

Clearances" dated December 12, 2005⁷ and July 17, 2006.⁸

(2) Personnel who have been determined eligible for access to classified information or a sensitive position shall not be subject to additional security reviews or determinations unless potentially disqualifying conditions are present that have not been previously adjudicated. This does not preclude requirements for suitability determinations.

(3) Reciprocity for SCI eligibility shall be executed in accordance with the ICD 704.

(i) *National Security Agency (NSA)/ Central Security Service (CSS)*. Employees, contractors, military assignees, and others with similar affiliations with the NSA/CSS must maintain SCI eligibility for access to sensitive cryptologic information in accordance with chapter 23 of 50 U.S.C.

(j) *Support of the Operation Warfighter Program*. PSIs in support of wounded warriors may be submitted and processed regardless of the time remaining in military service. Investigations will be accelerated through a special program code established by the Office of the USD(I) to ensure expedited service by the investigating and adjudicating agencies.

(1) Category 2 wounded, ill, or injured Uniformed Service personnel who expect to be separated with a medical disability rating of 30% or greater may submit PSIs for Top Secret clearance eligibility prior to medical separation provided they are serving in or have been nominated for a wounded warrior internship program.

(2) The investigations will be funded by the DoD sponsoring agency that is offering the internship. If the sponsoring agency does not have funds available, the owning Military Service may choose to fund the investigation.

§ 156.7 Procedures—common access card investigation and adjudication.

(a) A favorably adjudicated National Agency Check with Inquiries (NACI) is the minimum investigation required for the CAC.

(b) All final adjudicative determinations must be made by cleared and trained Government personnel. Automated adjudicative processes shall be used to the maximum extent practicable.

(c) Adjudication decisions of CAC investigations shall be incorporated into

Central Adjudication Facility consolidation as directed by the Deputy Secretary of Defense.

(d) CAC applicants or holders may appeal CAC denial or revocation. No separate administrative appeal process is allowed when an individual has been denied a CAC as a result of a negative suitability determination under 5 CFR part 731, an applicable decision to deny or revoke a security clearance, or based on the results of a determination to disqualify the person from an appointment in the excepted service or from working on a contract for reasons other than eligibility for a Federal credential as described in the OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12." If a later denial or revocation of a CAC results from an applicable denial or revocation of a security clearance, suitability decision or other action for which administrative process was already provided on grounds that support denial or revocation of a CAC, no separate appeal for CAC denial or revocation is allowed.

(1) Civilian applicants who have been denied a CAC, and for whom an appeal is allowed under this paragraph, may elect to appeal to a three member board containing one security and one human resources representative from the sponsoring activity.

(2) Contractor employees who have had their CAC revoked, and for whom an appeal is allowed under this paragraph, may appeal to the Defense Office of Hearings and Appeals under the established administrative process set out in 32 CFR part 155. Decisions following appeal are final.

(e) Reciprocity of CAC Determinations. (1) The sponsoring activity shall not readjudicate CAC determinations for individuals transferring from another Federal department or agency, provided:

(i) Possession of a valid PIV or CAC can be verified by the individual's former department or agency.

(ii) The individual has undergone the required NACI or other equivalent suitability, public trust, or national security investigation and received favorable adjudication from the former agency.

(2) Reciprocity may be granted as long as there is no break in service greater than 24 months and the individual has no actionable information since the date of the last completed investigation.

(3) Reciprocity shall be based on final adjudication only.

(4) Determinations for CACs issued on an interim basis are not eligible to be transferred.

Dated: January 14, 2011.

Patricia L. Toppings,
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-2011-0038]

RIN 1625-AA87

Security Zones; Cruise Ships, Port of San Diego, CA; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of January 27, 2011 (76 FR 4833), regarding security zones for cruise ships in the Port of San Diego, California. This correction clarifies when a preliminary environmental analysis checklist will be available in the docket.

DATES: This correction is effective February 2, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or e-mail Commander Michael B. Dolan, Prevention, Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7261, e-mail Michael.B.Dolan@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

Correction

In the notice of proposed rulemaking FR Doc. 2011-1804, beginning on page 4833 in the issue of January 27, 2011, make the following correction in the **SUPPLEMENTARY INFORMATION** section. On page 4835 in the 2nd column, remove the following sentence starting on line 9:

"A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**."

And replace it with the following sentence:

"We intend to prepare a preliminary environmental analysis checklist and make it available in the docket where indicated under **ADDRESSES**."

⁷ Copies available on the Internet at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2006/reciprocal121205.pdf>.

⁸ Copies available on the Internet at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2006/m06-21.pdf>.

Dated: January 27, 2011.

Kathryn A. Sinniger,
Chief, Office of Regulations and
Administrative Law.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AN64

Clothing Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations regarding clothing allowances. The amendment would provide for annual clothing allowances 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 distinct 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 distinct outergarment. The amendment would also provide 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 appliances(s) or medication(s) together cause a single article of clothing to wear out faster than if affected by a single appliance or medication.

DATES: VA must receive comments on or before April 4, 2011.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll free number). Comments should indicate that they are submitted in response to "RIN 2900-AN64—Clothing Allowance." Copies of 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) 461-4902 for an appointment.

(This is not a toll free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Tom Kniffen, Chief, Regulations Staff (211D), Compensation and Pension 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: Section 1162 of title 38, United States Code, authorizes VA to pay an annual clothing allowance to each veteran who, because of a service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which VA determines tends to wear out or tear the veteran's clothing or uses prescription medication for a skin condition that is due to a service-connected disability which VA determines causes irreparable damage to the veteran's outergarments. VA had interpreted "a clothing allowance * * * because of a service-connected disability" in section 1162(1) and (2) and the word "or" between paragraphs (1) and (2) to mean that a veteran is entitled to only one annual clothing allowance, regardless of whether the veteran uses multiple qualifying appliances for more than one service-connected disability or uses a qualifying appliance for a service-connected disability and prescription medication for a skin condition resulting from a service-connected disability. In *Sursely v. Peake*, 551 F.3d 1351, 1356 (Fed. Cir. 2009), VA, based upon this statutory interpretation, rejected a claim for a second clothing allowance for "independently qualifying orthopedic appliances affecting different articles of clothing." The United States Court of Appeals for the Federal Circuit (Federal Circuit) disagreed with VA's interpretation and stated that, "by linking receipt of the benefit to a single qualifying appliance," Congress "require[s]" VA "to pay multiple clothing allowances to a veteran who * * * uses multiple qualifying appliances." *Id.* and 1356 n.4. The Federal Circuit also rejected the United States Court of Appeals for Veterans Claims' conclusion that it would be "irrational" to permit multiple clothing allowances for use of multiple prosthetic appliances affecting a single article of clothing because under such circumstances the garment may wear out faster than if affected by a single appliance. *Id.* at 1357-58 and 1358 n.6

(quoting 22 Vet. App. 21, 25-26 (2007)). However, the Federal Circuit noted that VA could promulgate regulations prohibiting multiple clothing allowances if "damage to a single garment resulting from multiple prosthetic appliances is 'overlapping.'" *Id.* at 1358 (quoting *Esteban v. Brown*, 6 Vet. App. 259, 262 (1994)).

VA proposes to amend 38 CFR 3.810(a) to implement *Sursely*. VA would amend current § 3.810(a)(1) so that it provides the criteria for entitlement to one annual clothing allowance currently set forth in § 3.810(a)(1) and (2). We would also make a technical change in § 3.810(a)(1)(i) by changing the reference to § 3.326(c) to § 3.326(b) to reflect a longstanding regulatory amendment. VA also would revise § 3.810(a)(2) to provide the criteria for more than one annual clothing allowance where distinct garments are affected. New § 3.810(a)(2) would state that a veteran is entitled to a clothing allowance for each prosthetic or orthopedic appliance or medication used by the veteran that satisfies the requirements of paragraph (1) of this subsection if each appliance or medication affects a distinct article of clothing or outergarment. This regulation is consistent with the *Sursely* holding that the veteran was entitled to a second clothing allowance "for his independently qualifying orthopedic appliances affecting different articles of clothing." 551 F.3d at 1356.

VA also recognizes, as the Federal Circuit did, that use of multiple qualifying appliances or medications may cause a single article of clothing to wear out faster, requiring replacement of the garment more frequently during the course of the year than if the garment were affected by only one appliance or medication. *Id.* at 1358 n.6. VA therefore also proposes to provide 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 appliances(s) or medication(s) each satisfy the requirements of § 3.810(a)(1) and together tend to tear or wear a single article of clothing or irreparably damage an outergarment at a faster rate, requiring replacement sooner than if the article of clothing or outergarment was affected by a single qualifying appliance or medication. In such circumstances, VA would provide two annual clothing allowances, rather than an allowance for each appliance or medication, because we believe that the wear and tear or irreparable damage caused by three or