

Dated: October 23, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8-25815 Filed 10-28-08; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 726

[USN-2008-0009]

RIN 0703-AA85

Payments of Amounts Due Mentally Incompetent Members of the Naval Service

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy amends its rules to update existing sections relating to the authority and procedures to designate trustees for Navy and Marine Corps service members who have been determined to be mentally incompetent pursuant to 37 U.S.C. Chapter 11. The amendments will comport with current policy reflected in Chapter XIV of the Manual of the Judge Advocate General (JAGMAN).

DATES: This rule is effective October 29, 2008.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Tanya M. Cruz, JAGC, U.S. Navy, Office of the Judge Advocate General (Administrative Law), Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone: 703-614-7245.

SUPPLEMENTARY INFORMATION: The Department of the Navy published a proposed rule at 73 FR 38350 on July 7, 2008, to amend regulations concerning the authority and procedures to designate trustees for members of the Naval service who have been determined to be mentally incompetent in accordance with 37 U.S.C. Chapter 11. As a result of organizational change in the Office of the Judge Advocate General, the functions under Chapter XIV were transferred from the Judge Advocate General to the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), Office of Continuing Government Activity (CGA). No comments on the proposed rule were submitted. Accordingly, the Department of the Navy amends its rules concerning the authority and procedures to designate trustees for Navy and Marine

Corps service members who have been determined to be mentally incompetent pursuant to 37 U.S.C. Chapter 11. It has been determined that this rule amendment is not a major rule within the criteria specified in Executive Order 12866, as amended by Executive Order 13258, and does not have substantial impact on the public.

Matters of Regulatory Procedure

Executive Order 12866, "Regulatory Planning and Review." It has been determined that the changes to 32 CFR part 726 are not considered a "significant regulatory action." The rule does not:

(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 the 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 this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4). It has been certified that 32 CFR part 726 does not contain a Federal Mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601). It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the processing of the proper administrative processing and consideration of claims on behalf of and against the United States, and does not economically impact the Federal government's relations with the private sector.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35). This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320). U.S.C. Chapter 35).

Executive Order 13132, "Federalism". It has been certified that 32 CFR part 726 does not have federalism

implications as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 726

Administrative practice and procedure, Military personnel, Reporting and recordkeeping requirements, Trusts and trustees.

■ For the reasons set forth in the preamble, the Department of the Navy amends 32 CFR part 726 as follows:

PART 726—PAYMENTS OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

■ 1. The authority citation for 32 CFR part 726 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5013, and 5148; 37 U.S.C. 601-604, and 1001; 32 CFR 700.105 and 700.312.

§ 726.1 [Amended]

■ 2. Section 726.1 is amended by removing the words "title 11 of chapter 37" and adding the words "Chapter 11 of Title 37" in their place.

§ 726.2 [Amended]

■ 3. Section 726.2 is amended by adding three new sentences to the end of paragraph (a) to read as follows:

§ 726.2 Scope.

(a) * * * The Secretary of the Navy has authority to designate a trustee in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a State court of competent jurisdiction (37 U.S.C. 601-604). This authority is exercised by the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), who has delegated it to DFAS-CL, Office of Continuing Government Activity (DFAS-CL(CGA)). Trustees receive the active duty pay and allowances, amounts due for accrued or accumulated leave, and retired pay or retainer pay, that are otherwise payable to a member found by competent medical authority to be mentally incapable of managing his affairs.

* * * * *

§ 726.3 [Amended]

■ 4. Section 726.3 is amended by removing "The Judge Advocate General or his designee" and adding "DFAS-CL (CGA)" in its place.

■ 5. Section 726.4 is revised to read as follows:

§ 726.4 Procedures.

(a) *Competency Board.* (1) The commanding officer of the cognizant Naval medical facility will convene a board of not less than three Medical Department officers or physicians, one of whom will be a Navy psychiatrist or clinical psychologist, when there is evidence that a member may be incapable of handling his financial affairs. The board will be convened in accordance with Chapter 18, Manual of the Medical Department (MANMED). The board may include members of the Reserve components on active or inactive duty. When active duty Navy or Marine Corps members are hospitalized in non-Naval medical facilities, the Military Medical Support Office will ensure compliance with Chapter 18, MANMED.

(2) DFAS-CL(CGA) may request the commanding officer of any Naval medical facility, or request the commanding officer of another service medical facility or administrator of a Department of Veterans Affairs medical facility, convene a competency board in accordance with this section to determine the mental capability of a member to manage his financial affairs.

(3) A finding of restoration of competency or capability to manage personal and financial affairs may be accomplished in the same manner specified in Chapter 18, MANMED, except that the board may consist of one or two Medical Department officers or physicians, one of whom must be a Navy psychiatrist or clinical psychologist.

(4) At least one officer on the competency board, preferably the psychiatrist or clinical psychologist, will personally observe the member and ensure that the member's medical record, particularly that portion concerning his mental health, is accurate and complete.

(5) The requirement to convene a competency board under this chapter is in addition to and separate from the medical board procedures. Each board member signs the report of the board and certifies whether the member is or is not mentally capable of managing his financial affairs. After approval by the convening authority, the original board report is forwarded to DFAS-CL(CGA).

(b) *Records.* The convening authority will forward the original of each board report to the Defense Finance and Accounting Service-Cleveland Center, Office of Continuing Government Activity (Code CGA), Post Office Box 998021, Room 2323, Cleveland, OH

44199-80216. If a member is found to be not mentally capable of managing his financial affairs, the forwarding endorsement will set forth the name, relationship, address, and telephone number(s) of the member's next of kin, and any other information that will assist to identify a prospective trustee.

■ 6. Section 726.5 is revised to read as follows:

§ 726.5 Procedures for designation of a trustee.

Upon receipt of a report of a competency board that a member has been found mentally incapable of managing his financial affairs, DFAS-CL(CGA) will initiate action to appoint a trustee, provided no notice of appointment of a committee, guardian, or other legal representative by a State court of competent jurisdiction has been received by DFAS-CL(CGA).

■ 7. Section 726.6 is revised to read as follows:

§ 726.6 Travel orders.

The Chief of Naval Personnel or the Deputy Commandant, Manpower & Reserve Affairs, may issue travel orders to a member to appear before a competency board convened to determine whether the member is mentally capable of managing his financial affairs. In the case of permanently retired members, travel will be at no cost to the Government.

■ 8. Section 726.7 is revised to read as follows:

§ 726.7 Status of pay account.

Upon notification by the commanding officer of the medical facility preparing the board report that a member has been declared mentally incapable of managing his financial affairs, DFAS-CL(CGA) will suspend the member's pay. Thereafter, DFAS-CL(CGA) or his designee will direct payment of monies to:

- (a) The appointed trustee;
- (b) The legal representative appointed by a State court of competent jurisdiction; or
- (c) Directly to the member following a determination the member is capable of managing his financial affairs.

■ 9. Section 726.8 is revised to read as follows:

§ 726.8 Emergency funds and health and comfort.

Until a trustee is appointed, DFAS-CL(CGA) may appoint the member's designated next of kin to receive emergency funds equal to, but not to

exceed the amount of pay due the incompetent member for a period of one month. These funds will be deducted from the member's pay account and will be used for the benefit of the member and any legal dependents.

■ 10. Section 726.9 is revised to read as follows:

§ 726.9 Reports and supervision of trustees.

(a) *Accounting reports.* The trustee designated by DFAS-CL(CGA) will submit accounting reports annually or at such other times as DFAS-CL(CGA) or his designee directs. DFAS-CL(CGA) will provide forms to be used by trustees for the required accounting report. The report will account for all funds received from the Navy or Marine Corps on behalf of the member. When payments to a trustee are terminated for any reason, the trustee will submit a final accounting report to DFAS-CL(CGA). Upon approval of the final accounting report, the trustee and the surety will be discharged from liability.

(b) *Failure to submit a report and default.* If an accounting report is not received by the date designated by DFAS-CL(CGA) or an accounting is unsatisfactory, DFAS-CL(CGA) will notify the trustee in writing. If a satisfactory accounting is not received by DFAS-CL(CGA) within the time specified, the trustee will be declared in default of the trustee agreement and will be liable for all unaccounted trustee funds. If a trustee is declared in default of the trustee agreement, DFAS-CL(CGA) will terminate payments to the trustee and, if necessary, a successor trustee may be appointed. The trustee and surety will be notified in writing by DFAS-CL(CGA) of the declaration of default. The notification will state the reasons for default, the amount of indebtedness to the Government, and will demand payment for the full amount of indebtedness. If payment in full is not received by DFAS-CL(CGA) within an appropriate period of time from notification of default, the account may be forwarded to the Department of Justice for recovery of funds through appropriate civil action.

Dated: October 21, 2008.

T.M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8-25675 Filed 10-28-08; 8:45 am]

BILLING CODE 3810-FF-P