

Chip Lopez at (787) 706-2444 for assistance in understanding this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule would not impose an unfunded mandate.

#### Taking of Private Property

This rule would not effect a taking of private property or otherwise have 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 an economically significant rule and does not create an environmental risk to

health or safety that may disproportionately affect children.

#### Environment

The Coast Guard has considered the environmental impact of this rule and has determined that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, that this rule is categorically excluded from further environmental documentation.

#### List of Subjects in 33 CFR Part 165

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

For the reasons discussed 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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add § 165.757 to read as follows:

#### § 165.757 Safety Zones; Ports of Ponce, Tallaboa, and Guayanilla, Puerto Rico and Limetree Bay, St. Croix, U.S.V.I.

(a) *Location.* The following areas are established as a safety zones during the specified conditions:

(1) *Port of Ponce, Puerto Rico.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°57.0' N in the waters of the Caribbean Sea on approach to or departing from the Port of Ponce, Puerto Rico (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(2) *Port of Tallaboa, Puerto Rico.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°56.0' N in the waters of the Caribbean Sea on approach to or departing from the Port of Tallaboa, Puerto Rico (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(3) *Port of Guayanilla, Puerto Rico.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels around with product aboard while transiting north of Latitude 17°57.0' N in the waters of the Caribbean Sea on approach to or departing from the Port of Guayanilla, Puerto Rico (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(4) *Port of Limetree Bay, St. Croix, U.S.V.I.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while

transiting north of Latitude 17°39.0' N in the waters of the Caribbean Sea on approach to or departing from the Port of Limetree Bay, U.S.V.I. (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port. The Marine Safety Office San Juan will notify the maritime community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures on LHG carriers via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz).

Dated: September 16, 2002.

W.J. Uberti,

*Captain, U.S. Coast Guard, Captain of the Port, San Juan.*

[FR Doc. 02-24665 Filed 9-26-02; 8:45 am]

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#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

RIN 2900-AK95

#### Recoupment of Severance Pay From VA Compensation

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulation governing recoupment of military severance pay from service-connected disability compensation to conform to the statutory provision that, effective September 15, 1981, requires the recoupment of any severance pay from VA compensation. VA is also amending these regulations to reflect the statutory provision that excludes Federal income tax withheld from payments of separation pay, severance pay, and readjustment pay made after September 30, 1996, from VA recoupment.

**DATES:** *Effective Date:* September 27, 2002.

*Applicability Dates:* The changes will be applied retroactively to conform to statutory requirements. For more information concerning dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810

Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7213.

**SUPPLEMENTARY INFORMATION:** VA regulations at 38 CFR 3.700(a)(3) currently state that there is no prohibition against payment of compensation if a veteran received nondisability severance pay from the military.

In a precedent opinion (VAOPGCPREC 12-96), VA's General Counsel held that the portion of 38 CFR 3.700(a)(3) which states that there is no prohibition against payment of compensation to a veteran who received nondisability severance pay is of no effect because it is inconsistent with 10 U.S.C. 1174(h)(2), which as added in 1980 by Public Law 96-513, section 109(c), 94 Stat. 2835, 2870 (1980), requires, effective September 15, 1981, recoupment of nondisability severance pay from VA compensation. Therefore, VA is amending 38 CFR 3.700(a)(3) to conform to the governing statute.

Public Law 104-201 amended 10 U.S.C. 1174(h)(2) to exclude Federal income tax withheld from payments of separation pay, severance pay and readjustment pay made after September 30, 1996, from VA recoupment. VA is amending 38 CFR 3.700(a)(2)(iii), (a)(3), and (a)(5)(i) to conform to this governing statute. In addition, VA is making nonsubstantive changes to 38 CFR 3.700 for purposes of clarity.

Except with respect to the amendment relating to income tax, this rule applies to disability compensation paid after September 14, 1981; the amendment relating to income tax applies only to payment of separation pay, special separation benefits under 10 U.S.C. 1174a, severance pay, and readjustment pay made after September 30, 1996.

While this document updates VA regulations concerning statutes enacted in 1981 and 1996, VA procedures have adhered to these statutes since their enactment. This document brings VA regulations into conformance with VA practice and will not create overpayments in any existing claims.

#### Administrative Procedure Act

Changes made by this final rule merely reflect the statutory requirements in title 10, U.S.C. or are nonsubstantive changes made for purposes of clarity. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated

costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

#### Executive Order 12866

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

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 64.109.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: August 16, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

#### 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 3.700 is amended by:

A. In paragraph (a)(2)(iii), removing “of the total amount”; adding two sentences and revising the authority citation at the end of paragraph (a)(2)(iii).

B. In paragraph (a)(3), in the first sentence, removing “severance pay is

granted,” and adding, in its place, “severance pay is granted, or where entitlement to disability compensation was established on or after September 15, 1981,”; removing the fifth sentence; in the six sentence, removing “Compensation” and adding, in its place, “Where entitlement to disability compensation was established prior to September 15, 1981, compensation”; adding three sentences at the end of paragraph (a)(3); and revising the authority citation at the end of the paragraph.

C. In paragraph (a)(5), revising the paragraph heading.

D. In paragraph (a)(5)(i), removing “A veteran” and adding, in its place, “Where entitlement to disability compensation was established on or after September 15, 1981, a veteran”; removing “total amount received as”; adding two sentences at the end of paragraph (a)(5)(i).

E. Revising the authority citation at the end of paragraph (a)(5).

The revisions and additions read as follows:

#### § 3.700 General.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iii) \* \* \* Where payment of readjustment pay was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of readjustment pay. Where payment of readjustment pay was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of readjustment pay less the amount of Federal income tax withheld from such pay.

(Authority: 10 U.S.C 1174(h)(2) and 1212(c))

\* \* \* \* \*

(3) \* \* \* Where entitlement to disability compensation was established on or after September 15, 1981, a veteran may receive disability compensation for disability incurred or aggravated by service prior to the date of receipt of the severance pay, but VA must recoup from that disability compensation an amount equal to the severance pay. Where payment of severance pay was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of the severance pay. Where payment of severance pay was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of the severance pay less the amount of Federal income tax withheld from such pay.

(Authority: 10 U.S.C. 1174(h)(2) and 1212(c))

\* \* \* \* \*

(5) *Separation pay and special separation benefits.* (i) \* \* \* Where payment of separation pay or special separation benefits under section 1174a was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of separation pay or special separation benefits. Where payment of separation pay or special separation benefits under section 1174a was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of separation pay or special separation benefits less the amount of Federal income tax withheld from such pay.

\* \* \* \* \*

(Authority: 10 U.S.C. 1174 and 1174a)

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BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[GA-200228(a); FRL-7382-2]

### Approval and Promulgation; Georgia Transportation Conformity State Implementation Plan Memorandum of Agreement for the Atlanta Metropolitan Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is promulgating a minor correction to its previous approval of the transportation conformity State Implementation Plan (SIP) for Atlanta, Georgia promulgated on April 7, 2000 (65 FR 18249). This direct final rulemaking will amend EPA's approval of the Georgia Transportation Conformity SIP, so that the current SIP is consistent with the March 2, 1999, decision by the U.S. Court of Appeals for the District of Columbia Circuit Court that affected the transportation conformity regulations pertaining to triggers and the frequency of conformity determinations. As a consequence of this correction, Georgia will no longer be required to make a new conformity determination within eighteen months of the submission date of an initial SIP. Alternatively, EPA's August 6, 2002, rulemaking revision (67 FR 50808) will now govern the establishment of the eighteen-month conformity clock for

initial SIP submissions. The eighteen-month clock for initial SIPs will begin upon the effective date of EPA's adequacy finding for the motor vehicle emissions budgets in such submitted SIPs.

**DATES:** This direct final rule is effective November 26, 2002, without further notice, unless EPA receives adverse comment by October 28, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Kelly A. Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. References file GA 20228. The EPA Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn.: Kelly Sheckler, 404/562-9042, [Sheckler.Kelly@epa.gov](mailto:Sheckler.Kelly@epa.gov).

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Quality Modeling and Transportation Section, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, [Sheckler.Kelly@epa.gov](mailto:Sheckler.Kelly@epa.gov), (404) 562-9042.

### SUPPLEMENTARY INFORMATION:

#### Background

Transportation conformity is required under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan. EPA's transportation conformity rule established the criteria and procedures for determining whether transportation

activities conform to the state air quality plan.

EPA first published the transportation conformity rule on November 24, 1993 (58 FR 62188), and made subsequent revisions to the rule in 1995 (60 FR 40098, August 7, 1995, and 60 FR 57179, November 14, 1995). On August 15, 1997, however, EPA published a comprehensive set of amendments that clarified and streamlined language from the 1993 transportation conformity rule and 1995 amendments (62 FR 43780). Since the publication of the 1997 rule, EPA has made two additional revisions to the conformity rule in 2000 and 2002 (65 FR 18911, April 10, 2000, and 67 FR 50808, August 6, 2002).

The August 2002 amendment to the conformity rule addressed, in part, the decision made on March 2, 1999, by the U.S. Court of Appeals for the District of Columbia Court that affected several provisions of the 1997 rulemaking (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir 1999). Specifically, the August amendment addressed the impact of this Court decision on one provision of the conformity rule, Section 93.104 (e). With this rule change, conformity must now be determined within eighteen months of the effective date of the **Federal Register** notice announcing EPA's finding that the motor vehicle emission budgets in an initial SIP submission are adequate rather than within eighteen months of initial SIP submission.

We made this minor change to the conformity rule to respond to the Court decision that EPA must find motor vehicle emissions budgets in submitted SIPs adequate before they can be used in a conformity determination. The August 2002, rulemaking also changes the starting point for eighteen month clocks that are currently running for areas with initial SIP submissions, so that these areas are given the full eighteen months after EPA's adequacy finding to determine conformity to their SIPs. In other words, in areas where a SIP has been submitted and EPA is currently reviewing it for adequacy, the eighteen-month clock required by section 93.104(e) (2) will now not start until the effective date of our adequacy finding. For areas that have submitted initial SIPs that EPA has already found adequate and to which conformity has not yet been determined, the August rule restarts the eighteen-month clock from the effective date of EPA's positive adequacy finding. For more information on the eighteen-month conformity requirement for initial SIP submissions see the August 6, 2002 final rule (67 FR 50808).