comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-43. This action would realign a segment of V-43 located in the vicinity of Erie, PA. The changes to the airway are necessary to coincide with the preferred arrival routings to the Toronto International Airport. The proposed changes will simplify routings issued by air traffic control and make better use of the airspace. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulation evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-43 [Amended]

By removing the words "INT Erie 043° and Buffalo, NY, 259° radials" and substituting the words "INT Erie 042° T(048° M) and Buffalo, NY, 259° T (167° M) radials."

Issued in Washington, DC, on February 12, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-4336 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-51]

Proposed Revision of Control Zone, Brunswick Malcolm-McKinnon Airport, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Brunswick Malcolm-McKinnon Airport Control Zone. The existing description references the Burnswick Municipal Airport and excludes from the control zone that portion within a 1.5-mile radius of the airport. The Burnswick Municipal Airport has long been closed. This proposed action would eliminate this reference and also, would make a minor correction in the latitude/longitude coordinate position of the Malcolm-McKinnon Airport.

DATES: Comments must be received on or before: April 12, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 91-ASO-5, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are inivited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Avilability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the appliation procedure.

The Propsal

The FAA is considering an amendment to § 71.171 of part 71 of the

Federal Aviation Regulations (14 CFR part 71) to revise the Brunswick Malcolm-McKinnon, GA Control Zone. The existing description of the control zone excludes that portion within a 1.5-mile radius of the Brunswick Municipal Airport which has long been closed. This proposed action would eliminate this reference. Also, a minor correction would be made in the latitude/longitude coordinate position of the Malcolm-McKinnon Airport. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therfore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regultory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Brunswick Malcolm-McKinnon Airport, GA [Revised]

Within a 5-mile radius of Malcolm-McKinnon Airport (lat. 31°09'05"N., long 81°23'30"W.); with in 1.5 miles each side of the Brunswick VORTAC 022° radial, extending from the 5-mile radius zone to the VORTAC.

Issued in East Point, Georgia, on February 12, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-4351, Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[PS-093-88]

RIN 1545-A059

Proposed Regulations Amending the Gasohol Regulations to Modify the Tolerance Allowed to the 10 Percent Alcohol Requirement and the Later Blending Rule

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed amendments to the regulations under section 4081(c) of the Internal Revenue Code of 1986 ("Code") that modify the tolerance rule for determining the percentage of alcohol required for gasohol to qualify for a reduced rate of tax. This document also proposes amendments that eliminate the later blending rule applicable to gasohol pursuant to regulations under section 4081 of the Code, except where later blending is for the purpose of producing a mixture consisting of less than 10 percent alcohol. These proposed regulations are in response to comments on the existing rules and affect gasohol blenders and retailers.

DATES: Written comments and requests for a public hearing must be received by April 26, 1991.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Attn: CC:CORP:T:R (PS-093-88), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS-093-88), Internal Revenue Service, room 4429, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, 202-535-9758 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) relating to the excise tax on qualified gasohol (a mixture of gasoline and at least 10 percent alcohol) under section 4081 of the Code.

Explanation of Provisions

The Current Rules

Under section 4081 of the Code, Federal excise tax is generally imposed on the sale or removal of gasoline at a rate of 14.1 cents per gallon. However, tax is imposed at a reduced rate equivalent to 8.1 cents per gallon of mixture for gasohol not containing ethanol and 8.7 cents per gallon of mixture for gasohol containing ethanol.

Section 4081(c) provides that gasohol must contain at least 10 percent alcohol to qualify for the reduced rate of tax Section 48.4081-2(a)(5) of the Manufacturers and Retailers Excise Tax Regulations provides a tolerance rule under which gasohol that contains less than 10 percent alcohol may qualify for a reduced rate of tax if the blender demonstrates to the satisfaction of the district director the existence of facts and circumstances establishing that, but for the commercial and operational realities of the blending process, the 10-percent-alcohol requirement would have been met. In any event, under the regulations, the percentage of alcohol in gasohol may not be less than 9.802 percent. Further, the necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain 10 percent alcohol (the "consistent pattern test").

Under § 48.4081-2(a)(5), the 10-percent-alcohol requirement is applied immediately after the gasohol is blended. However, § 48.4081-2(e)(3) provides that, if qualifying gasohol is later blended with additional motor fuel to produce a blend with less than 10 percent alcohol, the sale or use of such blend is subject to tax under section 4041 or 4081 (the "later blending rule").

The Proposed Regulations

The reduced rate of tax applicable to gasohol is intended to encourage the development of fuels that reduce the use of petroleum products in automobile transportation. S. Rep. No. 529, 95th Cong., 1st Sess. 45 (1977). Experience with the current gasohol tolerance and later blending rules suggests that the effectiveness of the reduced rate in achieving that purpose is diminished because the current rules do not adequately take into account the practical problems faced by blenders and retailers of gasohol. Accordingly, these proposed regulations would modify the gasohol tolerance rule and would, in general, eliminate the later blending rule.

The Gasohol Tolerance Rule

Taxpayers have argued that the current gasohol tolerance rule does not adequately address the practical problems in blending a mixture that contains 10 percent alcohol. For example, blenders may fail to attain the required 10-percent-alcohol level because the device used to meter the amount of gasoline or alcohol added to the tank truck is imprecise or because the high-speed gasoline or alcohol pump used does not shut off at the proper moment. Thus, it is inevitable that a significant number of mixtures will not contain exactly 10 percent alcohol, even though the blender intends for all of its mixtures to contain exactly 10 percent alcohol. Commentators have pointed out that blenders cannot compensate for these errors by consistently aiming for an alcohol content in excess of 10 percent because Environmental Protection Agency rules regulating the sale of gasohol to consumers explicitly authorize only the sale of gasohol containing not more than 10 percent alcohol. See Clean Air Act section 211(f)(1), 42 U.S.C. 7545(f)(1); EPA interpretive rule, 46 FR 38582 (July 28, 1981); Gas Plus, Inc., EPA notice 44 FR 20777 (April 6, 1979); Synco 76 Fuel Corp., EPA notice, 47 FR 22404 (May 24, 1982). Because these commercial and operational realities may cause a blender's gasohol mixtures to fail to attain the required 10-percent-alcohol level on more than an occasional basis, commentators have expressed concern that the consistent pattern test has created considerable uncertainty among blenders as to whether any of their mixtures that fail to do so (even if only by a small margin) qualify for a reduced rate of tax. This uncertainty reduces the effectiveness of the reduced rate in achieving its purpose of encouraging gasohol use.

The proposed regulations would eliminate the consistent pattern test so that whether gasohol qualifies for a reduced rate of tax would be determined on a batch-by-batch basis. Any batch containing at least 9.8 percent alcohol (without rounding) immediately after blending will qualify. For this purpose, a batch of gasohol is a discrete mixture of gasoline and alcohol and typically corresponds to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. Ordinarily, whether a batch contains at least 9.8 percent alcohol will be determined based on the meter delivery tickets corresponding to each batch. However, where a blender adds metered gallons of gasoline and alcohol into a tank already containing more than a de minimis amount of liquid (other than gasohol), the determination of whether a batch satisfies the 10-percent-alcohol requirement will be made by taking into account the amount of such liquid already in the tank. The Internal Revenue Service requests comments concerning the quantity of liquid (other than gasohol) that should be considered de minimis for these purposes given the commercial and operating realities associated with the blending process.

The Service believes that the proposed modification furthers the legislative objective underlying section 4081(c) of the Code because it should allow blenders who in good faith attempt to reach a 10-percent-alcohol level to qualify for the reduced rate of tax with respect to all or almost all of their mixtures. (In this regard, it should be noted that, to the extent a blender's mixtures fail to reach 9.8 percent alcohol, the blender may be entitled to an income tax credit under section 40 of the code.)

The Gasohol Later Blending Rule

Taxpayers have argued that the later blending rule does not reflect certain commercial and operational realities associated with the distribution and sale of gasohol, especially at the retail level. A retailer may have to add gasohol to a storage tank already containing gasoline or gasoline to a storage tank already containing gasohol. This may occur, for example, because of the technological difficulty or expense involved in assuring that a retail storage tank is completely empty before pumping in gasohol. Later blending also may result where a retailer is effectively forced to pump gasoline into a tank containing gasohol because of a shortage in the supply of gasohol.

The proposed regulations would modify the later blending rule so that inadvertent or unavoidable later blending caused by these practical problems would not cause additional tax to be imposed. As modified, the later blending rule would impose tax under section 4081(b) on the sale or removal of a mixture containing gasoline and alcohol by the blender thereof only if gasohol (with respect to which tax was imposed at the reduced rate) and other motor fuel are blended together for the purpose of producing a mixture containing a specific percentage of alcohol that is less than 10 percent alcohol. For example, tax would be imposed if a retailer advertises fuel containing 5 percent alcohol and, in order to produce that mixture, blends gasohol (with respect to which tax was imposed at the reduced rate) and gasoline.

Modification of the current later blending rule is appropriate because, in light of the commercial and operational realities associated with the distribution and sale of gasohol, it appears that later blending ordinarily is inadvertent or unavoidable. Consequently, the current later blending rule may discourage the production, sale, and use of gasohol because it exposes retailers to additional tax even though they intend to sell only gasohol that meets the 10-percent-alcohol requirement. In addition, the proposed modification of the later blending rule would not affect the aggregate tax subsidy per gallon of alcohol used to produce gasohol. That is, regardless of whether later blending occurs, one gallon of alcohol will still support a reduction in tax only for nine gallons of gasoline. In order to protect the Congressional intent that gasohol qualifying for the reduced excise tax rate (as opposed to the section 40 credit) contain 10 percent alcohol, however, the proposed regulations would continue to apply the later blending rule where a taxpayer blends gasohol with another fuel for the purpose of producing a mixture that contains a specific percentage of alcohol that is less than 10 percent.

Effective Date

The modifications to the gasohol tolerance rule and the gasohol later blending rule are proposed to be effective for gasoline sold or removed on or after January 1, 1991. The Service believes that application of the proposed regulations from the beginning of the current calendar quarter is appropriate because this allows blenders to apply a single rule during this quarter and because retroactive liberalization of these provisions (to periods before the beginning of the current calendar quarter) would not increase the supply of gasohol, but effectively would benefit taxpayers who violated regulations that were in force at the time that they blended gasohol.

Effect on Other Alcohol/Fuel Mixtures

The proposed regulations apply only to gasohol. The Service invites comments on whether rules similar to the rules provided in the proposed regulations should be applied to blends of alcohol and other fuels taxable under sections 4081 or 4091 of the Code (*i.e.*, mixtures of alcohol and diesel fuel or special motor fuel, qualified methanol and ethanol mixtures, and partially exempt methanol and ethanol mixtures) in light of the commercial and operational realities involved in the blending, distribution, and sale of such blends.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Edward B. Madden, Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. Other personnel from the Service and Treasury Department, however, participated in their development.

List of Subjects in 26 CFR Part 48

Agriculture, Aircraft, Arms and ammunition, Boats, Coal, Excise taxes, Furs, Gasohol, Gasoline, Jewelry, Motor vehicles, Petroleum, Sporting goods, Tires.

Adoption of Amendments to the Regulations

Accordingly, title 26, part 48, of the Code of Federal Regulations is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAX REGULATIONS

Paragraph 1. The authority for part 48 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 48.4081-2 also issued under 26 U.S.C. 4081(c)(1).

Par. 2. Section 48.4081-2 is amended as follows:

1. By revising paragraph (a)(5), and
2. By revising paragraph (e)(3).
3. The revised provisions read as follows:

§ 48.4081-2 Gasoline mixed with alcohol.

(a) * * *

(5) *Qualifying gasohol*—(i) *Qualifying gasohol defined.* Qualifying gasohol (hereinafter referred to as gasohol) is a blend of gasoline and alcohol in a mixture at least 10 percent of which is alcohol immediately after the mixture is blended. The determination of whether a particular mixture satisfies this percentage requirement will be made on a batch-by-batch basis. For purposes of determining if the 10 percent requirement has been met, a batch is considered to contain 10 percent alcohol if it contains at least 9.8 percent alcohol by volume, without rounding. A batch of gasohol is a discrete mixture of gasoline and alcohol and typically corresponds to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. The volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, where a blender adds metered gallons of gasoline and alcohol to a tank already containing more than a de minimis amount of liquid (other than qualifying gasohol), the determination of whether a batch satisfies the 10-percent-alcohol requirement will be made by taking into account the amount of such liquid already in the tank.

(ii) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example 1. A gasohol blender blends a batch of gasohol in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture is blended by first pumping 7200 metered gallons of gasoline into the empty tank, and then pumping 800 metered gallons of alcohol into the tank. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as gasohol.

Example 2. The facts are the same as in *Example 1* except that the applicable delivery tickets show that another mixture is blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains only 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

(iii) *Effective date.* The provisions of this paragraph (a)(5) apply to sales or removals of gasoline or gasohol made on or after January 1, 1991.

* * * * *

(e) * * *

(3) *Later blending*—(i) *In general.* Section 4081(b) applies to the sale or removal of a mixture containing gasoline and alcohol by the blender thereof if—

(A) Gasoline and alcohol are blended in a batch that, immediately after blending, is qualifying gasohol under paragraph (a)(5) of this section,

(B) Tax is imposed with respect to the batch at the reduced rate prescribed in section 408l(c) (or tax is imposed with respect to the batch at the rate prescribed in section 4081(a) and a refund or credit is claimed pursuant to section 6427(f)),

(C) For the purpose of producing fuel that contains a specific percentage of alcohol that is less than 10 percent, the blender subsequently produces the mixture by blending additional motor fuel (other than qualifying gasohol) with such batch; and

(D) Immediately after blending, the mixture contains less than 9.8 percent alcohol.

(ii) *Examples.* The provisions of this paragraph are illustrated by the following examples.

Example 1. A retailer advertises fuel containing 5 percent alcohol. To produce the mixture, the retailer purchases 5,000 gallons of gasohol containing 10 percent alcohol on which tax has been imposed at the reduced rate prescribed in section 4081(c) and blends the gasohol with 5,000 gallons of gasoline. Because the retailer blends the gasoline and gasohol for the purpose of producing a mixture that contains only 5 percent alcohol, this paragraph (e)(3) applies and tax is imposed on the sale or removal of the mixture under section 4081(b). The retailer may be entitled to claim a credit under section 40(b) for the amount of alcohol contained in the mixture.

Example 2. A retailer who has been selling gasoline decides to begin selling gasohol. The retailer purchases 5,000 gallons of gasohol containing 10 percent alcohol on which tax has been imposed at the reduced rate prescribed in section 4081(c). The retailer pumps the gasohol into a storage tank with gasoline that had not been emptied prior to the conversion to gasohol sales. Because the retailer did not blend the gasohol purchased and the gasoline already in the storage tank for the purpose of producing a mixture containing a specific percentage of alcohol that is less than 10 percent, this paragraph (e)(3) does not apply and tax is not imposed under section 4081(b) even if the resulting mixture contains less than 9.8 percent alcohol. Similarly, this paragraph (e)(3) would not apply and tax would not be imposed under section 4081(b) if, several months later, the retailer decides to switch back to gasoline sales because of a shortage in the supply of gasohol and pumps gasoline into the storage tank, which still contains some gasohol.

(iii) *Effective date.* This paragraph (e)(3) applies to sales or removals of gasoline made on or after January 1, 1991.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91-4295 Filed 2-22-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE92

Reduction Because of Hospitalization

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations on reductions of pensions of certain veterans receiving institutional care. These proposed changes are based on recently enacted legislation and further consideration of previous legislation. The intended effect of these changes is to minimize pension reductions when VA provides institutional care.

DATES: Comments must be received on or before March 27, 1991. The changes that pertain to improved pension rates for certain veterans receiving institutional care are proposed to be effective February 1, 1990, the date provided by legislation. The change pertaining to veterans receiving pension under section 306 who are institutionalized is proposed to be effective 30 days after the date of publication of the final rule. Comments will be available for public inspection until April 8, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Phyllis Barber, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Provisions of the recently enacted Veterans' Benefits Amendments of 1989, Public Law 101-237, 103 Stat. 2062 (1989), ease the statutory requirements limiting pension payments to certain veterans receiving institutional care. The provisions of 38 U.S.C. 3203(a)(1), as amended by section 111 of the Veterans Benefits Amendments of 1989, require reduction of improved pension for veterans without dependents only if they are admitted to a domiciliary or nursing home by VA or at VA expense. Under these conditions a veteran's monthly pension payment may not exceed $90 effective the end of the third full calendar month following the month of admission. Since paragraph (C) of 38 U.S.C. 3203(a)(1) has not been amended, monthly payments may not exceed $60 effective the first of the month following the month of readmission if the veteran again receives such care at VA expense within six months of a period during which there was a required reduction.

In passing this legislation, Congress clearly intended to eliminate pension reductions due to hospitalization and to increase the maximum monthly pension payable to pensioners who are receiving long-term domiciliary or nursing home care at VA expense without creating a large estate. In order to achieve those goals, we are proposing that, when a veteran with no dependents who is receiving nursing home or domiciliary care is transferred to a hospital and then returns to the nursing home or domiciliary, the entire period be treated as continuous nursing home or domiciliary care if the period of hospitalization is for less than six months. By doing so we will be able to maintain payments at the $90 rate rather than reducing them to $60 if the veteran is subsequently readmitted for domiciliary or nursing home care. Likewise, if the veteran dies after transfer from a nursing home or domiciliary to a hospital, the period of hospitalization will be considered as continuous nursing home or domiciliary care. If hospitalization of less than six months results in the discharge of the veteran from care at VA expense, then his or her full rate of pension will be restored effective the date of transfer to the hospital.

In an opinion dated June 15, 1990, (O.G.C. Prec. 19-90), the VA General Counsel advised us that the previous amendments to 38 U.S.C. 320(a)(1) had been erroneously applied to veterans receiving pension under section 306 of that law. Therefore, we are proposing that the rate payable for veterans without dependents receiving section 306 pension who are institutionalized at VA expense for the requisite period may not exceed $50 per month. In addition, the effective date for reduction for such admissions will be the end of the second full calendar month following the month of admission and, for readmissions within six months following termination of a period of treatment or care of not less than two full calendar months, reduction will be from date or readmission.

The reference in 38 CFR 3.551 to service pensions is being deleted as there are no longer any veterans receiving this benefit. VA is proposing to implement these changes by appropriately amending 38 CFR 3.454 and 3.551.

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 reasons for this certificate 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 number is 64.104)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: December 6, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication is proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.551 the heading of paragraph (b) is revised, the existing text in paragraph (b) is designated as paragraph (b)(1), and new paragraphs (b)(2) and (b)(3) are added to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(b) Old-law pension.

* * * * *

(2) *Readmission following regular discharge.* Where a veteran has been given an approved discharge or release, readmission the next day to the same or any other VA institution begins a new period of hospitalization, unless the veteran was released for purpose of admission to another VA institution.

(3) *Readmission following irregular discharge.* When a veteran whose award is subject to reduction under this paragraph has been discharged or released from a VA institution against medical advice or as a result of disciplinary action, reentry within 6 months from the date of previous admission constitutes a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release will be considered as a new admission.

(Authority: Pub. L. 89-362).

2. In § 3.551 paragraphs (d), (f), and (g) are redesignated as (f), (g), and (h), respectively, a new paragraph (d) is added, paragraph (e) is revised, and the introductory text of redesignated paragraph (h)(1) is revised to read as follows:

* * * * *

§ 3.551 Reduction because of hospitalization.

* * * * *

(d) *Improved pension prior to February 1, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished domiciliary care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admissions for such care. (38 U.S.C. 3203(a)).

(2) Where any veteran having spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or nursing home care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 33202(a)).

(3) No pension is excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (d) (1) or (2) of this section. (38 U.S.C. 3203(a)).

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b). (38 U.S.C. 3203(a)).

(5) The provisions of paragraphs (d) (1), (2), and (3) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

(6) For the purposes of paragraphs (d) (1), (2) and (3) of this section, if a veteran is furnished hospital or nursing home care by VA and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by the VA and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(e) *Improved pension after January 31, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished domiciliary or nursing home care by VA, no pension in excess of $90 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 3203(a))

(2) No pension in excess of $60 monthly shall be paid to a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in 3.454(b).

(Authority: 38 U.S.C. 3203(a))

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home care to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e) (1) and (2) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

* * * * *

(h) *Hospitalization.* (1) *General.* The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

* * * * *

§ 3.551 [Amended]

3. In § 3.551(a) in the first sentence after the word "reduction" and before the word "when" add the words "as specified below"..

4. In redesignated § 3.551(b)(1) remove the phrase ", and service pension based on entitlement prior to July 1, 1960,".

5. In § 3.551(c)(1) after the word "furnished" and before the word "domiciliary" add the words "hospital, nursing home or" remove the dollar amount "60" and add, in its place the dollar amount "50".

6. In § 3.551 remove paragraphs (c) (2), and (4), (6) and (7) and redesignate paragraphs (c)(3) and (c)(5) as (c)(2) and (c)(3), respectively.

7. In redesignated § 3.551 (c)(2) and (c)(3) remove the dollar amount "$60" wherever it appears, and add in its place the dollar amount "$50".

8. In redesignated § 3.551(h)(2) remove the paragraph designations "(c)(2)", "(c)(3)", and "(g)(1)" wherever they appear, and add, in their place, the paragraph designations "(d)", "(e)", and "(h)(1)", respectively.

9. In redesignated § 3.551(h)(3) after the word "monthly" and before the word "payable" add the phrase "or $90, if reduction is under paragraph (e)(1),".

§ 3.454 [Amended]

10. In redesignated § 3.454(b)(1) and (c) remove the dollar amount "$60", wherever it appears, and add in its place, the dollar amount "$60".

11. In § 3.454 (b)(2) and (d) remove "$3.551(c)" and add, in its place, "§ 3.551(d) or (e)(2)".

12. In § 3.454(d) after the word "monthly" add the words "if reduction is under § 3.551(D) or (e), or $90 monthly if reduction is under § 3.551(e)(1)."

13. In § 3.454 add paragraph (b)(3) to read as follows:

§ 3.454 Veterans disability pension.

* * * * *

(b) * * *

(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 521(b) is reduced to $90 monthly under § 3.551(e)(1) an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension was being paid under 38 U.S.C. 521(c) including the additional amount payable under 38 U.S.C. 521(e) if the veteran is so entitled.

(Authority: 38 U.S.C. 3203(a))

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38 CFR Parts 3 and 4

RIN 2900-AE09

Claims Based on Exposure to Herbicides Containing Dioxin (Soft-Tissue Sarcomas)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to establish service connection for soft-tissue sarcomas based on exposure to herbicides containing dioxin. VA is also proposing to amend the Schedule for Rating Disabilities to add specific diagnostic codes for soft-tissue sarcoma as well as evaluation criteria. These changes are necessary to implement our determination that it is at least as likely as not that there is a significant statistical association between exposure to herbicides containing dioxin and soft-tissue sarcoma. The intended effect will be to establish a rule for making determinations regarding service connection for soft-tissue sarcomas for all veterans who were exposed to herbicides containing dioxin during service.

DATES: Comments must be received on or before March 27, 1991. Comments will be available for public inspection until April 8, 1991. The change to part 3 is proposed to be effective September 25, 1985. The changes to part 4 are proposed to be effective the date of publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under 38 CFR 1.17(c), when VA determines that a significant statistical association exists between exposure to a herbicide containing dioxin and any disease, 38 CFR 3.311a shall be amended to provide guidelines for the establishment of service connection for the disease(s). These determinations are to be made after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards (Advisory Committee) based on its evaluation of scientific or medical studies. In making these determinations, VA must apply the reasonable doubt doctrine found in 38 CFR 1.17(d)(1).

In a public meeting on May 16–17, 1990, the Advisory Committee met in Washington, DC. At that meeting, the committee considered more than 80 scientific and medical documents relating to the connection, if any, between exposure to a herbicide containing dioxin and soft-tissue sarcoma. The committee found that the relative weights of valid positive and valid negative studies (as defined in 38 CFR 1.17(d)(2)–(4)) permitted the conclusion that it is at least as likely as not that there is a significant statistical association between exposure to a herbicide containing dioxin and soft-tissue sarcoma.

In making our determination, we recognized conflicting results among scientific and medical studies. Some studies in Scandinavia reported an association of soft-tissue sarcomas with exposure to herbicides. Other studies there, as well as in the United States and New Zealand, found no such association. Valid Vietnam experience studies were both positive and negative. While the negative studies were of some significance, we have determined that the relative weights of the valid positive and valid negative studies permit the conclusion that it is at least as likely as not that there is a significant statistical association between exposure to herbicides containing dioxin and soft-tissue sarcoma.

Accordingly, we propose to amend 38 CFR 3.311a to provide standards for the establishment of service connection for soft-tissue sarcomas based on exposure to herbicides containing dioxin. In addition, to insure equitable treatment of veterans who may have been exposed to herbicides containing dioxin during service other than in Vietnam during the Vietnam Era, e.g., in activities related to testing, storage or shipping of herbicides, we propose to remove the restriction limiting the regulation to herbicides, we propose to remove the restriction limiting the regulation to veterans who served in Vietnam during the Vietnam Era. Exposure to herbicides containing dioxin during service other than in Vietnam during the Vietnam Era would have to be established by appropriate evidence.

There is disagreement even among pathologists as to what tumors the term "soft-tissue sarcoma" encompasses.