

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of 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 would be 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.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation because this rule establishes a safety zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be 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 set out 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. From February 20, 2006 to February 23, 2006 add temporary § 165.T17–124 to read as follows:

**§ 165.T17–124 Alaska Aerospace Development Corporation, Safety Zone; Gulf of Alaska, Narrow Cape, Kodiak Island, AK.**

(a) *Description.* The established safety zone includes the navigable waters in the vicinity of Narrow Cape and Ugak Island, within the boundaries defined by a line drawn from a point located at

57°29.8' North, 152°17.0' West, then southeast to a point located at 57°21.1' North, 152°11.2' West, then southwest to a point located at 57°19.9' North, 152°14.2' West, and then northwest to a point located at 57°25.4' North, 152°28.2' West, and then northeast to the point located at 57°29.8' North, 152°17.0' West. All coordinates reference Datum: NAD 1983.

(b) *Enforcement periods.* The safety zone in this section will be enforced from 2 a.m. to 10:30 a.m. during each day of a four-day launch window period from February 20, 2006 to February 23, 2006.

(c) *Regulations.* (1) The Duty Officer at Marine Safety Detachment, Kodiak, Alaska can be contacted at telephone number (907) 486–5918.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone without first obtaining permission from the Captain of the Port or his on-scene representative. The Captain of the Port, Western Alaska, on-scene representative may be contacted at Marine Safety Detachment Kodiak.

Dated: January 31, 2006.

**M.R. DeVries,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

[FR Doc. 06–1438 Filed 2–15–06; 8:45 am]

**BILLING CODE 4910–15–P**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

**RIN 2900–AK65**

#### Filipino Veterans' Benefits Improvements

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by three Public Laws. First, Public Law 106–377, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, changed the rate of compensation payments to certain veterans of the Philippine Commonwealth Army and recognized guerrilla forces, who reside in the

United States. Second, Public Law 106–419, the Veterans Benefits and Health Care Improvement Act of 2000, changed the amount of monetary burial benefits that VA will pay to survivors of certain veterans of the Philippine Commonwealth Army and recognized guerrilla forces who lawfully reside in the United States at death. This document adopts with changes the interim final rule published in the **Federal Register** on December 27, 2001 at 66 FR 66763.

This document additionally implements Public Law 108–183, the Veterans Benefits Act of 2003, and solicits comments on this regulatory amendment only. This public law added service in the Philippine Scouts as qualifying service for payment of compensation, dependency and indemnity compensation (DIC) and monetary burial benefits at the full-dollar rate, and provided for payment of DIC at the full-dollar rate to survivors of certain veterans of the Philippine Commonwealth Army and recognized guerrilla forces who lawfully reside in the United States.

**DATES:** *Effective Date:* February 16, 2006.

*Comment Date:* Comments on the regulatory amendments in this rulemaking which implement Public Law 108–183 only must be received on or before March 20, 2006.

**ADDRESSES:** Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (OOREG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to “RIN 2900-AK65.” All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Bill Russo, Chief, Regulations Staff, Compensation and Pension Service (211D), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7211.

**SUPPLEMENTARY INFORMATION:** To implement Public Law 106–377 and Public Law 106–419, VA published an interim final rule in the **Federal Register** for notice and comment (see 66 FR 66763). We received written comments from the American Coalition

for Filipino Veterans, Inc.; the Disabled American Veterans; and two congressmen. Based on the rationale set forth in the interim final rule and in this document, we are adopting the provisions of the interim final rule as a final rule with the changes discussed below. We are also including in this final rule amendments to 38 CFR 3.40, 3.42, 3.43, 3.405, 3.505, and 3.1600 to implement provisions from Public Law 108–183 that relate to Filipino veterans. Public Law 108–183, the Veterans Benefits Act of 2003 was enacted subsequent to publication of the interim final rule. The provisions in the Public Law relate to Filipino veterans, therefore, we find it appropriate to include the amendments in this final rule. As well, the amendments are restatements of statutes and, as such, do not require publication for public notice and comment.

#### Street Address Requirement

The interim final rule required that Filipino veterans and their survivors have a valid street address where they receive mail to prove that they are residing in the United States. Two commenters noted that some veterans and survivors do not have a street address because they are either homeless or live in a home that is mobile, such as a motor home or boat. One commenter stated that some veterans and survivors choose not to receive mail at their home address because “mail security” at that address is questionable.

VA has established procedures for ensuring that homeless claimants and claimants without mailing addresses receive benefit payments. As stated in 38 CFR 1.710(d), if a claimant is homeless or does not have a mailing address, benefit payments and correspondence will be sent to the VA Agent Cashier of the Regional Office that adjudicated or is adjudicating the veteran’s or survivor’s claim, or to any other VA Agent Cashier that VA deems appropriate. Additionally, a homeless veteran or survivor may elect to receive correspondence from VA at General Delivery in a United States Postal Service (USPS) facility. As VA has acknowledged that having a valid street address is not a requirement for receipt of benefit payments, we agree that the requirement in the interim final rule of having a valid street address at which mail is received is overly restrictive. Accordingly, we have revised §§ 3.42 and 3.43 to remove the requirement that a Filipino veteran or survivor must reside at a valid street address and receive mail at that address to be

eligible for VA benefits at the full-dollar rate.

Three commenters objected to the provision in § 3.42(c)(4) that stated that VA would not pay benefits at the full-dollar rate if a veteran’s or survivor’s mailing address was a Post Office box, unless the USPS did not deliver mail to the veteran’s or survivor’s street address. They asserted that the provision was arbitrary and capricious, and contrary to 38 U.S.C. 5126, which provides that VA may not deny benefits on the basis that a claimant does not have a mailing address. One commenter stated that § 3.42(c)(4) would also bar payment of benefits at the full-dollar rate if the veteran or survivor had a General Delivery mailing address.

As stated above, we agree that the requirement in the interim final rule of having a valid street address at which mail is received is overly restrictive and we have removed that provision from the final rule. We believe this change addresses the commenters’ concerns regarding 38 U.S.C. 5126. The issue addressed by § 3.42(c)(4) is whether a Post Office box mailing address constitutes evidence that a Filipino veteran, or his or her survivor, is “residing in the United States.” We believe that it does not constitute such evidence. A Post Office box is essentially rented space. The box can be rented in any Post Office that has space available, and the box does not have to be in the Post Office that provides delivery service to the renter’s residential address. A person who resides outside the United States can rent a Post Office box inside the United States. Although a valid mailing address in the United States is initially required to rent a Post Office box, there is no requirement that the renter remain in the United States or maintain a residence at that address. Access to a Post Office box does not require the physical presence of the renter. Physical possession of the key to the box or knowing the combination to the lock on the box is all that is required for access. Therefore, having a Post Office box as a mailing address does not establish that a person resides in the United States. Nevertheless, for reasons previously discussed, we have removed the requirement that a Filipino veteran or survivor must receive mail at a valid street address to be eligible for VA benefits at the full-dollar rate.

Section 3.42(d)(4) provides that if mail from VA is returned by the USPS, VA will reduce payments to \$0.50 for each dollar authorized. Two commenters objected to this provision. One commenter suggested that VA should take steps to verify that the

address of record is the most current address before reducing benefits. The other commenter simply called the provision arbitrary and unlawful. We disagree with the commenter's assertion that the provision is in any way arbitrary or unlawful, but we agree that VA should ensure that the mail was sent to the correct address before reducing benefits. Therefore, we have added language to § 3.42(d)(4) and § 3.505(d) that requires VA to make reasonable efforts to determine the correct mailing address. If VA is unable to determine the correct mailing address after reasonable efforts, VA may reduce benefit payments to \$0.50 for each dollar authorized.

VA requires proof of lawful U.S. residency to establish eligibility for VA benefits at the full-dollar rate. One commenter urged VA to use the Social Security Administration's regulation, 20 CFR 416.1603, How to prove you are a resident of the United States, as guidance for alternative ways to prove residency if the Department has "reason to question" that a claimant or beneficiary is residing in the United States.

We agree that the examples listed in that Social Security Administration regulation and similar examples listed in Department of Homeland Security regulations at 8 CFR 244.9, may be relevant evidence of residency. We have decided to use several of the examples from these two regulations, selecting those which are most commonly available to Filipino veterans and their survivors. We have not used the exact wording contained in those regulations; instead we have summarized them in both §§ 3.42(c)(4) and 3.43(c)(4).

#### **Requiring U.S. Citizenship and Immigration Services Verification of Naturalization or Permanent Residence Status**

After VA published the interim final rule, the Immigration and Naturalization Service (INS) was transferred to the Department of Homeland Security and renamed the U.S. Citizenship and Immigration Services (USCIS). We will refer to the USCIS when responding to comments concerning the INS. We also made non-substantive clarifying amendments to the rule to reflect this change.

One commenter described "data integrity" problems at USCIS, quoting a portion of a 2001 Government Accountability Office (GAO) report regarding USCIS's data on immigration applications. This same commenter stated that there is no evidence that the USCIS will be able to provide verification directly to VA in a timely

manner and there is a GAO audit finding that it will likely not be able to do so accurately.

The referenced material from the GAO report concerns USCIS processing of immigration applications. It does not concern USCIS's ability to identify individuals to whom it has granted citizenship or resident alien status. Upon VA's request, USCIS verifies the citizenship or alien status of a Filipino veteran or survivor. We have not experienced any problems in receiving timely and accurate verification of citizenship or alien status from USCIS. USCIS generally responds to VA's requests for verification data within one work day of the request. Therefore, no changes are warranted based on this comment.

One commenter suggests that some Filipino veterans and survivors may meet the USCIS criteria for a presumption of permanent residence as persons who "have been lawfully admitted for permanent residence even though a record of his admission cannot be found," under 8 CFR 101.1, Aliens and Nationality, Presumption of lawful admission. This commenter stated that VA should require USCIS confirmation of naturalized citizenship or permanent resident alien status only if the Filipino veteran or survivor is unable to produce adequate alternative documentation of status.

USCIS is the Federal agency with responsibility for granting citizenship or resident alien status, and for maintaining records on alien residents and naturalized citizens. VA has no authority to determine that a veteran has adequate alternative documentation of citizenship or permanent resident alien status under 8 CFR 101.1 and thus relies exclusively upon USCIS's verification, even if that verification is based upon USCIS's presumption of residency. Since USCIS timely responds to VA's requests for verification of citizenship or resident alien status, there is no need to seek alternative documentation of that status. No changes in the interim final rule are warranted based on this comment.

Two commenters noted that USCIS does not require that employers request USCIS verification of citizenship or permanent resident alien status. Instead, USCIS allows employers to accept documentation such as a United States passport or Permanent Residence card.

We agree that since the United States Department of State requires proof of U.S. citizenship before issuing a passport, VA may accept a valid passport as proof that a veteran or survivor is a citizen of the United States. Accordingly, we have amended

§§ 3.42(c)(2) and 3.43(c)(2) to reflect that either USCIS verification or a valid United States passport is sufficient proof that a veteran or survivor is a citizen of the United States.

We do not agree that a Permanent Residence card is sufficient proof of lawful residence in the United States. VA's responsibility under Public Laws 106-377, 106-419, and 108-183 to pay full-dollar rate benefits to Filipino veterans and survivors who are either citizens or permanent resident aliens is inherently different than the responsibility of employers to verify resident alien status for employment purposes. In addition, Permanent Residence cards may be forged. Because such cards may not be the most reliable evidence, we decline to accept them as sufficient proof of residency.

#### **Length-of-Residency Requirements**

Three commenters felt that the length-of-residency requirements in the interim final rule were too stringent. Two of these commenters disagreed with the provisions in §§ 3.42 and 3.43 that require the discontinuance of full-dollar rate benefits if a Filipino veteran is absent from the U.S. for more than 60 consecutive days. They noted that, under 20 CFR 404.460, Nonpayment of monthly benefits of aliens outside the United States, the Social Security Administration allows beneficiaries to continue receiving benefits as United States residents until they are absent from the country for more than 6 consecutive months. The commenters urged VA to adopt similar residency requirements.

Section 402(t)(1) of title 42, United States Code, mandated the 6-month absence rule that the Social Security Administration implemented in 20 CFR 404.460. Because Congress did not establish a specific residency period in the Public Laws authorizing full-dollar rate benefits for Filipino veterans, VA must establish reasonable residency requirements within its general rule-making authority.

In our view, the requirement that a Filipino veteran or survivor not be absent from the United States for more than 60 consecutive days to continue to receive benefits at the full-dollar rate is fair, reasonable, and consistent with the applicable Public Laws. The 60-day requirement reasonably allows a Filipino veteran or survivor sufficient freedom to travel, while allowing payment of compensation or DIC at the full-dollar rate only while he or she is residing in the United States. An extended period spent outside of the United States is not consistent with the intent of Congress that the Filipino

veteran or survivor reside in the United States for receipt of benefits at the full-dollar rate. We therefore make no changes based on these comments.

Another commenter also disagreed with the 60-day provision, asserting that it is arbitrary and “has no apparent connection or correlation to the indicators or determinants of residency.” This commenter stated that a beneficiary may need to be temporarily outside the United States for more than the 60-day limit imposed by the interim final rule. The key factor, the commenter urged, should be whether the beneficiary intends to give up his or her United States residency.

We disagree that a beneficiary’s intent should be the key factor in determining whether benefits may be paid at the full-dollar rate. Congress, by the language in the applicable Public Laws, limited entitlement to the full-dollar rate to Filipino veterans and survivors while they are actually residing in the United States, as citizens or aliens lawfully admitted for permanent residence. The statute makes no mention of the beneficiary’s intent to establish a permanent residence as a factor. Therefore, no changes have been made based on this comment.

This commenter also asserted that an important factor in Congress’ decision to pay these beneficiaries at the full-dollar rate must have been Congress’ recognition that these Filipino veterans’ past military service and allegiance to the United States was and is on a par with that of other veterans. The commenter concluded that “[t]o require of these Filipino [beneficiaries] a greater physical presence in the United States than is required of United States veterans [and survivors] is without any rational basis except to prevent Filipino [beneficiaries] from obtaining full [benefits] while actually living in the Philippines.”

There is no general statutory residency requirement for receipt of VA benefits. However, Congress has determined that Filipino veterans and survivors must actually reside in the United States to receive VA benefits at the full-dollar rate. Thus, under current law, veterans of the United States Armed Forces and their survivors are entitled to the full range of VA benefits without regard to residency, while certain Filipino veterans and their survivors are entitled to VA benefits payable at the rate of \$0.50 for each dollar authorized under the law, unless they reside in the United States. VA therefore cannot interpret these plain statutory provisions as the commenter suggests. Accordingly, no changes are being made based on this comment.

Three commenters stated that Filipino beneficiaries traveling outside of the United States may be unavoidably detained because of physical illness or other infirmities which prevent them from timely returning to the United States. One commenter also noted that such beneficiaries may be absent from the U.S. to care for a terminally ill relative or to assist with the disposition of a relative’s estate. Another commenter felt that VA should take into account each Filipino beneficiary’s peculiar circumstances and reasons for foreign travel. This commenter agreed that physical presence outside the U.S. for extended periods on a regular basis might provide a basis to question the Filipino beneficiary’s residency.

We agree that Filipino beneficiaries who are traveling outside of the United States may not return within 60 days for legitimate reasons that are out of their control, such as physical illness or other infirmities that occur at any point during the 60-day or 183-day periods. The residency requirements in the interim final rule are based upon Congress’ express intent to require that Filipino beneficiaries reside within the United States to receive benefits at the full-dollar rate. However, we recognize that circumstances may arise that prevent Filipino beneficiaries from returning to the United States as planned. Accordingly, we are amending § 3.42(d)(1) to provide exceptions to the 60-day and 183-day rules for good cause. Exceptions will be granted on a case-by-case basis and must be thoroughly documented.

We have deleted the last sentence of § 3.42(e) as it is redundant with § 3.405(e), and we have clarified that § 3.405 refers to a calendar year as opposed to a 12-month period. In addition, in § 3.42(d)(1), we have revised the phrase “on an initial basis” to “for the first time.” The revised language clarifies application of the July 1st exception to the 183-day rule.

#### Effective Dates

One commenter stated that the effective date provision in § 3.405(c) of the interim final rule invites misinterpretation. By using the term “date of the rating” in conjunction with the later phrase “such rating action,” it appears to refer to the date of the decision rather than the effective date of the decision.

We agree and have amended the regulation accordingly by changing the phrase “Effective date of the rating establishing service connection” to “Effective date of service connection” and the phrase “such rating action” to “the decision establishing service

connection.” These changes appear in § 3.405(a)(3) of the final rule.

One commenter stated that § 3.405 in the interim final rule violated 38 U.S.C. 5110, Effective dates of awards. The rule listed several dates and provided that the latest of the dates would be the initial effective date for full-dollar rate benefits. This commenter stated that the general statutory rule for determining effective dates is found in 38 U.S.C. 5110(a), which states “(a) Unless specifically provided otherwise in this chapter [38 U.S.C. 5100 *et seq.*], the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.” The commenter asserted that § 3.405(e) of the interim final rule delays initial entitlement on a basis not permitted by statute.

Section 3.405(e) of the interim final rule applied to resumption of payment at the full-dollar rate after the Filipino veteran or survivor was absent for 183 days or more in one calendar year and then returns to the United States. It did not apply to initial entitlement and neither did § 3.405(d). Only the introductory text of § 3.405 and paragraphs (a), (b), and (c) applied to initial entitlement. We have reorganized § 3.405 to make this distinction more clear.

The statutory authority for § 3.405 is 38 U.S.C. 107, not 38 U.S.C. 5110, because resumption of payment at the full-dollar rate is more closely associated with the definition of “residing in the United States” than with general effective date provisions. Therefore, no changes are being made based on this comment.

The same commenter asserted that section 5110(g) should apply because Public Law 106–377 was liberalizing legislation. We agree that section 5110(g) is applicable to the implementation of Public Law 106–377, and the first sentence of the introductory text of § 3.405 was designed for that application. However, it appears that a direct citation to 38 CFR 3.114(a) would more clearly indicate that the special effective date rules for liberalizing legislation apply. In addition, since we must now include the additional full-dollar rate entitlement created by Public Law 108–183, we have decided to reorganize and revise the content of § 3.405 to more clearly identify the beneficiaries of these liberalizing laws and specify that § 3.114(a) applies to all of them.

### Changes Made To Implement Public Law 108-183

Public Law 108-183 amended 38 U.S.C. 107 to allow payment of compensation, DIC, and burial benefits at the full-dollar rate for New Philippine Scouts and their survivors as well as DIC for survivors of veterans who served in the Philippine Commonwealth Army and recognized guerrilla forces, if the beneficiary is residing in the United States and is either a United States citizen or a legally admitted resident alien. To implement the provisions of Public Law 108-183, we have amended 38 CFR 3.40(b) by adding to the beginning of the second sentence, "Except as provided in §§ 3.42 and 3.43." This clause refers to provisions that extend payment of compensation, DIC, and burial benefits at the full-dollar rate to certain Filipino veterans and their survivors in accordance with amendments made by the new law. We have also amended § 3.1600(a) and (b) concerning payment of monetary burial benefits at the full-dollar rate.

We discovered a minor ambiguity in the law governing the effective date for monetary burial benefits at the full-dollar rate based on the service of a New Philippine Scout. The date of enactment of Public Law 108-183 was December 16, 2003. Section 212(a)(4) of the law provides that the full-dollar rate for burial benefits applies to New Philippine Scouts who die "after" the date of enactment, while section 212(c) of the law provides that it applied to New Philippine Scouts who die "on or after" the date of enactment. In resolving the issue of whether the death of a New Philippine Scout on December 16, 2003, is within the provisions of Public Law 108-183, we are applying a pro-veteran interpretation and amending § 3.43(b) to provide monetary burial benefits at the full-dollar rate for eligible Filipino veterans who die after December 15, 2003.

Because VA published the interim final rule prior to the enactment of Public Law 108-183, it correctly referred only to benefits for veterans and not to benefits for survivors, other than monetary burial benefits. We have, therefore, amended §§ 3.40, 3.42, 3.43, 3.405, and 3.505 to include benefits for survivors as well as veterans, where appropriate, in accordance with the provisions of Public Law 108-183.

### Other Non-Substantive Clarifying Changes to These Rules

We reviewed the regulations and corrected several minor inconsistencies in wording between §§ 3.42 and 3.43. First, § 3.42(a)(4) cited title 8, United

States Code, regarding proof of permanent resident alien status and we have added the same citation to § 3.43(a)(4).

Section 3.42(b) is entitled "Eligibility requirements," and we have used this same title for § 3.43(b). We have changed the title of § 3.42(c) to "Evidence of eligibility," the same as the title for § 3.43(c).

Section 3.42(d)(2) incorrectly referred to "paragraph (a) of this section," when the reference should have been to the eligibility requirements of paragraph (b), so we have changed that reference. We also noted that the last sentence of § 3.42(d)(2) dealing with the effective date of restored eligibility for the full-dollar rate is redundant with paragraph (e) of the same section. We have, therefore, deleted the last sentence of § 3.42(d)(2) to eliminate the redundancy.

We have changed the second sentence of § 3.40(a) to clearly state that benefits for veterans who served in the Regular Philippine Scouts are paid at the full-dollar rate in the same manner as veterans who served in the United States Armed Forces. We did this by adding "at the full-dollar rate" to the end of the second sentence.

We have change the wording in § 3.42(a)(4) from "\* \* \* such status not having changed" to "and still has this status", to parallel the language in § 3.43(a)(4). We have added commas between "rate" and "based" and between "(d)" and "to" in § 3.42(b) to parallel § 3.43(b).

We have added the phrase "or the veteran's survivor" to § 3.42(c), (c)(2), and (c)(3), and the phrase "or survivor's" to (c)(4) to clarify that a claimant may be a Filipino veteran's survivor.

Based on the rationale set forth in the interim final rule and this document, we are adopting the interim final rule as a final rule with the changes discussed in this document.

### Administrative Procedure Act

*With regard to the regulatory amendments in this rulemaking which implement Public Law 108-183, we are making them effective on an emergency basis because there is good cause under the provisions of 5 U.S.C. 553 to publish them as an interim final rule without regard to prior notice and comment and effective date provisions. Compliance with these provisions would be impracticable, unnecessary, and contrary to the public interest. Publication as an interim final rule will implement Public Law 108-183, which provides additional benefits to disabled Filipino veterans and their survivors,*

most of whom are elderly. Many of these Filipino veterans, and their survivors, have chronic health problems and financial hardships. Publication of these amendments as interim final rules will enable VA to immediately provide to these beneficiaries the increased benefits they need in order to better cope with the cost of living in the United States.

### 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 expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

### 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 because it raises novel policy issues.

### Paperwork Reduction Act

All collections of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521) referenced in this final rule have existing OMB approval as forms. No changes are made in this final rule to those collections of information.

### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment 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 these

amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, under 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

### Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.104, Pension for Non-Service-Connected Deaths for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 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, Health care, Pensions, Veterans, Vietnam.

Approved: October 6, 2005.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

**Editor's Note:** This document was received at the **Federal Register** on February 10, 2006.

■ For the reasons set forth in this preamble, VA is adopting the interim final rule amending 38 CFR part 3 which was published at 66 FR 66763 on December 27, 2001, as a final rule with the following changes:

## 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. Section 3.40 is amended by:

■ a. In paragraph (a), removing the period at the end of the last sentence and adding, in its place, "at the full-dollar rate."

■ b. Revising paragraph (b).

The revision reads as follows:

#### § 3.40 Philippine and Insular Forces.

\* \* \* \* \*

(b) *Other Philippine Scouts.* Service of persons enlisted under section 14, Pub. L. 190, 79th Congress (Act of October 6,

1945), is included for compensation and dependency and indemnity compensation. Except as provided in §§ 3.42 and 3.43, benefits based on service described in this paragraph are payable at a rate of \$0.50 for each dollar authorized under the law. All enlistments and reenlistments of Philippine Scouts in the Regular Army between October 6, 1945, and June 30, 1947, inclusive, were made under the provisions of Pub. L. 190 as it constituted the sole authority for such enlistments during that period. This paragraph does not apply to officers who were commissioned in connection with the administration of Pub. L. 190.

(Authority: 38 U.S.C. 107)

■ 3. In § 3.42, paragraphs (a)(4), (b) introductory text, (c)(1) introductory text, (c)(2) through (c)(4), (d), and (e) are revised to read as follows:

#### § 3.42 Compensation at the full-dollar rate for certain Filipino veterans or their survivors residing in the United States.

(a) \* \* \*

(4) *Lawfully admitted for permanent residence* means that an individual has been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code, and still has this status.

(b) *Eligibility requirements.* Compensation and dependency and indemnity compensation is payable at the full-dollar rate, based on service described in § 3.40(b), (c), or (d), to a veteran or a veteran's survivor who is residing in the U.S. and is either:

\* \* \* \* \*

(c) *Evidence of eligibility.* (1) A valid original or copy of one of the following documents is required to prove that the veteran or the veteran's survivor is a natural born citizen of the U.S.:

\* \* \* \* \*

(2) Only verification by the U.S. Citizenship and Immigration Services to VA that a veteran or a veteran's survivor is a naturalized citizen of the U.S., or a valid U.S. passport, will be sufficient proof of such status.

(3) Only verification by the U.S. Citizenship and Immigration Services to VA that a veteran or a veteran's survivor is an alien lawfully admitted for permanent residence in the U.S. will be sufficient proof of such status.

(4) VA will not pay benefits at the full-dollar rate under this section unless the evidence establishes that the veteran or survivor is lawfully residing in the U.S.

(i) Such evidence should identify the veteran's or survivor's name and relevant dates, and may include:

(A) A valid driver's license issued by the state of residence;

(B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;

(C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;

(D) Hospital or medical records showing medical treatment or hospitalization, and showing the name of the medical facility or treating physician;

(E) Property tax bills and receipts; and

(F) School records.

(ii) A Post Office box mailing address in the veteran's name does not constitute evidence showing that the veteran was lawfully residing in the United States on the date of death.

(d) *Continued eligibility.* (1) In order to continue receiving benefits at the full-dollar rate under this section, a veteran or a veteran's survivor must be physically present in the U.S. for at least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time unless good cause is shown. However, if a veteran or a veteran's survivor becomes eligible for full-dollar rate benefits for the first time on or after July 1 of any calendar year, the 183-day rule will not apply during that calendar year. VA will not consider a veteran or a veteran's survivor to have been absent from the U.S. if he or she left and returned to the U.S. on the same date.

(2) A veteran or a veteran's survivor receiving benefits at the full-dollar rate under this section must notify VA within 30 days of leaving the U.S., or within 30 days of losing either his or her U.S. citizenship or lawful permanent resident alien status. When a veteran or a veteran's survivor no longer meets the eligibility requirements of paragraph (b) of this section, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law, effective on the date determined under § 3.505. If such veteran or survivor regains his or her U.S. citizenship or lawful permanent resident alien status, VA will restore full-dollar rate benefits, effective the date the veteran or survivor meets the eligibility requirements in paragraph (b) of this section.

(3) When requested to do so by VA, a veteran or survivor receiving benefits at the full-dollar rate under this section must verify that he or she continues to meet the residency and citizenship or permanent resident alien status requirements of paragraph (b) of this

section. VA will advise the veteran or survivor at the time of the request that the verification must be furnished within 60 days and that failure to do so will result in the reduction of benefits. If the veteran or survivor fails to furnish the evidence within 60 days, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized, as provided in § 3.652.

(4) A veteran or survivor receiving benefits at the full-dollar rate under this section must promptly notify VA of any change in his or her address. If mail from VA to the veteran or survivor is returned to VA by the U.S. Postal Service, VA will make reasonable efforts to determine the correct mailing address. If VA is unable to determine the correct mailing address through reasonable efforts, VA will reduce benefit payments to the rate of \$0.50 for each dollar authorized under law, effective on the date determined under § 3.505.

(e) *Effective date for restored eligibility.* In the case of a veteran or survivor receiving benefits at the full-dollar rate, if VA reduces his or her payment to the rate of \$0.50 for each dollar authorized under the law, VA will resume payments at the full-dollar rate, if otherwise in order, effective the first day of the month following the date on which he or she again meets the requirements. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she again meets the requirements.

■ 4. In § 3.43, paragraphs (a)(4), (b) introductory text, and (c)(2) through (c)(4) are revised to read as follows:

**§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.**

(a) \* \* \*

(4) *Lawfully admitted for permanent residence* means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code, and on the date of death, still had this status.

(b) *Eligibility requirements.* VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate, based on service described in § 3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, or based on service described in § 3.40(b) when an individual who performed such service dies after December 15, 2003, and was on the date of death:

\* \* \* \* \*

(c) \* \* \*

(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA, or a valid U.S. passport, will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(3) In a claim based on the deceased veteran having been an alien lawfully admitted for permanent residence in the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(4) VA will not pay benefits at the full-dollar rate under this section unless the evidence establishes that the veteran was lawfully residing in the U.S. on the date of death.

(i) Such evidence should identify the veteran's name and relevant dates, and may include:

(A) A valid driver's license issued by the state of residence;

(B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;

(C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;

(D) Hospital or medical records showing medical treatment or hospitalization of the veteran or survivor, and showing the name of the medical facility or treating physician;

(E) Property tax bills and receipts; and

(F) School records.

(ii) A Post Office box mailing address in the veteran's name does not constitute evidence showing that the veteran was lawfully residing in the United States on the date of death.

\* \* \* \* \*

■ 5. Section 3.405 is revised to read as follows:

**§ 3.405 Filipino veterans and their survivors; benefits at the full-dollar rate.**

Public Laws 106-377 and 108-183, which provide disability compensation and dependency and indemnity compensation at full-dollar rates to certain Filipino veterans and their survivors, are considered liberalizing laws. As such, the provisions of 38 CFR 3.114(a) apply when determining the effective date of an award. If the requirements of § 3.114(a) are not satisfied, then the effective date of an award of benefits at the full-dollar rate under § 3.42 will be determined as follows:

(a) *Initial entitlement to full-dollar rate.* The latest of the following:

(1) Date entitlement arose;

(2) Date on which the veteran or survivor first met the residency and citizenship or permanent resident alien status requirements in § 3.42, if VA receives evidence of this within one year of that date; or

(3) Effective date of service connection, provided VA receives evidence that the veteran or survivor meets the residency and citizenship or permanent resident alien status requirements in § 3.42 within one year of the date of notification of the decision establishing service connection.

(b) *Resumption of full-dollar rate.* (1) Date the veteran or survivor returned to the United States after an absence of more than 60 consecutive days; or

(2) First day of the calendar year following the year in which the veteran or survivor was absent from the United States for a total of 183 days or more, or the first day after that date that the veteran or survivor returns to the United States.

■ 6. Section 3.505 is revised to read as follows:

**§ 3.505 Filipino veterans and their survivors; benefits at the full-dollar rate.**

The effective date of discontinuance of compensation or dependency and indemnity compensation for a Filipino veteran or his or her survivor under § 3.42 will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) If a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 is physically absent from the U.S. for a total of 183 days or more during any calendar year, VA will reduce benefits to the rate of \$0.50 for each dollar authorized under the law, effective on the 183rd day of absence from the U.S.

(b) If a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 is physically absent from the U.S. for more than 60 consecutive days, VA will reduce benefits to the rate of \$0.50 for each dollar authorized under the law, effective on the 61st day of the absence.

(c) If a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 loses either U.S. citizenship or status as an alien lawfully admitted for permanent residence in the U.S., VA will reduce benefits to the rate of \$0.50 for each dollar authorized under the law, effective on the day he or she no longer satisfies one of these criteria.

(d) If mail to a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 is returned to VA by the U.S. Postal Service, VA will make

reasonable efforts to determine the correct mailing address. If VA is unable to determine the veteran's or survivor's correct address through reasonable efforts, VA will reduce benefits to the rate of \$0.50 for each dollar authorized under law, effective the first day of the month that follows the month for which VA last paid benefits.

(Authority: 38 U.S.C. 107)

■ 7. In § 3.1600, paragraphs (a) and (b) introductory text are revised to read as follows:

**§ 3.1600 Payment of burial expenses of deceased veterans.**

\* \* \* \* \*

(a) *Service-connected death and burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 2307 (or if entitlement is under § 3.40(b), (c), or (d), an amount computed in accordance with the provisions of § 3.40(b) or (c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement to this benefit is subject to the applicable further provisions of this section and §§ 3.1601 through 3.1610. Payment of the service-connected death burial allowance is in lieu of payment of any benefit authorized under paragraph (b), (c) or (f) of this section.

(Authority: 38 U.S.C. 2307)

(b) *Nonservice-connected death burial allowance.* If a veteran's death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 2302 (or if entitlement is under § 3.40(b), (c), or (d), an amount computed in accordance with the provisions of § 3.40(b) or (c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 050623166-6027-02; I.D. 061505B]

RIN 0648-AT49

**Marine Mammals; Subsistence Taking of Northern Fur Seals; Harvest Estimates**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final fur seal harvest estimates.

**SUMMARY:** Pursuant to the regulations governing the subsistence taking of northern fur seals, NMFS is publishing the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) for 2002 to 2004, and the annual estimates for the fur seal subsistence needs from 2005 through 2007. NMFS estimates the annual subsistence needs are 1,645-2000 seals on St. Paul and 300-500 seals on St. George.

**DATES:** Effective March 20, 2006.

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**SUPPLEMENTARY INFORMATION:** Electronic Access

A Final Environmental Impact Statement (EIS) is available on the Internet at the following address: <http://www.fakr.noaa.gov/protectedresources/seals/fur.htm>.

The subsistence harvest from the depleted stock of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 216, subpart F, Taking for Subsistence Purposes. The regulations require NMFS to publish every 3 years a summary of the harvest in the preceding 3 years and a discussion of the number of fur seals expected to be taken over the next 3 years to satisfy the subsistence requirements of residents of the Pribilof Islands (St. Paul and St. George). After a 30-day comment period, NMFS must publish a final notification of the expected annual harvest levels for the next 3 years.

On July 18, 2005 (70 FR 41187), NMFS published the summary of the

2002-2004 fur seal harvests and provided a 30-day comment period on proposed estimates of subsistence needs for 2005-2007. One comment letter was received on the proposed estimates. The letter identified two substantive points:

1. There are too many northern fur seals killed to eat, and

2. The season is too long.

The numbers of seals killed has been established through long-term needs analysis and monitoring. The established levels have been in place since 1997, and measures have been implemented to insure full use of each animal. Frequently the harvest is ended before the limits are reached, demonstrating good stewardship of the resource. The length of the season is based on avoiding the accidental harvest of females. Young females are difficult to distinguish from young males and studies have shown in late August the sexes are intermixed, whereas earlier in the summer they are not. The actual harvest frequently does not take the number of animals in the harvest estimates, thereby showing the length of harvest season does not contribute to an overharvest of animals. Final expected annual harvest levels for 2005 through 2007 are up to 1,645-2000 seals on St. Paul Island and up to 300-500 seals on St. George Island. Background information related to these estimates was included in the proposed harvest estimates.

**Classification**

*National Environmental Policy Act*

NMFS prepared an EIS evaluating the impacts on the human environment of the subsistence harvest on northern fur seals. The final EIS is available on the Internet (see Electronic Access).

*Executive Order 12866 and Regulatory Flexibility Act*

This action has been determined to be not significant under Executive Order (E.O.) 12866. The actions are not likely to result in (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; or (4) novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. The Chief Counsel for Regulation, Department of