

(6) Current local and regional real estate market conditions, including market demand for the property.

(7) Incorporation of other Federal agency interests and concerns, including the applicability of other Federal surplus property disposal authorities.

(8) Economic benefit to the Federal Government, including protection and maintenance cost savings, environmental clean-up savings, and anticipated consideration from the transfer.

(9) Compliance with applicable Federal, state, interstate, and local laws and regulations.

(g) The Secretary concerned shall negotiate the terms and conditions of each transaction with the LRA. The Secretary concerned shall have the discretion and flexibility to enter into agreements that specify the form of payment and the schedule.

(h)(1) The Secretary concerned may accept, as consideration, any combination of the following:

(i) Cash, including a share of the revenues that the local redevelopment authority receives from third-party buyers or lessees from sales and leases of the conveyed property (*i.e.*, a share of the revenues generated from the redevelopment project);

(ii) Goods and services;

(iii) Real property and improvements; and

(iv) Such other consideration as the Secretary considers appropriate.

(2) The consideration may be accepted over time.

(3) All cash consideration for property at a military installation where the date of approval of closure or realignment is before January 1, 2005, shall be deposited in the account established under Section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101-510; 10 U.S.C. 2687 note). All cash consideration for property at a military installation where the date of approval of closure or realignment is after January 1, 2005, shall be deposited in the account established under Section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101-510; 10 U.S.C. 2687 note).

(4) The Secretary concerned may use in-kind consideration received from an LRA at any location under control of the Secretary concerned.

(i) The LRA and the Secretary concerned may agree on a schedule for sale of parcels and payment participation.

(j) Additional provisions shall be incorporated in the conveyance

documents to protect the Department's interest in obtaining the agreed upon consideration, which may include such items as predetermined release prices, accounting standards, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions. Every agreement for an EDC shall contain provisions allowing the Secretary concerned to recoup from the LRA such portion of the proceeds from a sale or lease by the LRA as the Secretary concerned determines appropriate if the LRA does not use the proceeds to support economic redevelopment of or related to the installation during the period specified in paragraph (d)(8) of this section. The Secretary concerned and an LRA may enter into a mutually agreed participation agreement which may include input by the Secretary concerned on the LRA's disposal of EDC parcels.

(k) The Secretary concerned should take account of property value but is not required to formally determine the estimated fair market value of the property for any EDC. The consideration negotiated should be based on a business plan and development pro-forma that assumes the uses in the redevelopment plan. The Secretary concerned may determine the nature and extent of any additional information needed for purposes of an informed negotiation. This may include, but is not limited to, an economic and market analysis, construction estimates, a real estate pro forma analysis, or an appraisal. To the extent not prohibited by law, information used should be shared with the LRA.

(l) After evaluating the application based upon the criteria specified in paragraph (f) of this section, and negotiating terms and conditions, the Secretary concerned shall present the proposed EDC to the Deputy Under Secretary of Defense (Installations and Environment) for formal coordination before announcing approval of the application.

#### § 174.10 [Removed and Reserved]

■ 3. Section 174.10 is removed and reserved.

Dated: November 10, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-0842]

### Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule published in the **Federal Register** on October 4, 2011, for the Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility. That document contained an inaccurate Docket Number, USCG-2010-0842. The correct Docket Number is USCG-2011-0842.

**DATES:** Effective November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Ensign Anthony P. LaBoy, USCG Sector Puget Sound Waterways Management Division, Coast Guard; telephone (206) 217-6323, email [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### *Correction*

The heading of the final rule published in the **Federal Register** of October 4, 2011, in FR Doc. 2011-25344, on page 61263, contained an incorrect Docket Number, USCG-2010-0842. The correct Docket Number is USCG-2011-0842. To advise the public of this error, we are publishing this notice of correction.

#### Correction of Publication

Accordingly, the final rule Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility published in the **Federal Register** of October 4, 2011, in FR Doc. 2011-25344, is corrected as follows: On page 61263, in the heading, "Docket No. USCG-2010-0842" is corrected to read "Docket No. USCG-2011-0842."

Dated: November 9, 2011.

**Kathryn A. Sinniger,**  
Chief, Office of Regulations and  
Administrative Law United States Coast  
Guard.

[FR Doc. 2011-29561 Filed 11-15-11; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AN64

#### Clothing Allowance

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its regulations regarding clothing allowances. The amendment provides for an annual clothing allowance for each qualifying prosthetic or orthopedic appliance worn or used by a veteran for a service-connected disability or disabilities that wears out or tears a single article of the veteran's clothing and for each physician-prescribed medication used by a veteran for a skin condition that is due to a service-connected disability that affects a single outergarment. The amendment also provides two annual clothing allowances if a veteran wears or uses more than one qualifying prosthetic or orthopedic appliance, physician-prescribed medication for more than one skin condition, or an appliance and a medication for a service-connected disability or disabilities and the appliance(s) or medication(s) together cause a single article of clothing to wear out faster than if affected by a single appliance or medication. This amendment also makes certain technical changes to the rule.

**DATES:** *Effective Date:* This final rule is effective December 16, 2011.

*Applicability Date:* This final rule applies to claims received by or pending before VA on or after December 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tom Kniffen, Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9725. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on February 2, 2011 (76 FR 5733-5734), VA proposed to amend its regulations regarding clothing allowances in order to implement the

holding of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Sursely v. Peake*, 551 F.3d 1351, 1356 (Fed. Cir. 2009). In this final rule, VA will implement *Sursely* by amending 38 CFR 3.810(a)(2) to provide that a veteran is entitled to a clothing allowance for each qualifying prosthetic or orthopedic appliance worn or used by a veteran because of a service-connected disability which tends to wear or tear clothing or medication prescribed by a physician and used by a veteran for a skin condition caused by a service-connected disability which irreparably damages an outergarment if each appliance or medication affects a single article of clothing or outergarment.

VA also provides in § 3.810(a)(3) that a veteran is entitled to two annual clothing allowances if: (1) A veteran uses more than one qualifying prosthetic or orthopedic appliance, medication for more than one skin condition, or an appliance and a medication; and (2) the appliance(s) or medication(s) each satisfy the requirements of § 3.810(a)(1) and together tend to wear or tear a single article of clothing or irreparably damage an outergarment, requiring replacement at an increased rate than if the article of clothing, or outergarment, was affected by a single qualifying appliance or medication.

#### Comments in Response to Proposed Rule

A 60-day comment period ended April 4, 2011, and VA received comments from seven members of the general public and one organization. Three individual commenters expressed general support for the rule. A fourth commenter stated that VA should expand the service-connected disabilities for which a clothing allowance is provided to include "very limited knee movement when walking" which causes shoes to wear out faster. VA makes no change based on this comment because 38 U.S.C. 1162 authorizes payment of a clothing allowance only if a veteran "wears or uses a prosthetic or orthopedic appliance" that tends to wear out or tear the veteran's clothing or uses physician-prescribed medication for a skin condition due to a service-connected disability and the medication causes irreparable damage to the veteran's outergarments. No clothing allowance is payable if a veteran does not use a prosthetic or orthopedic appliance or medication for a skin condition.

Another commenter stated that use of an Ankle-Foot Orthotic (AFO) wears out shoes as well as slacks/trousers. VA makes no change based on this

comment because 38 U.S.C. 1162 does not authorize the payment of more than one clothing allowance based on a single qualifying appliance. Section 1162 authorizes VA to pay "a clothing allowance of \$716 per year" to each veteran who, because of service-connected disability "wears or uses a prosthetic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of the veteran." In *Sursely*, the Federal Circuit stated that "by linking receipt of the [clothing allowance] to a single qualifying appliance, Congress recognized that multiple appliances might allow the award of multiple benefits." That decision provides no basis for interpreting section 1162 to allow more than one clothing allowance for a single appliance.

A sixth commenter expressed that VA should establish "no limitation for the number of clothing allowances per year" because some veterans use a combination of prosthetic and/or orthopedic appliances for service-connected disabilities. VA appreciates this comment; however, VA makes no change in response to this comment because the rule as proposed already provides for multiple prosthetic and/or orthopedic appliances. As explained above, § 3.810(a)(2) provides that a veteran is entitled to an annual clothing allowance for each prosthetic or orthopedic appliance used by the veteran if each appliance affects a distinct article of clothing and § 3.810(a)(3) provides for two clothing allowances based on the cumulative effects of multiple appliances on a single article of clothing.

The seventh commenter stated that currently, only metal-hinged prosthetic devices qualify for the clothing allowance and that VA should cover wear and tear caused by plastic-hinged prosthetics as well. The commenter further stated that prescription skin cream for the "face, neck, hands, arms, or any area not covered by clothing may come into contact with clothing, causing discoloration or rapid deterioration." VA appreciates these comments; however, VA makes no change to the rule based on these comments for the following reasons. The term "prosthetic \* \* \* appliance" in § 3.810(a)(1)(i), (a)(1)(ii)(A), (a)(2) and (3) includes plastic-hinged prosthetics and is not limited to metal-hinged prosthetic devices. With regard to the comment about medication that comes in contact with clothing, § 3.810(a) does not limit entitlement to a clothing allowance to medications that are covered by clothing. Rather a veteran is entitled to a clothing allowance if any physician-