

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:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0933 to read as follows:

### **§ 165.T08 0933 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.**

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates: 27°48′55.07″ N, 97°13′15.94″ W; 27°48′54.99″ N, 97°13′6.74″ W; 27°48′44.46″ N, 97°13′6.86″ W; 27°48′44.54″ N, 97°13′16.06″ W.

(b) *Effective period.* This section is effective from 9 a.m. through 3 p.m. on November 15, 2022. This section is subject to enforcement from 9 a.m. to 3 p.m.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into the temporary safety zone in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: November 9, 2022.

**J.B. Gunning,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.*

[FR Doc. 2022–24953 Filed 11–10–22; 4:15 pm]

**BILLING CODE 9110–04–P**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 3**

**RIN 2900–AR70**

### **Vietnam Era Definition, Medal of Honor Special Pension for Surviving Spouses, and Dependency and Indemnity Compensation (DIC) Remarriage Age**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its adjudication regulations by revising the definition of the Vietnam era, extending the payment of Medal of Honor special pension to an eligible surviving spouse, and extending eligibility for dependency and indemnity compensation (DIC) to surviving spouses who remarry after age 55. These amendments incorporate legislative updates enacted by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020. Amendments to regulations regarding the definition of Vietnam era and the retention of eligibility to DIC benefits following the remarriage of a surviving spouse after a certain age bring federal regulations into conformance with the statutory changes. Similarly, the Medal of Honor special pension regulatory amendments extend eligibility for that benefit to a surviving spouse of a Medal of Honor recipient as required by law.

#### **DATES:**

*Effective date:* This rule is effective November 15, 2022.

*Applicability date:* The provisions of this final rule shall apply to all applications for benefits pending before VA or a Federal appellate court on or after January 5, 2021, unless otherwise noted.

**FOR FURTHER INFORMATION CONTACT:** Eric Baltimore, Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8863 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Public Law 116–315, 134 Stat. 4967 (herein referred to as “the Act”), was enacted on January 5, 2021. Sections 2001, 2003, and 2009 of the Act amended sections 101(29)(A), 1562(a), 1562(d), 1562(f)(1), 103(d)(5), and 103(d)(2)(B) of title 38, U.S.C. To incorporate these amendments, VA amends its regulations governing the

definition of the Vietnam era, Medal of Honor special pension benefits for surviving spouses, and the remarriage age for surviving spouses eligible to receive DIC benefits.

### **Definition of Vietnam Era**

Section 2001 of the Act amended 38 U.S.C. 101(29)(A) by revising the definition of Vietnam era to “[t]he period beginning November 1, 1955, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.” VA amends 38 CFR 3.2 to incorporate this change.

VA administers several benefit programs, including Veterans and Survivors Pension, in which benefits are payable to veterans and their survivors based, in part, on whether the veteran served during a period of war, including the Vietnam era. See 38 U.S.C. 101(11) (defining period of war). For example, eligibility for pension benefits requires that the veteran served in the active military, naval, air, or space service—(1) for ninety days or more during a period of war; (2) during a period of war and was discharged or released from such service for a service-connected disability; (3) for a period of ninety consecutive days or more and such period began or ended during a period of war; or (4) for an aggregate of ninety days or more in two or more separate periods of service during more than one period of war. See 38 U.S.C. 1521(j). The definition of the Vietnam era also impacts numerous other VA benefits tied to service during a period of war, to include disability compensation under Chapter 11, and DIC under Chapter 13.

Previously, the Vietnam era was defined as “[t]he period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.” 38 U.S.C. 101(29) (2020). Under the amended definition of the Vietnam era, which now begins on November 1, 1955, additional veterans who served in the Republic of Vietnam and their eligible survivors now qualify for the above-mentioned benefits.

VA amends 38 CFR 3.2 to incorporate the new statutory definition of Vietnam era. Because the Act did not amend the definition of Vietnam era in 38 U.S.C. 1831(3), that definition remains unchanged for purposes of administering benefits under Chapter 18 of Title 38, United States Code. Accordingly, VA is not amending the definition of Vietnam veteran in 38 CFR 3.814 and 3.815.

### Medal of Honor Special Pension for Surviving Spouses

Section 2003 of the Act amended 38 U.S.C. 1562 to expand entitlement for Medal of Honor special pension (MOHP) to eligible surviving spouses. If a veteran dies while eligible for MOHP or if a veteran is posthumously awarded a Medal of Honor for distinguished military service by the Secretary of the military branch in which the veteran served, then the veteran's eligible surviving spouse is now entitled to receive the MOHP benefit. VA amends 38 CFR 3.802 to incorporate this change.

Prior to the Act, MOHP was only awarded to veterans or servicemembers whose name had been entered on the Army, Navy, Air Force, and/or Coast Guard Medal of Honor Rolls, with minor revisions since its original establishment on September 2, 1958. See Public Law 85–857, 72 Stat. 1140. The Act extended eligibility for MOHP to surviving spouses of veterans whose name has been recorded on a Medal of Honor Roll of the Army, Navy, Air Force, and/or Coast Guard, either while the veteran was living or posthumously. A surviving spouse, for MOHP purposes, must satisfy the definition of surviving spouse in 38 U.S.C. 101(3), implemented by 38 CFR 3.50 through 3.60, including the requirement that the individual was married to a Medal of Honor recipient at the time of the veteran's death. In addition, the surviving spouse must meet the special section 1562 requirement that the marriage lasted for one year or more prior to the veteran's death, or for any period of time if a child was born of the marriage or was born to the surviving spouse and veteran before the marriage. See 38 U.S.C. 1562(a)(2)(B). VA amends 38 CFR 3.802(c) to incorporate the statutory eligibility criteria.

VA also amends § 3.55 to incorporate amendments to 38 U.S.C. 103(d), regarding exceptions to the remarriage bar in section 101(3). See Act, section 2003(b)(2)(B); 38 CFR 3.50(b)(2). The amendment to section 103(d) provides that, in addition to any other applicable exceptions, the surviving spouse is not barred from entitlement to MOHP due to (a) remarriage terminated by death or divorce unless the Secretary determines that the divorce was secured through fraud or collusion; (b) remarriage after age 57; or (c) living with another person and holding himself or herself out openly to the public as that person's spouse since the death of the veteran and after September 19, 1962, if such behavior has ceased. See 38 U.S.C. 103(d)(2)(A), (B), (d)(3), and (d)(5)(E). VA

adds § 3.55(a)(11) to reflect these changes.

The Act also provides that MOHP benefits shall not be paid to a surviving spouse who is in receipt of benefits under 38 U.S.C. 1311 (DIC benefits for service-connected death) or 1318 (benefits for survivors of certain veterans rated totally disabled at time of death). See Act, section 2003(b)(1)(B) (adding 38 U.S.C. 1562(a)(2)(C)). This exclusion is based on actual receipt of MOHP benefits, not on eligibility. In addition, section 1562(g) provides that a person entitled to MOHP may elect not to receive it. As a result, VA will allow a surviving spouse to make an election between MOHP and DIC benefits if eligible for both, as reflected in the amendment to 38 CFR 3.802(c)(3) and the addition of 38 CFR 3.702(g). Additionally, the Act amends section 1562(d) to provide that a surviving spouse shall receive no more than one MOHP, even if they were married to more than one person who has been awarded a Medal of Honor. See Act, section 2003(b)(2)(A)(i) (amending 38 U.S.C. 1562(d)). VA amends 38 CFR 3.802(b) to incorporate this limitation.

Section 2003(b)(3) of the Act precludes MOHP payments to a surviving spouse for time periods prior to January 5, 2021, the date of enactment. See 38 U.S.C. 1562, note. This limitation applies without qualification to “payment of pension” under section 1562 to a surviving spouse. *Id.* Accordingly, the limitation applies to lump sum payments under section 1562(f) in the case of a posthumous entry of the veteran on a Medal of Honor Roll, because section 1562(f) payments are “special pension” payments per section 1562(f)(2). This limitation is reflected in 38 CFR 3.802(c)(4) and (d)(2).

VA revises 38 CFR 3.802(a) to reflect that the Coast Guard official who certifies a veteran's acceptance on the Coast Guard Medal of Honor Role is “the Secretary of the Department in which the Coast Guard is operating,” rather than the Secretary of the Department of Transportation. This technical amendment aligns the language of the regulation with the statute governing military Honor Role certifications, 10 U.S.C. 1134a. Section 1134a(a) references the “Secretary of the Department in which the Coast Guard is operating,” in accordance with the realignment of the Coast Guard in The Homeland Security Act of 2002 (Pub. L. 107–296, section 888, 116 Stat. 2135), and the current language was incorporated into section 1134a in 2013. See Public Law 113–66, section 563, 127 Stat. 767.

VA also revises 38 CFR 3.802(b) to conform the language specifying the beginning date of MOHP payments to the current language of 38 U.S.C. 1562(a)(1). The beginning date of MOHP payments in the regulation is changed from the date VA received the application to “the date on which the person's name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll.” This change aligns the regulation with the amendments to 38 U.S.C. 1562(a)(1), effective December 26, 2013, made by the National Defense Authorization Act for Fiscal Year 2014 (Pub. L. 113–66, section 563(b)(1)(D), 127 Stat. 767), which has been implemented to date through internal VA adjudication guidance. This regulation change is applicable with respect to a Medal of Honor awarded on or after December 26, 2013 (the enactment date of Pub. L. 113–66), to parallel the applicability date of the statutory change. See Public Law 113–66, section 553(d).

In sum, in order to align the regulation for adjudicating claims with amended 38 U.S.C. 1562, VA amends 38 CFR 3.802 and 3.55 to incorporate MOHP eligibility for surviving spouses under the parameters established by the Act. The changes include adding a definition of an eligible surviving spouse for MOHP purposes, provisions concerning payment and eligibility dates, and other amendments to conform regulatory text with current legislative text.

### DIC Remarriage Age Change

Section 2009 of the Act amended 38 U.S.C. 103 to expand surviving spouse eligibility for DIC benefits, where the surviving spouse has remarried following the death of the veteran. Whereas prior to the amendment, remarriage after the age of 57 was not a bar to DIC benefits, the amendment lowers that age to 55. VA amends 38 CFR 3.55 to implement the statutory change.

DIC benefits are generally payable to a surviving spouse, child, or parent of a veteran whose death was service-connected and occurred on or after January 1, 1957, or before January 1, 1957, if the survivor elects to receive DIC in lieu of Death Compensation. This benefit may also be payable due to a veteran's death which occurred following a continuously rated totally disabling condition for the period required by 38 U.S.C. 1318. DIC benefits are paid to an eligible surviving spouse defined by 38 CFR 3.50 as an individual who lived with the veteran continuously from the date of marriage to the date of the veteran's death and

has not remarried since the death of the veteran, except in certain circumstances as provided in 38 CFR 3.55. If an individual ceases to be a surviving spouse due to remarriage, DIC is generally discontinued effective the last date of the month prior to the remarriage. 38 U.S.C. 5112(b)(1). However, Congress created an exception to this rule in 2003, providing that remarriage after age 57 does not bar receipt of DIC to otherwise eligible surviving spouses. Public Law 108–183, section 101 (Veterans Benefits Act of 2003). The Act lowers this age to 55, effective January 5, 2021.

The Act's expansion of DIC liberalizes the benefit criteria. A liberalizing VA law generally gives rise to a new benefit claim for those impacted by the change. *Routen v. West*, 142 F.3d 1434 (Fed. Cir. 1998); *Spencer v. Brown*, 17 F.3d 368, 372 (Fed. Cir. 1994) (“[t]he applicant's later claim, asserting rights which did not exist at the time of the prior claim, is necessarily a different claim”). A claimant previously denied DIC based on remarriage may, if the statutory amendment impacts eligibility, file a new application for the benefit without the need to supply new and relevant evidence. *Ortiz v. McDonough*, 6 F.4th 1267, 1270–71 (Fed. Cir. 2021). For example, a claimant denied DIC prior to the Act based on remarriage between the ages of 55 and 57 generally may, after January 5, 2021, file a new claim. The effective date of an award based on the Act's change in DIC eligibility criteria is governed by special provisions applicable to changes in law. *Id.* at 1270–71. Under 38 U.S.C. 5110(g) and 38 CFR 3.114, the effective date depends on a number of factors, but generally may not be earlier than January 5, 2021, the effective date of the Act.

The exception for remarriage after age 55 applies regardless of when the remarriage occurred, whether before, on, or after January 5, 2021. The Act does not limit the exception to remarriages occurring after the Act's effective date of January 5, 2021. Similarly, the amendments to 38 CFR 3.55 do not contain such a limitation. We note that the Act contrasts in this regard with the Veterans Benefits Act of 2003, which first established the age-related remarriage exception for DIC benefits. Public Law 108–183. There, Congress specified that claimants whose remarriage qualified for the new statutory exception, but occurred before that law was enacted, had one year to file a new claim in order to benefit from the rule. Public Law 108–183, section 101(e). The Act contains no filing limitation. Thus, for DIC applications filed after January 5, 2021, the filing

limitation contained in the Veterans Benefits Act of 2003 is not relevant. Even if that limitation previously barred a claimant from DIC, it would not bar a new application for DIC benefits filed after January 5, 2021. Nothing in the Act, however, creates the basis for a claim of clear and unmistakable error in a VA claim that was finally adjudicated prior to January 5, 2021. *See, e.g. George v. McDonough*, 142 S. Ct. 1953 (2022).

In order to align the regulation for adjudicating claims with amended 38 U.S.C. 103, VA amends 38 CFR 3.55 to explicitly provide that an eligible surviving spouse that remarries after age 55 (irrespective if said marriage took place before, on, or after January 5, 2021), is not barred from entitlement to DIC benefits.

#### Administrative Procedure Act

The Secretary of Veterans Affairs has found that there is good cause to publish this rule without opportunity for public comment under the provisions of 5 U.S.C. 553(b)(B), allowing an exception where an agency finds that notice and comment is “impractical, unnecessary, or contrary to the public interest.” The Act liberalizes specific VA benefits under specific mandatory parameters, as outlined above, and is self-implementing. This rule simply conforms VA's regulations to incorporate the new statutory standards, without creation of rules beyond the plain language of the statute or the exercise of substantive policy discretion. To date, the new standards are incorporated only in internal agency adjudication guidance. Thus, while VA recognizes generally that the public has an interest in the opportunity to comment, in this case notice and comment rulemaking is unnecessary and would delay conformance of VA regulations to the clear terms of the amended statutes.

The Secretary has also found that a 30-day delayed effective date is not required under 5 U.S.C. 553(d), which excepts “(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.” Because this rule liberalizes VA benefits in accordance with statutory changes that are already in effect, the Secretary finds that a delayed effective date is not required pursuant to section 553(d)(1) and (3).

For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as a final rule with an immediate effective date.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

#### Paperwork Reduction Act

Although this final rule contains collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collection of information for 38 CFR 3.55 is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control 2900–0495.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

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

#### Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are: 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children;

64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

### Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 3, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

### Luvenia Potts,

*Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, VA amends 38 CFR part 3 as set forth below:

## 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. Amend § 3.2 by revising paragraph (f) to read as follows:

#### § 3.2 Periods of war.

\* \* \* \* \*

(f) *Vietnam era.* The period beginning on November 1, 1955, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.

(Authority: 38 U.S.C. 101(29))

\* \* \* \* \*

■ 3. Amend § 3.55 by:

■ a. Removing the heading from paragraph (a)(9);

- b. Adding paragraph (a)(9)(iii);
  - c. Revising paragraph (a)(10); and
  - d. Adding paragraph (a)(11).
- The revision and additions read as follows:

#### § 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships.

(a) \* \* \*

(9) \* \* \*

(iii) The remarriage of a surviving spouse after the age of 55 (at any time) shall not bar the furnishing of benefits under 38 U.S.C. chapter 13 to such person as the surviving spouse of the veteran.

(10)(i) On or after January 1, 2004, the remarriage of a surviving spouse after the age of 57 shall not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37, subject to the limitation in paragraph (a)(10)(ii) of this section.

(ii) A surviving spouse who remarried after the age of 57, but before December 16, 2003, may be eligible for medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37 pursuant to paragraph (a)(10)(i) of this section only if the application for such benefits was received by VA before December 16, 2004.

(Authority: 38 U.S.C. 103)

(11) A surviving spouse will not be barred from benefits relating to Medal of Honor special pension under 38 U.S.C. 1562(a)(2) due to:

- (i) Remarriage after the age of 57;
- (ii) Remarriage terminated by death or divorce, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion; or
- (iii) Having lived with another person and held himself or herself out openly to the public as the spouse of such other person since the death of the veteran and after September 19, 1962, if he or she ceases living with such other person and holding himself or herself out openly to the public as the other person's spouse.

(Authority: 38 U.S.C. 103(d)(2) and 38 U.S.C. 103(d)(3))

\* \* \* \* \*

■ 4. Amend § 3.702 by revising paragraph (d)(1) and adding paragraph (g) to read as follows:

#### § 3.702 Dependency and indemnity compensation.

\* \* \* \* \*

(d) \* \* \*

(1) Except as noted in paragraphs (d)(2) and (g) of this section, an election to receive dependency and indemnity compensation is final and the claimant may not thereafter reelect death pension or compensation in that case. An election is final when the payee (or the payee's fiduciary) has negotiated one check for this benefit or when the payee dies after filing an election but prior to negotiation of a check.

\* \* \* \* \*

(g) *Medal of Honor pension.* A surviving spouse who qualifies for dependency and indemnity compensation under 38 U.S.C. 1311 or 1318 may, by notifying the Secretary in writing, elect to receive instead Medal of Honor pension, if entitled to such pension. See also § 3.802(c)(2) and (3).

(Authority: 38 U.S.C. 1562(a)(2)(C))

\* \* \* \* \*

■ 5. Revise § 3.802 to read as follows:

#### § 3.802 Medal of Honor.

(a) The Secretary of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Department in which the Coast Guard is operating will determine the eligibility of applicants to be entered on the Medal of Honor Roll and will deliver to the Secretary of the Department of Veterans Affairs a copy of each certificate issued in which the right of the person named in the certificate to the special pension is set forth. The special pension will be authorized on the basis of such certification. A surviving spouse may be authorized for special pension in accordance with paragraph (c) of this section.

(Authority: 10 U.S.C. 1134a; 38 U.S.C. 1562)

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 1562 will be made beginning as of the date on which the person's name is entered on the Army, Navy, Air Force, and/or Coast Guard Medal of Honor Roll. The special pension will be paid in addition to all other payments under laws of the United States. However, a person awarded more than one Medal of Honor, or a person married to more than one person who has been awarded a Medal of Honor, may not receive more than one special pension. A person who is entitled to special pension under paragraph (a) of this section may elect not to receive special pension by notifying the Secretary of such election in writing.

(Authority: 38 U.S.C. 1562)

(c) Except as provided in paragraphs (c)(1) and (2) of this section, the Secretary shall pay special pension under this section to the surviving

spouse (as defined in § 3.50(b)) of a person whose name has been entered on the Army, Navy, Air Force, and/or Coast Guard Medal of Honor Roll and a copy of whose certificate has been delivered to the Secretary under 10 U.S.C. 1134a(d).

(1) No special pension shall be paid to a surviving spouse of a person under this section unless such surviving spouse was married to such person—

(i) For one year or more prior to the veteran's death; or

(ii) For any period of time if a child was born of the marriage, or was born to them before the marriage.

(2) No special pension shall be paid to a surviving spouse of a person under this section if such surviving spouse is receiving dependency and indemnity compensation under 38 U.S.C. 1311 or 1318.

(3) A surviving spouse who qualifies for Medal of Honor pension may, by notifying the Secretary in writing, elect to receive instead dependency and indemnity compensation under 38 U.S.C. 1311 or 1318, if entitled to such compensation. See also § 3.702(g).

(4) Special pension, including any lump sum payment under paragraph (d) of this section, may only be paid to a surviving spouse for months beginning after January 5, 2021.

(Authority: 38 U.S.C. 1562 and note)

(d)(1) VA will pay to each veteran or service member who is receiving or who in the future receives Medal of Honor pension a retroactive lump sum special pension payment equal to the total amount of Medal of Honor pension that person would have received during the period beginning the first day of the month after the date of the event for which the veteran earned the Medal of Honor and ending on the last day of the month preceding the month in which pension was awarded under paragraphs (b) and (c) of this section.

(2) VA will calculate the veteran's or service member's lump sum payment using the monthly Medal of Honor pension rates in effect from the first day of the month after the date of the event for which the veteran or service member earned the Medal of Honor, to the last day of the month preceding the month in which the individual was initially awarded the Medal of Honor pension under paragraph (b) of this section. VA will not make a retroactive lump sum payment under this paragraph (d)(2) before October 1, 2003.

(Authority: 38 U.S.C. 1562(f))

(e) In the case of a posthumous entry on a qualifying Medal of Honor Roll, VA will pay to each surviving spouse who

is receiving or who in the future receives Medal of Honor pension under paragraph (c) of this section a retroactive lump sum payment using the monthly Medal of Honor pension rates in effect from the first day of the month after the date of the event for which the veteran or service-member earned the Medal of Honor, to the last day of the month preceding the month in which the surviving spouse was initially awarded the Medal of Honor pension. VA will not make a retroactive posthumous lump sum payment under this paragraph (e) for periods before February 1, 2021.

(Authority: 38 U.S.C. 1562(f) and 1562 note)

[FR Doc. 2022–24416 Filed 11–14–22; 8:45 am]

**BILLING CODE 8320–01–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA–R05–OAR–2022–0295; FRL–10162–03–R5]**

### **Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules; Withdrawal of Direct Final Rule**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the September 27, 2022, direct final rule approving revisions to Michigan Air Pollution Control Rules Part 1 Definitions, and Part 2 Air Use Approval for inclusion in the Michigan State Implementation Plan (SIP) and the removal of rules from the SIP that are part of Michigan's title V Renewable Operating Permit program, and rules that have been moved to other sections of the Michigan Administrative Code and approved into the Michigan SIP. EPA will address the comment in a subsequent final action based upon the proposed action also published on September 27, 2022. EPA will not institute a second comment period on this action.

**DATES:** As of November 15, 2022, EPA withdraws the direct final rule published at 87 FR 58453 on September 27, 2022.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671,

*Blathras.constantine@epa.gov*. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

**SUPPLEMENTARY INFORMATION:** On September 27, 2022, the EPA published a direct final rule (87 FR 58453). The State of Michigan submitted this revision as a modification to the SIP on March 22, 2022. In the direct final rule, EPA stated that if adverse comments were submitted by October 27, 2022, the rule would be withdrawn and not take effect. On October 27, 2022, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on September 27, 2022 (87 FR 58471). EPA will not institute a second comment period on this action.

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 4, 2022.

**Debra Shore,**

*Regional Administrator, Region 5.*

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ Accordingly, the amendment to 40 CFR 52.1170 published in the **Federal Register** on September 27, 2022 (87 FR 58453) is withdrawn as of November 15, 2022.

[FR Doc. 2022–24688 Filed 11–14–22; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 55**

**[EPA–R01–OAR–2021–0790; FRL–9265–02–R1]**

### **Outer Continental Shelf Air Regulations; Consistency Update for Massachusetts**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air