

31, 1988, and on or before January 10, 1994.

Dated: January 12, 1990.

Jill E. Kent,

Chief Financial Officer.

[FR Doc. 90-27864 Filed 11-28-90; 8:45 am]

BILLING CODE 4710-37-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD7-90-102]

Safety Zone Regulations: Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone for an annual fireworks display to be held December 1, 1990. The fireworks will be discharged from the new city park adjacent to the James Island Yacht Club at Lat. 32-45.3N, Long. 79-55.1W. The safety zone will extend approximately 1000 feet offshore from the launch site. The zone is needed to protect spectators and vessels from hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, South Carolina.

EFFECTIVE DATES: This regulation becomes effective at 5:45 p.m. EST, December 1, 1990. It terminates at the conclusion of the event, approximately 7 p.m. EST, December 1, 1990.

FOR FURTHER INFORMATION CONTACT: LT Steven J. Boyle, Port Operations Officer, U.S. Coast Guard Marine Safety Office, 196 Tradd Street, Charleston, S.C. 29401-1899, (803) 724-7689.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazard to any spectators and vessels in the area of the event.

Drafting Information

The drafters of this notice are LT Steven J. Boyle, project officer, U.S. Coast Guard Marine Safety Office, Charleston, SC, and LT Genelle Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation will occur on December 1, 1990 when the organizers of the fireworks display will sponsor this annual event as part of the celebration of Christmas. A safety zone is needed to prevent damage to vessels or injury to personnel from hazards associated with a fireworks display. The safety zone will be box shaped and extend approximately 1000 feet from the discharge area of the fireworks (Lat. 32-45.3N, Long. 79-55.1W). The safety zone will extend west 1000 feet along the shore to Lat. 32-45.3N, Long. 79-55.3W. It will then extend north into the harbor to Lat. 32-45.5N, Long. 79-55.3W, thence east to Lat. 32-45.5N, Long. 79-54.9W, and thence south back to shore at Lat. 32-45.3N, Long. 79-54.9W. The safety zone will be in effect from 5:45 p.m. EST, December 1, 1990, until the end of the event, approximately 7:00 p.m. EST, December 1, 1990. Coast Guard vessels will patrol and enforce the safety zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rule making does not have sufficient FEDERALISM implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A temporary § 165.T07102 is added to read as follows:

§ 165.T07102 Safety Zone: Establishment of Temporary Safety Zone, Charleston Harbor, Charleston, South Carolina

(a) *Location.* The following area is a safety zone: An area extending at least 1000 feet from the launch area of the fireworks (Lat. 32-45.3N, Long. 79-55.1W). The safety zone will extend west along the shore to Lat. 32-45.3N, Long. 79-55.3W. It will then extend north into the harbor to Lat. 32-45.5N,

Long. 79-55.3W, thence east to Lat. 32-45.5N, Long. 79-54.9W, and thence south to shore at Lat. 32-45.3N, Long. 79-54.9W.

(b) *Effective Date.* This regulation becomes effective on December 1, 1990, at 5:45 p.m. EST. It terminates on December 1, 1990, at the conclusion of the event, approximately 7 p.m. EST.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, South Carolina.

Dated: November 9, 1990.

R.L. Storch, Jr.,

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

[FR Doc. 90-28062 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Tampa, FL. Regulation 07-90-103]

Safety Zone Regulations; Old Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The U.S. Coast Guard has designated the area with a 200 yard radius centered on the main span of the Howard Franklin Bridge, Old Tampa Bay, Florida as a slow minimum wake zone. Construction of the new span to the Howard Franklin Bridge has placed construction personnel and equipment in and around the navigation channel thus necessitating this regulation.

EFFECTIVE DATE: This regulation becomes effective on 1 November 1990. It terminates on 28 February 1991 or when construction is complete whichever is earlier.

FOR FURTHER INFORMATION CONTACT: Lt. P.J. MacDonald, Coast Guard Marine Safety Office, Tampa, FL at (813) 228-2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to prevent damage to construction equipment and transiting vessels and to prevent injury to construction personnel.

Drafting Information

The drafters of this regulation are Lt. P.J. Mac Donald, project officer for the

Captain of the Port and Lt. G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation is necessary due to the construction of a new span to the Howard Franklin Bridge. Construction equipment and workers will be in around the navigation channel at the main bridge span between the hours of 6 a.m. and 7:30 p.m. seven days a week until the project is complete. Concern that vessels transiting the area may damage construction equipment or injure personnel or be damaged themselves makes immediate action necessary.

Federalism

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

Economic Assessment and Certification

The regulation should have no economic impact because traffic is not being stopped or diverted.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A temporary § 165.T07-90-103 is added to read as follows:

§ 165.T07-90-103 Slow Minimum Zone: Old Tampa Bay, Florida

(a) *Location*: The following is a slow minimum wake zone: The area with a 200 yard radius centered on the main span of the Howard Franklin Bridge in Old Tampa Bay, Florida.

(b) *Effective date*: This regulation becomes effective on 1 November 1990. It terminates on 28 February 1991 or when construction is complete whichever is earlier.

(c) *Regulations*: In accordance with the general regulations in § 165.23 of this part: Vessels transiting Old Tampa Bay are required to proceed at a slow minimum wake speed while within the area within a 200 yard radius centered

on the main span of the Howard Franklin Bridge.

Dated: November 1, 1990.

M.J. Schiro,

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

[FR Doc. 90-28027 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AE34

Department of Veterans Affairs Official Seal and Distinguishing Flag

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations specifying the description and authorized use of its official seal and distinguishing flag. These amendments describe how the VA Official Seal and Distinguishing Flag are used and displayed.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Priscilla B. Carey, Director, Office of Administration (03), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-233-2672).

SUPPLEMENTARY INFORMATION: On March 15, 1989, the Veterans Administration became an Executive Department pursuant to the Department of Veterans Affairs Act, Pub. L. 100-527 (38 U.S.C. 201 Note). The VA official seal shall be noticed judicially (38 U.S.C. 202). The Secretary is adopting a new Department seal, which shall also be displayed on the Department's distinguishing flag and is amending 38 CFR 1.9 to describe the seal and flag, and provide for their use and display.

VA finds that good cause exists for making these regulations final without previous publication of a notice of proposed rulemaking. The changes contained in these regulations are statements of policy or rules of VA procedure or practice. Public participation in this rulemaking is therefore unnecessary (5 U.S.C. 553(b)(A), (B) and 38 CFR 1.12).

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2); the changes are therefore not subject to the requirements of that

Act. Nevertheless, these amendments concern primarily internal VA matters and 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.

These regulations do not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic or export markets.

List of Subjects in 38 CFR part 1

Administrative practice and procedure, Flags, Seals and insignia.

Approved: November 8, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 1, General Provisions is amended to read as follows:

PART 1—[AMENDED]

1. The undesignation center heading preceding § 1.9 is revised to read as follows: "Department of Veterans Affairs Official Seal and Distinguishing Flag".

2. § 1.9 is revised to read as follows:

§ 1.9 Description, use, and display of VA Seal and Flag.

(a) *General*. This section describes the official seal and distinguishing flag of the of the Department of Veterans Affairs, and prescribes the rules for their custody and use.

(b) *Definitions*.

(1) *VA* means all organizational units of the Department of Veterans Affairs.

(2) *Embossed seal* means an image of the official seal made on paper or other medium by using an embosser with a negative and positive die to create a raised impression.

(3) *Official seal* means the original(s) of the VA seal showing the exact form, content, and colors thereof.

(4) *Replica* means a copy of the official seal displaying the identical form, content, and colors thereof.

(5) *Reproduction* means a copy of the official seal displaying the identical form and content, reproduced in only one color.

(6) *Secretary* means the Secretary of Veterans Affairs.

(7) *Deputy Secretary* means the Deputy Secretary of Veterans Affairs.

(c) *Custody of official seal and distinguishing flags.* The Secretary or designee shall:

- (1) Have custody of:
 - (i) The official seal and prototypes thereof, and masters, molds, dies, and other means of producing replicas, reproductions, and embossing seals and
 - (ii) Production, inventory, and loan records relating to items specified in paragraph (c)(1)(i) of this section, and
- (2) Have custody of distinguishing flags, and be responsible for production, inventory, and loan records thereof.
- (d) *Official Seal.*
 - (1) Description of official seal. The Department of Veterans Affairs prescribes as its official seal, of which judicial notice shall be taken pursuant to 38 U.S.C. 202, the imprint illustrated below:



(i) The official seal includes an American eagle clutching a cord in its talons. The cord binds a 13-star U.S. flag and a 50-star U.S. flag. In the field over the eagle is a pentagon formation of stars, with one point down. The words Department of Veterans Affairs and United States of America surround the eagle, stars, and flags. A rope motif makes up the outermost ring of the seal.

(ii) The eagle represents the eternal vigilance of all our nation's veterans. The stars represent the five branches of military service. The crossed flags represent our nation's history. The gold cord that binds the two flags, which is shown clutched in the eagle's talons is symbolic of those who have fallen in the defense of liberty. Each of the various individual items placed together in the seal is a salute to the past, present, and future.

(iii) The colors used in the configuration are gold, brown, blue, white, silver, yellow, black, and red.

(iv) The colors are derived from the American flag and from nature. By

invoking this symbolism, the color scheme represents the Nation's commitment to its veterans.

- (2) Use of the official seal, replicas, reproductions, and embossing seals.
 - (i) The Secretary or designees are authorized to affix replicas, reproductions, and embossed seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.
 - (ii) Replicas may be used only for:
 - (A) Display in or adjacent to VA facilities, in Department auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms.
 - (B) Offices of senior officials.
 - (C) Official VA distinguishing flags, adopted and utilized pursuant to paragraph (e)(2) of this section.
 - (D) Official awards, certificates, medals, and plaques.
 - (E) Motion picture film, video tape, and other audiovisual media prepared by or for VA and attributed thereto.
 - (F) Official prestige publications which represent the achievements or mission of VA.
 - (G) For other similar official purposes.
 - (H) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.
 - (iii) Reproductions may be used only on:
 - (A) VA letterhead stationery.
 - (B) Official VA identification cards and security credentials.
 - (C) Business cards for VA employees.
 - (D) Official VA signs.
 - (E) Official publications or graphics issued by and attributed to VA, or joint statements of VA with one or more Federal agencies, State or local governments, or foreign governments.
 - (F) Official awards, certificates, and medals.
 - (G) Motion picture film, video tape, and other audiovisual media prepared by and for VA and attributed thereto.
 - (H) For other similar official purposes.
 - (I) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.
 - (iv) Use of the official seal and embossed seals:
 - (A) Embossed seals may be used only on VA legal documents, including interagency or intergovernmental agreements with States, foreign patent applications, and similar official documents.
 - (B) The official seal may be used only for those purposes related to the

conduct of Departmental affairs in furtherance of the VA mission.

(e) *Distinguishing flag.*

- (1) Description of distinguishing flag.
 - (i) The base or field of the flag shall be blue and a replica of the official seal shall appear on both sides thereof.
 - (ii) A Class 1 flag shall be of nylon banner, measure 4'4" on the hoist by 5'6" on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2 1/2" wide.
 - (iii) A Class 2 flag shall be of nylon banner, measure 3' on the hoist by 5' on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2 1/2" wide.
 - (iv) Each flag shall be manufactured in accordance with Department of Veterans Affairs Specification X-497G. The replica of the official seal shall be screen printed or embroidered on both sides.
 - (2) Use of distinguishing flag.
 - (i) VA distinguishing flags may be used only:
 - (A) In the offices of the Secretary, Deputy Secretary, Assistant Secretaries, Deputy Assistant Secretaries and heads of field locations designated below:
 - (1) Regional Offices.
 - (2) Medical Centers and Outpatient Clinics.
 - (3) Domiciliaries.
 - (4) Marketing Centers and Supply Depots.
 - (5) Data Processing Centers.
 - (6) National Cemetery Offices.
 - (7) Other locations as designated by the Deputy Assistant Secretary for Administration.
 - (B) At official VA ceremonies.
 - (C) In Department auditoriums, official presentation rooms, hearing rooms, lobbies, public document rooms, and in non-VA facilities in connection with events or displays sponsored by VA, and public appearances of VA officials.
 - (D) On or in front of VA installation buildings.
 - (E) Other such official VA purposes or purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Deputy Assistant Secretary for Administration.
 - (f) *Unauthorized uses of the seal and flag.*
 - (1) The official seal, replicas, reproductions, embossed seals, and the distinguished flag shall not be used, except as authorized by the Secretary or Deputy Secretary, in connection with:
 - (i) Contractor-operated facilities.
 - (ii) Souvenir or novelty items.
 - (iii) Toys or commercial gifts or premiums.

- (iv) Letterhead design, except on official Departmental stationery.
- (v) Matchbook covers, calendars and similar items.
- (vi) Civilian clothing or equipment.
- (vii) Any article which may disparage the seal or flag or reflect unfavorably upon VA.
- (viii) Any manner which implies Departmental endorsement of commercial products or services, or of the commercial user's policies or activities.

(2) Penalties for unauthorized use. Any person who uses the distinguishing flag, or the official seal, replicas, reproductions or embossed seals in a manner inconsistent with this section shall be subject to the penalty provisions of 18 U.S.C. 506, 701, or 1017, providing penalties for their wrongful use, as applicable.

(Authority: 38 U.S.C. 202, 38 U.S.C. 210(c))

[FR Doc. 90-27877 Filed 11-28-90; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AE24

Failure to Report for VA Examination

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning failure to report for VA examinations. These changes are necessary to clarify current rules and due process procedures. The effects of these amendments are to clarify the requirement that individuals must report for VA examinations and to require that VA issue an advance notice before taking adverse action because of failure to report.

EFFECTIVE DATE: These amendments are effective December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 4199-4201 of the Federal Register of February 7, 1990, VA published a proposal to amend §§ 3.326, 3.327 and 3.655, and to remove § 3.329. Interested persons were invited to submit comments, suggestions, or objections by March 9, 1990. Two comments were received.

One commenter objected to using examples of "good cause" in § 3.655(a), stating they should be confined to policy or procedural manuals, but that in the event they are retained in the regulation, commenter suggested the term "illness" be changed to "incapacitating illness."

VA does not concur. We find no sound basis for excluding examples from the regulation. The decision as to whether or not a claimant fails to report for good cause is a judgment matter for the adjudicator, and it is appropriate that the regulation contain guidelines for adjudicators to follow in their deliberations. For the sake of consistency, we are retaining the language used in the proposed rule because it is identical to that used in the recently amended § 3.105(h)(2), as published in the Federal Register on April 11, 1990.

The same commenter suggested that the term "pretermination" be replaced by "predetermination" wherever it appears in the proposed § 3.655(c) because "pretermination" implies that VA has already decided to reduce or terminate the benefit being paid.

The commenter is correct in his assessment of the meaning of the term "pretermination." When a pretermination notice is issued, VA has determined that benefits should be reduced or terminated. We are retaining the language used in the proposed rule because such notice is sent to satisfy the advance notice requirement of § 3.103(b)(2), as published in the Federal Register of April 11, 1990.

The other commenter stated that the current regulations provide that reexamination can be required only if there is some basis, at the time of the rating decision, for anticipating that the condition may improve. Commenter applauded VA's intent to incorporate due process procedures, but strongly opposed VA's intent to give blanket authority to compel reexaminations without providing any regulatory guidelines. Commenter further stated that under current regulations, VA cannot arbitrarily schedule a punitive examination when a claimant expresses views contrary to those of VA, but that under the proposed regulation, a claimant could be scheduled for examination after examination, as punishment.

VA does not concur. This amendment contains no substantive change to the current regulation regarding reexaminations. As set forth in the preamble to the proposed amendments, § 3.327 is being amended to reorganize the material in a more logical manner. The current paragraph (d), which provides authority to request

examinations as necessary, as well as the current § 3.329, which provides that claimants are required to report for examinations when requested, are being incorporated in the amended paragraph (a). Contrary to the commenter's assertion of providing no regulatory guidelines, amended paragraph (a) expressly refers to the general guidelines for requesting reexaminations set forth in paragraphs (b) and (c). Moreover, neither the current regulation nor this amendment authorizes the scheduling of a reexamination for punitive reasons. Such an improper practice is not VA policy and would not be in the best interest of the Government.

The same commenter also stated that the current rule makes no provision for reexamination when there is a basis for anticipating a condition will worsen. The commenter is correct. Generally, we would have no basis for such an anticipation. Claimants are encouraged to file claims for increased benefits if they believe a condition has become more disabling. When a claimant presents evidence indicating a reasonable probability that a condition has worsened, VA will conduct an examination to determine whether an increased evaluation is warranted.

That commenter stated that VA and claimant are bound by an appellate period commencing with promulgation of a decision and that where the law (38 U.S.C. 4006) contemplates some final resolution of claims, the proposal substitutes impermanency. Although the cited law limits administrative appeals by VA to the Board of Veterans' Appeals to one year, § 4006, in fact, is unrelated to the issues dealt with by the proposed amendments. Except in limited circumstances, the statutory scheme governing VA compensation does not contemplate final, permanent establishment of the degree of a veteran's disability. Rather, implicit in the scheme is recognition of the possibility that a disability may improve or worsen. The scheme contemplates adjustments in the amount of benefits paid based upon the veteran's current degree of disability. The only exception would be the protection of ratings explicitly authorized by 38 U.S.C. 110.

The same commenter asked how the proposed regulations will affect veterans who have protected ratings and those who are hearing-impaired. Generally, examinations will not be requested for disabilities protected under 38 U.S.C. 110 and 38 CFR 3.951. However, the provisions of that law and regulation do not apply upon a showing that a rating was based on fraud, and

examinations may be requested in such cases. As to hearing-impaired veterans, reexaminations, when deemed necessary by VA, will be requested in accordance with the same guidelines provided in amended § 3.327 as for veterans with any other service-connected disability.

That commenter stated that review of treatment records should suffice in those few cases in which medical advances warrant reevaluation. VA does not concur. Treatment records are generally not sufficient for rating purposes because they do not contain the detailed findings and observations which a disability examination is designed to elicit.

Without explanation or rationale, the same commenter also stated that due process would appear to require that VA advise veterans as to whether or not reexamination is anticipated. VA does not concur. The core concept of procedural due process is the government's duty to give notice and an opportunity to be heard to an individual whose life, liberty or property is adversely affected by governmental action. Establishing a future control for examination on a rating decision does not necessarily mean that an examination will be requested when the control matures. Accordingly, matters such as establishing future controls to determine whether reexaminations are to be scheduled simply do not involve a life, liberty or property interest and invoke no due process protection.

We appreciate the comments and suggestions of those who responded to publication of the proposed regulations. The proposed regulations are adopted without change, except for the deletion of the second sentence of the proposed § 3.655(b), as it appeared in the *Federal Register* of February 7, 1990, which was printed erroneously, and the deletion of the words "as to running awards" from the last sentence of the proposed § 3.655(c)(4).

The Secretary hereby certifies that these regulatory amendments 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, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory

amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of \$100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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, Handicapped, Health care, Pension, Veterans.

Approved: November 8, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, is amended as follows:

PART 3—[AMENDED]

1. In § 3.326 in paragraphs (a) and (d) remove the words "widow, widower" wherever they appear and insert in their place the words, "surviving spouse".

2. In § 3.326 introductory text is added, a sentence is added at the end of paragraph (a) and a cross-reference is added after paragraph (d) to read as follows:

§ 3.326 Examinations.

For purposes of this section, the term examination includes periods of hospital observation when required by VA.

(a) * * * Individuals for whom examinations have been authorized and scheduled are required to report for such examinations.

* * *

Cross reference: Failure to report for VA examination. See § 3.655.

3. In § 3.327 paragraph (a) is revised, in paragraph (b)(2) the first sentence and the text preceding the colon are revised, paragraph (c) is revised, a cross reference is added and paragraph (d) is removed as follows:

§ 3.327 Reexaminations.

(a) *General.* Reexaminations, including periods of hospital observation, will be requested whenever VA determines there is a need to verify either the continued existence or the current severity of a disability.

Generally, reexaminations will be required if it is likely that a disability has improved, or if evidence indicates there has been a material change in a

disability or that the current rating may be incorrect. Individuals for whom reexaminations have been authorized and scheduled are required to report for such reexaminations. Paragraphs (b) and (c) of this section provide general guidelines for requesting reexaminations, but shall not be construed as limiting VA's authority to request reexaminations, or periods of hospital observation, at any time in order to ensure that a disability is accurately rated.

(Authority: 38 U.S.C. 210(c))

* * *

(b) *Compensation cases.* * * *

(2) No periodic future examinations will be requested. In service-connected cases, no periodic reexamination will be scheduled:

* * *

(c) *Pension cases.* In nonservice-connected cases in which the permanent total disability has been confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will not generally be requested. In other cases further examination will not be requested routinely and will be accomplished only if considered necessary based upon the particular facts of the individual case. In the cases of veterans over 55 years of age, reexamination will be requested only under unusual circumstances.

Cross reference: Failure to report for VA examination. See § 3.655.

§ 3.329 [Removed]

3a. Section 3.329 is removed.

4. § 3.655 is revised in its entirety as follows:

§ 3.655 Failure to report for Department of Veterans Affairs examination.

(a) *General.* When entitlement or continued entitlement to a benefit cannot be established or confirmed without a current VA examination or reexamination and a claimant, without good cause, fails to report for such examination, or reexamination, action shall be taken in accordance with paragraph (b) or (c) of this section as appropriate. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc. For purposes of this section, the terms "examination" and "reexamination" include periods of hospital observation when required by VA.

(b) *Original or reopened claim, or claim for increase.* When a claimant fails to report for an examination scheduled in conjunction with an original compensation claim, the claim

shall be rated based on the evidence of record. When the elimination was scheduled in conjunction with any other original claim, a reopened claim for a benefit which was previously disallowed, or a claim for increase, the claim shall be denied.

(c) *Running award.* (1) When a claimant fails to report for a reexamination and the issue is continuing entitlement, VA shall issue a pretermination notice advising the payee that payment for the disability or disabilities for which the reexamination was scheduled will be discontinued or, if a minimum evaluation is established in part 4 of this title or there is an evaluation protected under § 3.951 of this part, reduced to the lower evaluation. Such notice shall also include the prospective date of discontinuance or reduction, the reason therefor and a statement of the claimant's procedural and appellate rights. The claimant shall be allowed 60 days to indicate his or her willingness to report for a reexamination or to present evidence that payment for the disability or disabilities for which the reexamination was scheduled should not be discontinued or reduced.

(2) If there is no response within 60 days, or if the evidence submitted does not establish continued entitlement, payment for such disability or disabilities shall be discontinued or reduced as of the date indicated in the pretermination notice or the date of last payment, whichever is later.

(3) If notice is received that the claimant is willing to report for a reexamination before payment has been discontinued or reduced, action to adjust payment shall be deferred. The reexamination shall be rescheduled and the claimant notified that failure to report for the rescheduled examination shall be cause for immediate discontinuance or reduction of payment. When a claimant fails to report for such rescheduled examination, payment shall be reduced or discontinued as of the date of last payment and shall not be further adjusted until a VA examination has been conducted and the report reviewed.

(4) If within 30 days of a pretermination notice issued under paragraph (c)(1) of this section the claimant requests a hearing, action to adjust payment shall be deferred as set forth in § 3.105(h)(1) of this part. If a hearing is requested more than 30 days after such pretermination notice but before the proposed date of discontinuance or reduction, a hearing shall be scheduled, but payment shall nevertheless be discontinued or reduced as of the date proposed in the

pretermination notice or date of last payment, whichever is later, unless information is presented which warrants a different determination. When the claimant has also expressed willingness to report for an examination, however, the provisions of paragraph (c)(3) of this section shall apply.

Cross references:

Procedural due process and appellate rights.	See § 3.103.
Examinations	See § 3.326.
Reexaminations	See § 3.327.
Resumption of rating when veteran subsequently reports for VA examination.	See § 3.330.

(Authority: 38 U.S.C. 210(c))

[FR Doc. 90-27878 Filed 11-28-90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6817

[CA-940-4214-10; CACA-26066]

Partial Revocation of the Secretarial Order dated October 16, 1931; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes the Secretarial Order dated October 16, 1931, insofar as it affects a 0.45 acre parcel of public land withdrawn for the Bureau of Reclamation's Colorado River Storage Project. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated October 16, 1931, which withdrew land as part of the Bureau of Reclamation's Colorado River Storage Project is hereby revoked as to the following described land:

San Bernardino Meridian

T. 9 N., R. 22 E.,
Sec. 13, lot 7.

The area described contains 0.45 acre in San Bernardino County.

2. At 10 a.m. on December 31, 1990, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 31, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on December 31, 1990, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 20, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-27961 Filed 11-28-90; 8:45 am]

BILLING CODE 4310-40-M

43 CFR Public Land Order 6818

[NV-930-91-4214-10; N-50507]

Withdrawal of Public Land for Administrative Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 5 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect an Administrative Site in Nye County. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6526.

By virtue of the authority vested in the Secretary of the Interior by section 204