connected disability. He stated that these are substantive rules that should be included in the amendment to § 3.301.

The manual and circular provisions which the commenter cited are examples of the application of 38 CFR 3.310(a), which provides that disability that is proximately due to or the result of a service-connected disease or injury shall be service-connected and that when service connection is thus established for a secondary condition the secondary condition shall be considered a part of the original condition. In circumstances such as those raised by the commenter, VA is required by § 3.310(a) to consider conditions that it has determined are

secondary to a service-connected condition to be part of that service-connected condition rather than a result of the abuse of alcohol or drugs. Since that requirement is established elsewhere in VA's regulations, it is unnecessary to incorporate those provisions into § 3.301.

The same commenter, citing the *Diagnostic and Statistical Manual of Mental Disorders* (Third Edition—Revised, 1987), (DSM-III-R), published by the American Psychiatric Association, stated that, at the time Congress enacted OBRA 1990, alcohol abuse had an established definition. The commenter implied that this definition was so well established as to constitute the meaning Congress intended when it enacted OBRA 1990, and suggested that, to the extent that VA's definition of alcohol abuse is inconsistent with the established definition, VA's definition exceeds the authority of the Secretary of Veterans Affairs to promulgate regulations. The commenter suggested that the definitions of alcohol abuse and drug abuse in DSM-III-R be adopted by VA.

While the DSM-III-R definitions may have been widely accepted in the medical community, they were intended for diagnostic and statistical purposes. There is no evidence to suggest that Congress had these diagnostic criteria in mind at the time OBRA 1990 was enacted. Rather, Congress clearly intended that no service-connected benefits would be granted for disability or death resulting from drug or alcohol abuse, whether from pathology due to long-term use, or from traumatic effects related to acute intoxication.

Nevertheless, we have further considered the meaning of the terms alcohol abuse and drug abuse in OBRA 1990. Congress did not define either term in OBRA 1990, and the legislative history does not indicate that Congress intended the terms to mean anything other than their commonly understood meanings. Therefore, we have concluded that Congress intended these terms to have their ordinary, contemporary, common meanings. We think that the definition of drug abuse in the proposed rule accurately reflects Congress' intent and, accordingly, have adopted the proposed definition in the final rule. However, we think that the definition of alcohol abuse in the proposed rule does not accurately reflect Congress' intent, since that definition differs from the common meaning. Therefore, we have changed the definition of alcohol abuse in the final rule to more accurately reflect the meaning we think Congress intended, i.e., "the use of alcoholic beverages over

time, or such excessive use at any one time, sufficient to cause disability to or death of the user." Under these circumstances, the definition of alcohol abuse constitutes an interpretative rule and need not be published as a proposed rule for notice and comment.

VA appreciates the comments submitted in response to the proposed rule which is now adopted with the changes noted above.

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 amendment will directly affect VA beneficiaries, but will not directly affect small business. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

(The Catalog of Federal Domestic Assistance program number is 64.109).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: May 12, 1995.

Jesse Brown,
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.

§ 3.1 [Amended]

2. In § 3.1(m), in the first sentence, remove the period at the end of the sentence and insert, in its place, "or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs."

§ 3.301 [Amended]

3. In § 3.301(a), at the end of the paragraph, remove the period and insert, in its place, "or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs."

4. In § 3.301(c), revise the heading to read as follows: “*Specific applications; willful misconduct.*”

5. In § 3.301(c)(3), after the third sentence, add a new sentence in parenthesis to read as follows: “(See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.)”; and in the fourth sentence, remove the words “Similarly, where” and add, in their place, the word “Where”.

6. In § 3.301, add a new paragraph (d) and an authority citation to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(d) *Line of duty; abuse of alcohol or drugs.* An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs by the person on whose service benefits are claimed. For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))

[FR Doc. 95-12644 Filed 5-23-95; 8:45 am]

BILLING CODE 8320-01-P

38 CFR Part 3

RIN 2900-AH38

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect a statutory change which authorizes VA to accept the report of a private physician’s examination that is otherwise adequate for rating purposes to establish entitlement to compensation or pension benefits.

EFFECTIVE DATE: This amendment is effective November 2, 1994, the date that Public Law 103-446, the Veterans’ Benefits Improvements Act of 1994, became effective.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations

Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: On November 2, 1994, the Veterans’ Benefits Improvements Act of 1994 was signed into law. Section 301 of that statute created 38 U.S.C. 5125, which authorizes the Secretary of Veterans Affairs to accept the report of a private physician’s examination that is otherwise adequate for rating purposes to establish entitlement to compensation or pension benefits. This document amends 38 CFR 3.157, 3.326, 3.327, and 3.352 in order to reflect that statutory authority.

38 CFR 3.157(b)(2) is amended to remove the requirement that a private physician’s statement be confirmed by a VA examination prior to granting service connection for a disability. 38 CFR 3.326(d) is amended to show that a private physician’s statement may be accepted for rating any compensation or pension claim as long as it is adequate for rating purposes. 38 CFR 3.327(b)(1) is amended to remove the requirement that at least one VA examination be made in every case in which compensation benefits are awarded. 38 CFR 3.352(b)(1) is amended to remove the requirement that a veteran’s need for the special aid and attendance benefit under 38 U.S.C. 1114(r) must be determined by a Department of Veterans Affairs physician.

Administrative Procedure Act

This final rule amends VA regulations merely to reflect statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities since it merely reflects a statutory change.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: May 17, 1995.

Jesse Brown,

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.

§ 3.157 [Amended]

2. In § 3.157, the last sentence in paragraph (b)(2) is removed.

3. In § 3.326, paragraph (d) is revised to read as follows:

§ 3.326 Examinations.

* * * * *

(d) A statement from a private physician that includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and laboratory tests as appropriate, may be accepted for rating any claim without further examination, provided it is otherwise adequate for rating purposes.

(Authority: 38 U.S.C. 5125)

§ 3.327 [Amended]

4. In § 3.327, the first two sentences in paragraph (b)(1) are removed.

§ 3.352 [Amended]

5. In § 3.352, paragraph (b)(1)(iv) is removed.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Ky-83-6927a; FRL-5184-7]

Approval and Promulgation of Implementation Plans State: Kentucky Approval of Revisions to State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state implementation plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources