vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or an event occurs without advance notice. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent regulations are not included in this list. They are published in their entirety in the **Federal Register**. Temporary regulations are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1993 to March 31, 1993, unless otherwise indicated.

| Docket # | Location | Type | Effective date |
|---|---|---|---|
| 1–93–015 | Winter Storm March 13, 1993 | Safety | 13 Mar 93. |
| 1–93–016 | Vessel Grounding, East River | Safety | 14 Mar 93. |
| 7–93–01 | Hillsborough Bay | Special | 7 Feb 93. |
| 7–93–08 | Ft. Pierce, FL | Special | 27 Mar 93 |
| | Captain of the Port Regulations | | |
| Baltimore 93–05–04 | Potomac River | Safety | 16 Jan 93. |
| Baltimore 93–05–05 | Potomac River | Security | 17 Jan 93. |
| Charleston 93–13 | Cooper River, SC | Safety | 16 Mar 93. |
| Charleston 93–14 | Murrell's Inlet Can/AM | Safety | 18 Mar 93. |
| Jacksonville 93–12 | St. John's River | Safety | 20 Mar 93. |
| LA/LB 93–01 | Port of Long Beach | Security | 07 Jan 93. |
| LA/LB 93–02 | Port of Long Beach | Security | 07 Jan 93. |
| Louisville 93–01 | Ohio River | Safety | 07 Mar 93. |
| Louisville 93–02 | Ohio River | Safety | 26 Mar 93. |
| Miami 93–17 | Port Everglades, FL | Safety | 22 Mar 93 |
| Memphis 93–01 | Lower Mississippi River | Safety | 31 Jan 93. |
| Paducah 93–01 | Cumberland River | Safety | 10 Feb 93. |
| Paducah 93–02 | Upper Mississippi River | Safety | 07 Mar 93. |
| Paducah 93–03 | Upper Mississippi River | Safety | 07 Mar 93. |
| Pittsburgh 93–01 | Monongahela River | Safety | 08 Feb 93. |
| Pittsburgh 93–02 | Ohio River | Safety | 31 Mar 93. |
| San Diego 93–02 | San Diego Bay | Safety | 05 Mar 93. |
| San Francisco 93–01 | San Francisco Bay | Safety | 15 Jan 93. |
| Southeast Alaska 93–01 | Dixon Entrance | Safety | 15 Feb 93. |
| St. Louis 92–13 | Illinois River | Safety | 05 Jan 93 |
| St. Louis 93–02 | Upper Mississippi | Safety | 04 Jan 93. |
| St Louis 93–06 | Upper Mississippi | Safety | 16 Jan 93. |
| Tampa 92–126 | Mullet Key Channel | Safety | 10 Dec 92. |
| Tampa 92–127 | Hillsborough Channel | Safety | 10 Dec 92. |
| Tampa 92–128 | Egmont Channel | Safety | 10 Dec 92. |

**T. R. Cahill,**

*Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.*

[FR Doc. 93–11862 Filed 5–18–93; 8:45 am]

BILLING CODE 4810–14–M

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 201

**[Docket No. 91–11A]**

## General Provisions—Computer Shareware Registry

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulation.

**SUMMARY:** The Copyright Office of the Library of Congress is issuing final regulations concerning a registry for documents pertaining to computer software and procedures for donating copies of public domain software. The Judicial Improvements Act of 1990 authorized the creation of these new systems of public records. The registry is intended to provide a public record of legal documents pertaining to shareware.

**EFFECTIVE DATE:** May 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540, Telephone (202) 707–8380.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Public Law 101–650, 104 Stat 5089 (1990) containing several provisions affecting the copyright law. Section 805 of that Act authorized the creation of a registry of documents "designated as pertaining to computer shareware." In addition, the act authorized the establishment of a voluntary system of deposit of public domain software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Section 805 of the Judicial Improvements Act was not codified in the copyright law, and therefore the provisions creating these new systems of records are not codified in title 17.

The provision creating the shareware registry accompanied legislation creating a rental right for computer programs. During legislative deliberations over creating the rental right, concerns were raised that recognition of such a right might adversely affect the shareware industry. The establishment of the shareware registry addressed this concern.

Shareware is a descriptive term applying to a unique way of marketing copyrighted computer programs. Under a shareware system of marketing, the copyright owner of the computer program permits wide distribution of disks embodying the program in order to allow potential users the opportunity for testing and review. The licensing terms extended to distributors to the disks vary. If a person who has received a disk embodying the program decides to use the software, then that person is required to register the use with the author and pay a registration fee. Authors obtain their income through these registration fees, and, in general, the registration fees are lower than the purchase price for a similar program through commercial channels.

The shareware system of marketing software is an increasingly popular way for authors of computer software to enter the software market. The computer shareware registry is intended as a means for notifying the public of the licensing terms applicable to individual programs marketed on a shareware basis.

**2. Interim Regulations**

The interim regulation was published in the **Federal Register** on October 8, 1991. 56 FR 50657. It was generally patterned after the Copyright Act's section 205 recordation system, title 17 U.S.C. In order to record documents in the Registry, the documents were required to be labeled "Documents Pertaining to Computer Shareware." The interim regulation identified such documents as meaning "licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware."

Documents which are not designated as pertaining to computer shareware are treated as section 205 recordations, even if they involve computer programs marketed on a shareware basis. In addition, documents transferring ownership of the rights under copyright of computer programs marketed on a shareware basis must be recorded as section 205 transfers.

Documents recorded in the Computer Shareware Registry are maintained in a system separate from ordinary section 205 copyright documents. The catalog records of shareware documents cannot be found by searching the Copyright Office History Documents (COHD) files.

With respect to the donation of public domain software, the interim regulations designated such gifts to be directed to the Exchange and Gift Division of the Library of Congress. The regulation further specified several conditions for acceptance of the donation.

**3. Comments and Modifications**

The Copyright Office received one comment on the interim regulation; that comment was submitted by the Association of Shareware Professionals (ASP). In general terms, the ASP supported the interim regulation. However, the ASP did suggest three modifications, two of which have been adopted.

The interim regulations described shareware as programs "distributed with relatively few restrictions." ASP argued that such a reference might create a bias against full enforcement of shareware copyrights, and that shareware copyright owners were entitled to all the rights given to other copyright owners under the Copyright Act. The Copyright Office agrees, and accordingly has deleted that reference in the final regulation.

As regarding recordable documents, the interim regulations established a preference for copies, rather than originals, and contained a requirement that the documents contain a signature of the computer program owner. The preference for copies was written into the interim regulation because, unlike section 205 recordations, the Copyright Office did not intend to return documents submitted for recordation in the Computer Shareware Registry.

ASP criticized the preference for copies containing a signature, pointing out that unlike transfers of ownership which are conveyed by a signed document, shareware licensing agreements, traditionally do not contain the signature of the licensee. Accordingly, the Copyright Office has modified the reference to signed copies.

The third suggestion of ASP was that the Copyright Office either adopt a special form or guidelines governing registrable shareware documents. This portion of ASP's comments expressed the concern that recorded documents might become permanently binding upon shareware owners, and might therefore inhibit later modification of licensing terms.

The legislation creating the shareware registry was not clear as to the legal effect of recording documents in the registry, leaving the matter within the discretion of the courts. For this reason, the Copyright Office is hesitant to offer "advice" on the contents of documents filed in the registry since only courts could construe the legal significance of such recordations. To date, the Copyright Office has received only one document for recordation in the Computer Shareware Registry.

Accordingly, the Copyright Office will not adopt at this time the ASP suggestions regarding a special form or content guidelines.

**4. Regulatory Flexibility Act**

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

[1] The Copyright Office was not subject to the Administrative Act before 1976, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act [i.e. "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits]. [17 U.S.C. 706[b]]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

**List of Subjects in 37 CFR Part 201**

Computer shareware registry; Computer programs, copyright.

**Final Regulations**

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II in the manner set forth below.

**PART 201—[AMENDED]**

1. The authority citation for part 202 continues to read as follows:

**Authority:** Section 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.26 is also issued under Public Law 101–650, 104 Stat. 5089, 5436–37

2. Section 201.26 is revised to read as follows:

**§ 201.26 Recordation of Documents Pertaining to Computer Shareware and Donation of Public Domain Computer Software.**

(a) *General.* This section prescribes the procedures for submission of legal documents pertaining to computer shareware and the deposit of public domain computer software under section 805 of Public Law 101–650, 104 Stat. 5089 (1990). Documents recorded in the Copyright Office under this regulation will be included in the Computer Shareware Registry. Recordation in this Registry will establish a public record of licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware. Documents transferring the ownership of some or all rights under the copyright law of computer shareware and security interests in such software should be recorded under 17 U.S.C. 205, as implemented by § 201.4.

(b) *Definitions*—(1) The term *computer shareware* is accorded its customary meaning within the software industry. In general, shareware is copyrighted software which is distributed for the purposes of testing and review, subject to the condition that payment to the copyright owner is required after a person who has secured a copy decides to use the software.

(2) A *documented designated as pertaining to computer shareware* means licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware.

(3) *Public domain computer software* means software which has been publicly distributed with an explicit disclaimer of copyright protection by the copyright owner.

(c) *Forms.* The Copyright Office does not provide forms for the use of persons recording documents designated as pertaining to computer shareware or for the deposit of public domain computer software.

(d) *Recordable Documents*—(1) Any document clearly designated as a "Document Pertaining to Computer Shareware" and which governs the legal relationship between owners of computer shareware and persons associated with the dissemination or other use of computer shareware may be recorded in the Computer Shareware Registry.

(2) Submitted documents may be a duplicate original, a legible photocopy, or other legible facsimile reproduction of the document, and must be complete on its face.

(3) Submitted documents will not be returned, and the Copyright Office requests that if the document is considered valuable, that only copies of that document be submitted for recordation.

(4) The Copyright Office encourages the submission of a machine-readable copy of the document in the form of an IBM–PC compatible disk, in addition to a copy of the document itself.

(e) *Fee.* For a document covering no more than one title, the basic recording fee is $20. An additional charge of $10 is made for each group of not more than 10 titles. For these purposes the term "title" refers to each computer shareware program covered by the document.

(f) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. The submission will be retained and filed by the Copyright Office, and may be destroyed at a later date after preparing suitable copies, in accordance with usual procedures.

(g) *Donation of public domain computer software.* (1) Any person may donate a copy of public domain computer software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Decision as to whether any public domain computer software is suitable for accession to the collections rests solely with the Library of Congress. Materials not selected will be disposed of in accordance with usual procedures, including transfer to other libraries, sale, or destruction. Donation of public domain software may be made regardless of whether a document has been recorded pertaining to the software.

(2) In order to donate public domain software, the following conditions must be met:

(i) The copy of the public domain software must contain an explicit disclaimer of copyright protection from the copyright owner.

(ii) The submission should contain documentation regarding the software. If the documentation is in machine-readable form, a print-out of the documentation should be included in the donation.

(iii) If the public domain software is marketed in a box or other packaging, the entire work as distributed, including the packaging, should be deposited.

(iv) If the public domain software is copy protected, two copies of the software must be submitted.

(3) Donations of public domain software with an accompanying letter of explanation must be sent to the following address: Gift Section, Exchange & Gift Division, Library of Congress, Washington, DC 20540.

Dated: April 22, 1993.

**Ralph Oman,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 93–11779 Filed 5–18–93; 8:45 am]

BILLING CODE 1410–07–M

taken by the Office are not subject to APA–FOIA requirements.

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 3**

**RIN 2900–AF44**

## Diseases Associated With Service in the Republic of Vietnam

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases even though there is no

record of the disease during service. This amendment is necessary because Congress has added certain diseases associated with military service in the Republic of Vietnam during the Vietnam era to those diseases subject to presumptive service connection. The intended effect of this amendment is to assure that the regulations accurately reflect all the conditions to which presumptive service connection may be applied.

**EFFECTIVE DATE:** This amendment is effective February 6, 1991, the date the legislation was signed into law.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** VA published a proposal to amend 38 CFR 3.307 and 3.309 in the **Federal Register** of July 10, 1992 (57 FR 30707–08). Interested persons were invited to submit written comments, suggestions or objections on or before August 10, 1992. We received four comments, one from a member of Congress, one from the American Legion, and two from private individuals.

Two commenters stated that the proposed rule was confusing, and recommended that the regulation be made understandable.

Since these commenters did not indicate what was confusing about the proposed rule and did not submit specific recommendations to make the proposed rule, in their view, understandable, VA cannot reply in detail. We believe, however, that the regulatory language captures the intent of Congress when it enacted the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11 (1991), by providing service connection for a veteran who served in Vietnam during the Vietnam era and subsequently develops one of the specified conditions.

Another commenter submitted statements and other documentation to support his contention that other conditions, to include birth defects, should be recognized by VA as resulting from exposure to herbicides containing dioxin.

The scope of this rulemaking is limited to implementing the statutory presumptions specifically established by Congress in Public Law 102–4. Although Public Law 102–4 authorizes VA to establish presumptive service connection for additional conditions which it determines are associated with exposure to dioxin, we may do so only after receiving the advice and recommendations of the National Academy of Sciences (NAS). NAS will submit its first report and recommendations by July 31, 1993, and we cannot propose regulations providing service connection for conditions not specified in Public Law 102–4 until we receive and evaluate the NAS report. It should be noted, however, that to compensate a veteran for the disabilities of another person, including the birth defects of a child, is beyond VA's authority and would require enabling legislation.

Two commenters expressed concern that the regulatory list of conditions which VA considers to be soft-tissue sarcomas for the purpose of implementing Public Law 102–4 does not include all soft-tissue sarcomas. The first commenter, a member of the United States Senate, implied that the listing that appears at 38 CFR 3.311a(c)(2) is a list of only those soft-tissue sarcomas which VA considers related to dioxin exposure rather than a listing of all soft-tissue sarcomas, and stated that Congress intended to compensate "each sarcoma" not expressly excluded by Public Law 102–4. The second commenter submitted a histological classification of soft-tissue tumors compiled by Dr. Franz Enzinger and Dr. Sharon W. Weiss which is contained in a manuscript entitled Soft Tissue Tumors, Second Edition, published by C. V. Mosby Co., 1988, and recommended that all of those tumors be included in the final regulation.

VA does not concur. Section 2 of Public Law 102–4 added 38 U.S.C. 1116 to establish a presumption of service connection for veterans with service in the Republic of Vietnam during the Vietnam era who subsequently develop, to a degree of 10 percent or more, "each *soft-tissue* sarcoma" (emphasis added) except osteosarcoma, chondrosarcoma, Kaposi's sarcoma, and mesothelioma. The plain language of the statute is on its face more restrictive than the interpretation which the first commenter urges us to adopt.

The term "soft-tissue sarcoma" is an imprecise term and there is no standard list of conditions which is universally accepted within the medical community as a definitive listing of "soft-tissue sarcomas". It should be pointed out, however, that not all sarcomas are "soft-tissue" sarcomas. Furthermore, some of the conditions, e.g. malignant schwannoma, malignant mesenchymoma, etc., which VA considers to be soft-tissue sarcomas do not contain the word "sarcoma" in their histological classifications. VA has previously addressed the issue of what the term soft-tissue sarcoma encompasses for purposes of implementing Public Law 98–52 (See the **Federal Register** of February 25, 1991 (56 FR 7632–34), the **Federal Register** of October 15, 1991 (56 FR 51651–53) and the **Federal Register** of July 10, 1992 (57 FR 30707–08)).

Based upon advice from the Veterans Advisory Committee on Environmental Hazards (VACEH) and the Veterans Health Administration (VHA), the Secretary concluded in those prior rulemakings that soft-tissue sarcomas should be classified by tumor type rather than tumor location and further, that in order to be recognized as "soft-tissue" sarcomas by VA, tumors must be malignant and arise from tissue of mesenchymal origin, including muscle, fat, blood or lymph vessels, or connective tissue (but not cartilage or bone), but that tumors of infancy or childhood, and those having a strong, known causal association with a specific etiology should not be included. The list of tumors which meet those criteria was published as part of the revision to 38 CFR 3.311a(c).

To implement the provisions of Public Law 102–4, we have cited in 38 CFR 3.309(e) the list of soft-tissue sarcomas that appears at § 3.311a(c)(2) and have augmented it with the following tumors: Extraskeletal Ewing's sarcoma, congenital and infantile fibrosarcoma, and malignant ganglioneuroma. These additional soft-tissue sarcomas are generally considered tumors of infancy and childhood which rarely, if ever, occur initially in an individual old enough to have been accepted for military service. They have been included in § 3.309(e), however, in order to satisfy the requirements established by the statutory language of Public Law 102–4.

Many of the tumors on the list submitted by the second commenter do not meet the criteria announced by VA. A large percentage of them, for example, are classified in the list itself as benign conditions and are thus outside the parameters established by VA. Neither of the commenters has objected to VA's criteria, indicated specific conditions which they believe meet those criteria but are not included in the regulation, or offered a reasonable alternative to those criteria for VA to consider. The Secretary has therefore concluded that the announced criteria are appropriate and that inclusion of additional conditions from the commenter's list is not warranted. In the future, should we determine that there are additional conditions which satisfy those criteria, we will amend the regulations accordingly.

One commenter stated that it is not logical to provide presumptive service connection for each soft-tissue sarcoma becoming manifest to a degree of 10 percent or more, and that there are no standards to evaluate the severity of soft-tissue sarcomas.

VA does not concur. The requirement that a soft-tissue sarcoma manifest itself to a degree of ten percent or more is a statutory requirement which VA has no authority to alter. Furthermore, those portions of VA's Schedule for Rating Disabilities dealing with soft-tissue sarcomas (38 CFR 4.73 (diagnostic code 5329), 4.104 (diagnostic code 7123) and 4.124a (diagnostic code 8540)) direct that a 100% evaluation be assigned for any malignancy which requires surgery, chemotherapy or radiation treatments. In practice, this means that when a soft-tissue sarcoma is diagnosed it will be rated as 100% disabling during treatment and for a specified period after surgery or other treatments have been terminated. Since such a condition will be evaluated totally disabling from the date it is discovered, the problem which the commenter anticipates cannot occur.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted without amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is 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 this regulatory amendment is non-major for the following reasons:

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

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

(3) It 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 64.109.

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

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

Approved: March 17, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 3 is amended 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. In § 3.307, the heading is revised, and new paragraph (a)(6) and its authority citation are added to read as follows:

**§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with service in the Republic of Vietnam; wartime and service on or after January 1, 1947.**

(a) * * *

(6) *Disease associated with service in the Republic of Vietnam.* The diseases listed in § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service in Vietnam during the Vietnam era, except that chloracne or another acneform disease consistent with chloracne shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(Authority: 38 U.S.C. 501(a) and 1116)

* * * * *

3. In § 3.307(a) introductory text, the first sentence, remove the words "or prisoner of war related disease", and add, in their place, the words ", prisoner of war related disease, or a disease associated with service in the Republic of Vietnam". In § 3.307(a)(1), after the words "§ 3.309(c)" add the words "and (e)".

4. In § 3.309, new paragraph (e) and its authority citation are added to read as follows:

**§ 3.309 Disease subject to presumptive service connection.**

* * * * *

(e) *Diseases associated with service in the Republic of Vietnam.* If a veteran, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era, the following diseases shall be service-connected if the requirements of § 3.307(a)(6) are satisfied even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of § 3.307(d) are also satisfied:

Chloracne
Non-Hodgkin's lymphoma
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

**Note:** The term "soft-tissue sarcoma" includes those tumors listed at § 3.311a(c)(2). For the purposes of this section only, the following tumors of infancy and childhood, although rarely if ever occurring in an individual old enough to have been accepted for military service, shall also be included:

Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

(Authority: 38 U.S.C. 501(a) and 1116)

[FR Doc. 93–11817 Filed 5–18–93; 8:45 am]

BILLING CODE 8320–01–P

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**38 CFR Part 3**

**RIN 2900–AF84**

### Direct Service Connection (Post-traumatic Stress Disorder)

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) has amended its adjudication regulations to establish the extent of evidence required to establish service connection for post-traumatic stress disorder (PTSD). This regulation is necessary because, although VA has issued procedural guidelines on this subject, it is a substantive issue which should be addressed by regulation. The intended effect of this amendment is to establish a regulatory basis for current VA policy.

**EFFECTIVE DATE:** This amendment is effective May 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** VA published a proposal to amend 38 CFR 3.304 to establish the extent of evidence required to establish service connection for PTSD in the **Federal Register** of August 5, 1992 (57 FR 34536–37, as corrected by 57 FR 38095). Interested persons were invited to submit written comments, suggestions or objections on or before September 4, 1992. We received comments from a representative of the American Psychiatric Association and from an interested individual.

The representative of the American Psychiatric Association endorsed the proposed regulation, stating that it will ensure that VA does not require unreasonable proof of inservice stressors in PTSD claims.

The other commenter contended that according to the United States Court of Veterans Appeals (COVA), corroboration of a claimed inservice stressor is mandatory to establish service-connection for PTSD and suggested that the rule be reproposed to require documentation of any claimed inservice stressor.

In the COVA case at issue (see *Wood* v. *Derwinski*, 1 Vet. App. 190 (1991) and 1 Vet. App. 406 (1991)), the appellant alleged that during his military service in Vietnam he witnessed some emotionally traumatic incidents which eventually resulted in PTSD. In affirming a decision by the Board of Veterans Appeals that the claimant did not have service-connected PTSD, COVA noted that there was nothing whatever in the record to show that the claimant was engaged in combat with the enemy when the putative stressful events occurred. One incident which the veteran relied upon was entirely unrelated to combat; the other was the aftermath of a combat action in which he had not participated. VA had attempted to verify the occurrence of the claimed stressors, but had been unsuccessful. The commenter has construed the COVA decision as a judicial edict preventing VA from establishing service connection for PTSD in any case unless it is able to obtain absolute proof that the claimed in-service stressor actually occurred.

That conclusion is clearly erroneous. COVA did note that the *sine qua non* of establishing a PTSD claim is "some corroboration" of the claimed stressor, but Congress has undisputably granted the Secretary of Veterans Affairs the authority to prescribe regulations with respect to the nature and extent of proof and evidence required in order to establish entitlement to benefits (see 38 U.S.C. 501(a)). As an exercise of that authority, the Secretary has determined that in claims for PTSD involving stressors which occurred under specific circumstances such as combat or being held as a prisoner-of-war where events can never be fully documented, evidence establishing the claimed circumstances is sufficient to substantiate the occurrence of the claimed stressor. The regulation is fully consistent with COVA's ruling in *Wood*, with the Secretary's authority under the provisions of 38 U.S.C. 501(a), and with the provisions of 38 U.S.C. 1154(b), which directs VA to accept as evidence of service connection for conditions of veterans who engaged in combat, satisfactory evidence consistent with the circumstances, conditions, or hardships of such service even though there is no official record to substantiate the claim.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with a minor technical amendment to clarify that, in the case of a prisoner-of-war, VA would consider as conclusive evidence of an inservice stressor that the claimant had prisoner-of-war experience satisfying the requirements of 38 CFR 3.1(y), in the absence of evidence to the contrary. Additionally, the military citation name, Combat Infantry Badge, that appeared in the proposed rule was not correct. The final regulation contains the correct name for that citation, Combat Infantryman Badge.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is 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 this regulatory amendment is non-major for the following reasons:

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

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

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

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

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

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

Approved: March 18, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 3 is amended 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. In § 3.304, add new paragraph (f) and its authority citation to read as follows:

**§ 3.304 Direct service connection: wartime and peacetime.**

* * * * *

*(f) Post-traumatic stress disorder.* Service connection for post-traumatic stress disorder requires medical evidence establishing a clear diagnosis of the condition, credible supporting evidence that the claimed inservice stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed inservice stressor. If the claimed stressor is related to combat, service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed inservice stressor. Additionally, if the claimed stressor is related to the claimant having been a prisoner-of-war, prisoner-of-war experience which satisfies the requirements of § 3.1(y) of this part will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed inservice stressor.

(Authority: 38 U.S.C. 1154(b))

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