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

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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))

[FR Doc. 93–11816 Filed 5–18–93; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 36

RIN 2900–AE19

Loan Guaranty: Servicing Procedures for Holders and Servicers of VA Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: To establish a regulatory standard for servicing VA guaranteed loans, the Department of Veterans Affairs (VA) is amending its loan guaranty regulations (38 CFR part 36) by adding the loan servicing procedures which will be required of holders and servicers of VA guaranteed loans.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233–3668.

SUPPLEMENTARY INFORMATION: On October 4, 1990, VA published in the Federal Register (55 FR 40682) proposed regulations setting forth the loan servicing procedures to be followed by holders and servicers of VA guaranteed loans. The regulations clarify for holders what is expected in the way of servicing. They also provide standards by which the adequacy of the servicing will be evaluated, and provide VA with a clear basis for imposing sanctions when appropriate. Please refer to the October 4, 1990, Federal Register for a complete discussion of the proposed regulations. The proposed regulations, through a scrivener's error, provided that the new servicing procedures would be located at § 36.4337 of this part. The correct reference is to § 36.4346. The erroneous citation has been corrected in this document.

Public comments were requested on the proposal, and VA received ten written comments. Comments were submitted by a legal aid society, three mortgage companies, one Savings and Loan, two associations representing lenders, one secondary market institution, a law firm, and a life insurance company.

The commenter from the legal aid society stated that lenders should be required to provide servicing to borrowers in default, beyond the servicing proposed in the regulations or the servicing conducted on conventional loans. VA's position is that the proposed regulations, together with existing VA regulations and policies on servicing, provide delinquent veteran-borrowers with ample opportunity to either reinstate their loans or to avoid foreclosure.

The same commenter also recommended that individual borrowers be given the right to halt foreclosure actions when they feel that the lender has not serviced the loan properly. We understand the basis for such a proposal, however, we believe that the matter of subjective interpretation by individuals as to what constitutes improper servicing would make the proposal administratively unworkable. At present, local VA offices provide delinquent borrowers with written notice of their options for reinstatement or avoidance of foreclosure and assist them with any problems they have with their lenders which they cannot resolve on their own.

Several commenters expressed concerns about the amendment of §§ 36.4280 and 36.4317 to require holders of VA-guaranteed loans to provide notice to the original veteran borrower and other liable obligors when a Notice of Intention to Foreclose has been provided to the Secretary. The commenters stated that additional unforeseen burdens and costs are being placed upon the holders by this requirement. They also requested clarification as to when noncompliance with this requirement would result in a partial or total loss of guaranty.

The requirement for notice applies to original veteran borrowers only when the original veteran borrower is a liable obligor. VA acknowledges that as a result of this amendment an additional burden and cost will be placed upon holders and estimates it will take an average of 15 minutes to perform each notification. Fifteen minutes should be sufficient time for reviewing instructions, researching data sources, gathering, organizing, completing and reviewing the collected information.

It will generally be considered that holders have made a reasonable effort for purposes of this amendment if the actions they have taken to complete the notification requirement are commensurate with VA estimates of what can be accomplished in 15 minutes, excluding those actions which would normally be performed in reviewing records and extracting information to be forwarded to the attorney being assigned the foreclosure. A reasonable effort would include: Searching the holder's automated and physical systems to identify the current or last known address of known obligors or to identify sufficient information to perform an automated skip-trace inquiry; conducting the skip-trace inquiry; obtaining the results of the inquiry; providing notice; and documenting the holder's file. Proposed §§ 36.4280 and 36.4317 are amended to add that a good faith effort to meet the notification requirement would include these actions.

Proposed §§ 36.4280 and 36.4317 have been revised to also apply the original obligor notice requirement to loans closed based on commitments issued after March 1, 1988. This is necessary because 38 U.S.C. 3714(a)(4)(B)(ii) sets forth conditions under which the Secretary can approve a loan assumption which would not otherwise be approved where the seller specifically agrees to remain liable for the loan.

One commenter expressed concern about the viability of providing notice to the original obligors by registered mail when most attempts at mailing are returned "not deliverable". This problem should be greatly reduced as a result of the addresses obtained through skip-traces.

One commenter stated that the requirement to notify the original obligors may act to delay foreclosure procedures. This is not the intent of the regulation. In no event should efforts to locate the original obligors cause postponement of foreclosure action, unless similar notice procedures are required under state law.

The same commenter also stated that 30 days to provide notice to the original obligors may be an insufficient amount of time when servicing transfers are taking place. The basic purpose of the notice is to satisfy reasonable due process considerations in order to avoid releasing the prior obligors from liability on the loan. Under the law of most states, this would entail providing notice within a relatively short time prior to foreclosure. Any denial of claim liability by VA is based on VA's inability to recover losses from original obligors because of the holder's failure to meet the due process requirement as is currently the case when provisions of § 36.4324(f) or 36.4325 (b) or (c) are applied.

Decisions with respect to partial or total loss of guaranty for non-compliance with these amendments are dependent upon the extent to which the holder's action or inaction increased the ultimate liability of the Secretary. Such decisions rest with the Director, Loan Guaranty Service in Washington, DC. VA anticipates that loan holders will be able to reasonably comply with this amendment by making reasonable attempts to provide the required notices. In the event issues arise which were not contemplated when the regulations were written or were not raised during the comment period, VA will address those issues when they arise.

Sections 36.4216 and 36.4331 provide for the disqualification or suspension of lenders and holders of VA-guaranteed loans. They provide that suspension may result, among other reasons, from a failure to maintain adequate loan accounting records or to demonstrate proper ability to service loans adequately. These sections are being amended to require compliance with § 36.4278 or 36.4346, servicing procedures for holders.

Comments on the amendment of §§ 36.4216 and 36.4331 were to the effect that sanctions against holders should be used only if there is substantial non-compliance by a holder or when a pattern of refusal or failure to comply is evident. As a practical matter, we will not generally suspend a lender based on an isolated instance of failure to follow the servicing requirements. We are aware of the significant impact and grave consequences of suspension on lenders and holders of VA-guaranteed loans. We are concerned that VA's authority to suspend program participants be used judiciously and have provided for administrative due process in the regulations. While VA would normally apply sanctions only in instances of substantial non-compliance or where a pattern of failure to comply is evident, VA must have the administrative flexibility under the regulations to enforce sanctions in other circumstances as necessary (see 38 CFR part 44).

The remaining comments concerned §§ 36.4278 and 36.4346, Servicing procedures for holders. These sections are identical. Section 36.4278 applies to loans guaranteed by VA to veterans for the purchase of manufactured home loans and lots. Section 36.4346 applies to loans guaranteed by VA to veterans for the purchase of real estate. The following comments and responses apply equally to both sections. Most comments favored VA's efforts to prescribe the manner in which VA-guaranteed loans should be serviced and to define adequate servicing.

One comment was received with respect to §§ 36.4278(b)(1) and 36.4346(b)(1), which concern procedures for providing loan information to borrowers. It suggested that the requirement that the holder have a servicing office with access to loan account information within 200 miles of the property be deleted from the final regulations because "most servicing is done on a national basis out of a single servicing center, which means that no servicer maintains an office within 200 miles of the property securing a VA-guaranteed loan."

VA's amendment was patterned after the Department of Housing and Urban Development servicing requirement found in 24 CFR 203.508. We believe that mortgage holders have a responsibility to provide information to borrowers and also that holders should have flexibility in organizing and locating their servicing organizations. Maintaining a servicing office within 200 miles of the property is only one of two alternatives available to holders. The other alternative, § 36.4278(b)(2), provides for toll-free telephone service or for the acceptance of collect calls at an office capable of providing needed information.

Sections 36.4278(g) and 36.4346(g) pertain to collection actions of holders. Comments relating to at least one of the provisions of paragraphs (g)(1) through (g)(4) were received from three respondents. Concerns were expressed about the provisions that: (1) The holder provide a written delinquency notice if payment has not been received 17 days after the payment due date; (2) an effort to establish telephone contact be made by the holder; (3) a letter to the borrower from the lender be sent if payment is not received within 30 days after the due date when telephone contact has not been successful; and (4) face-to-face contact be made or attempted by the servicer. One of the commenters also stated that in lieu of VA's proposal, holders should have the option of making "smart" phone calls (selected calls based upon portfolio and loan experience) and that such calls should begin after the 25th day of delinquency.

VA has found that holders employ a variety of collection actions to ensure timely payment by borrowers. In some instances, holders begin collection actions seven days after the due date. Telephone calls are made to borrowers reminding them that the payment was due on the first of the month and that the borrower's prompt payment is appreciated. In other instances, holders send reminder notices that payment has not been received and that the due date was 10 days prior to the date of the notice. Similarly, many holders immediately send notices after the 15-day grace period has expired or begin telephone servicing at that time. The intensity of these efforts ranges from "soft" customer service reminders to more collection-oriented messages. As a result of reviewing various collection actions we have determined that the requirements of paragraphs (g)(1) through (g)(4) are customary and usual servicing practices, and VA is establishing these as base levels of performance for holders who service VA-guaranteed loans.

Concern was expressed over what will satisfy the requirement for attempting to conduct a face-to-face interview with the obligor. We believe that the requirement is satisfied, in cases when it is not actually accomplished, when a reasonable effort to arrange such an interview is made. VA's requirement on this point is not intended to be unreasonable or overly burdensome to the lender. An effort to arrange the interview via appropriate letters and telephone calls should satisfy the regulation.

One commenter suggested that the requirement for lenders to explain any failure to perform collection actions when reporting defaults be deleted. We believe that this is a simple requirement which will be effective in assuring that appropriate servicing actions are consistently taken. We do not agree that the quality control provisions alone adequately address this particular need.

Three respondents commented on §§ 36.4278(i) and 36.4346(i) which concern property inspections. The comments were to the effect that VA or the homeowner should reimburse holders for the cost of such inspections, that VA should differentiate between vacant and abandoned property, that VA should clarify what actions the holder should take to protect vacant and/or abandoned property not in title, and that when the property has been abandoned VA should consider extending the 15 day period holders have to begin liquidation on delinquent loans.

We have given further consideration to the matter of who should pay for property inspections, including the fact that the Department of Housing and Urban Development reimburses inspection costs in its insurance program(s). We have concluded that reasonable expenses for property inspections may be included in the total eligible indebtedness when a holder reports such indebtedness to VA in connection with a request for net value advice or the filing of a claim under loan guaranty. Section 36.4313 is amended accordingly.

Two commenters requested a clarification of VA's interpretation of vacant and abandoned property. VA's understanding of these terms is consistent with the customary usage in the real estate industry unless they are defined differently by local law. Consistent with customary usage, VA considers that a vacant property is one that is not occupied, generally for a temporary period. An abandoned property is one in which the owner has declared that he or she has given up responsibility for the property, and custody of the property is relinquished permanently; or, upon an observation and evaluation of circumstances, it is reasonable to conclude that the owner has relinquished custody of the property permanently. There are numerous indicators, which when properly evaluated, support a conclusion that a property is abandoned. Such indicators include: written notice from the owner(s), discussions with the owner(s), property inspections, length of vacancy, property appearance, property condition, property open to trespass, turned off utilities, calls or discussions with neighbors or other interested parties, notices of code violations, police or fire reports, and notice of cancellation of hazard insurance.

Determining whether a property is abandoned calls for judgment based upon many factors and is the responsibility of the holder. Typically, when an inspection or other information reveals that a property is vacant, the holder should try to locate the borrower and determine the reason for the vacancy and make a determination as to whether the property is abandoned. If attempts at contact fail, the holder is expected to evaluate the circumstances and make a determination as to whether the property is abandoned.

One commenter requested clarification of the actions which the regulation requires the holder to take to preserve a vacant or abandoned property not in title. Inherent in performing the servicing of a loan is the prudent exercise of stewardship over the loan and collateral. While VA is guarantor and is at risk of loss, holders are equally at risk when the collateral diminishes in value due to physical deterioration of the property. Therefore, under these regulations, holders must make immediate arrangements to protect the property from vandalism and the elements, to the extent that the loan agreements and local laws permit such action, as soon as they know, reasonably should know, or reasonably should suspect and could readily learn, that the property is abandoned.

Commenters were also concerned about the requirement to report a property abandonment to the Secretary when a loan becomes 30 days delinquent and to initiate action under §36.4280(e) or §36.4317(a) within 15 days after the holder confirms the property is abandoned. For clarification purposes the following two examples of when these regulations require the 15 day notice are provided.

The first example is when a holder, in the course of servicing a loan, learns of circumstances in which a loan is in early default (30 to 60 days delinquent) and the property is vacant. Upon confirmation of the borrower's intentions and a property inspection, the holder determines that the property is abandoned. Under such circumstances these regulations will require the holder to provide notice within 15 days after determining that the property has been abandoned. The notice would be similar to the notice of default required under §36.4280(a) or §36.4315(a). However, such notice would be provided at an earlier date than was previously required. Additionally, the holder must initiate action under either §36.4280(e) or §36.4317(a) within 15 days after it has determined that a property is abandoned.

The second example is when a holder has already provided notice of the default to the Secretary and subsequently determines that the property is abandoned. Under such circumstances these regulations require the holder to provide notice, preferably by filing VA Form 26–6851, Notice of Intention to Foreclose, advising the Secretary of the abandonment. Accordingly, the holder must initiate action under either §36.4280(e) or §36.4317(a) within 15 days after determining that the property is abandoned. In either example above, the 30-day waiting period to begin liquidation action under §36.4280 or §36.4317 is not applicable.

One commenter states that providing notice of property abandonment at the time it occurs is unnecessary because the loan may later reinstate. We believe that a relatively small percentage of abandoned properties reinstate, and that notice of abandonment is imperative in order to ensure prompt foreclosure of these cases.

Concern was expressed that 15 days is inadequate for initiating action under either §36.4280(a) or §36.4317(a). We believe that 15 days is sufficient for holders to retrieve needed loan instruments from the custodian and initiate appropriate action.

One comment was received concerning the reporting requirements that holders must meet under §§36.4280(a), 36.4315, and 36.4317. These requirements include the Notice of Default or the Notice of Intention to Foreclose. The commenter suggested that because much of the information required is contained in the servicing history, holders should be permitted to attach this information to the forms instead of having to transcribe the information onto the forms. VA has generally accepted information in this format in the past and is agreeable to this proposal, providing that all required information is supplied when the reports are submitted. We also envision that at a future time, holder reporting will be made available in an electronic format.

Two respondents commented on §§36.4278(l) and 36.4346(l), Quality Control Procedures. One suggested that compliance with HUD quality control procedures should satisfy VA requirements. The other stated that the proposal would make it mandatory for holders to use and obtain data from others, that data may not be available to holders on the performance of VA-guaranteed loans, and that VA should periodically make delinquency data available to lenders.

With respect to the first comment VA would not object to a holder incorporating elements of HUD's quality control procedures into its quality control procedures for VA portfolios. VA would also encourage holders to extend their existing quality control procedures to include VA loans. However, we disagree with the second comment to the effect that information on VA loans may not be available. Title companies provide origination and foreclosure data to lenders. The Mortgage Bankers Association of America publishes its National Delinquency Survey on VA, FHA, and conventional loans. The regulations provide holders with considerable flexibility in evaluating their performance in relationship to a wide variety of foreclosure and default data which are, or may become, available. We believe that quality control procedures and such analyses provide a continuous and organized effort to improve the efficiency and effectiveness of a holder's servicing operation and, therefore, holders are required by these regulations to perform such reviews at least annually.

One commenter expressed concern that interpretation of VA rules and procedures would not be uniformly applied by each VA field office. A uniform application is always our goal, although it is sometimes limited by the differences in local laws. Any substantive variance in interpretation by a VA field office which is not due to differences in local law should be brought to the attention of local VA managers. If the matter cannot be resolved in this manner, the lender should contact program officials at VA Central Office.

One commenter suggested that VA should include a regulation which permits VA to waive applicability of these regulations. We do not believe this is necessary because under existing regulations (e.g., § 36.4325) any "punitive" aspects of these regulations would only be invoked in the event that VA's liability could be increased by the lender's action or failure. Moreover, existing regulation § 36.4335 authorizes VA to relieve undue prejudice to a holder or other party provided the vested rights of any other parties are not thereby affected. This commenter also recommended that specific authorization be given which permits a servicer to enter into subservicing arrangements. VA does not regulate servicing contracts and therefore such authorization is not necessary.

Several comments were received concerning proposed §§ 36.4278(d)(e) and 36.4346(d)(e). These sections deal with change of servicer and the handling of tax and insurance escrow accounts. One commenter pointed out that a proposed law would affect the proposed regulations. Public Law 101–625, The National Affordable Housing Act of 1990, was signed by the President on November 28, 1990, and we have amended §§ 36.4278(d)(e)(f) and 36.4346(d)(e)(f) to comply with the law, which provides that change of servicing and maintenance of escrow accounts be governed by the Real Estate Settlement Procedures Act.

We have also amended §§ 36.4331 and 36.4216 to provide for the possibility of suspension of lenders and holders for failure to comply with other laws or regulations which affect the VA Program.

The Secretary hereby certifies that these regulations 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. Few VA loans are held and serviced by small entities. Furthermore, the servicing requirements in the regulations are based on practices usual and customary in the industry and are consistent with HUD practices. Meeting the requirements to provide a notice of default to original veteran obligors and a report of property abandonment to the Secretary will have only a slight impact on holders.

The Secretary has also determined that the regulatory amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other 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 information collection requirements contained in §§ 36.4278, 36.4317, and 36.4346 were approved by the Office of Management and Budget (OMB) under control number 2900–0530.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

These amendments are made final under the authority granted the Secretary by section 501(a) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs-housing and community development, Manufactured homes, Veterans.

Approved: March 29, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. Section 36.4202 is amended by revising the definition of the term *Holder* to read as follows:

§ 36.4202 Definitions.

* * * * *

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred.

* * * * *

§ 36.4216 [Amended]

3. Section 36.4216 is amended by adding to the first sentence of paragraph (a) the words "as required under § 36.4278 and any other requirement of 38 U.S.C. and the regulations" after the word "adequately".

4. Section 36.4217 is revised to read as follows:

§ 36.4217 Delivery of notice.

Any notice required by the § 36.4200 series to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4221(b) and delivered, by mail or otherwise, to the VA office at which the guaranty was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by the § 36.4200 series. This section does not apply to legal process. (See § 36.4282.)

5. Section 36.4276 is revised by redesignating paragraph (b)(7) as paragraph (b)(8) and by adding a new paragraph (b)(7) to read as follows:

§ 36.4276 Advances and other charges.

* * * * *

(b) * * *

(7) Reasonable and customary costs of property inspections, * * *

6. Section 36.4278 is added to read as follows:

§ 36.4278 Servicing procedures for holders.

(a) *Establishment of loan servicing program.* The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) *Procedures for providing information.* (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) *Statement for income tax purposes.* Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) *Change of servicing.* Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.

(e) *Escrow accounts.* A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.

(f) *System for servicing delinquent loans.* In addition to the requirements of the Real Estate Settlement Procedures Act concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and,

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) *Collection actions.* (1) Holders should employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum, the holder's collection procedures must include the following actions:

(i) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(ii) An effort, concurrent with the written delinquency notice, to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(iii) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.

(iv) In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

(2) The holder must provide a valid explanation of any failure to perform these collection actions when reporting loan defaults to the Secretary. A pattern of such failure may be a basis for sanctions under 38 CFR 36.4216.

(h) *Conducting interviews with delinquent borrowers.* When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following facts:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The present income and employment of the borrower(s);

(3) The current monthly expenses of the borrower(s) including household and debt obligations;

(4) The current mailing address and telephone number of the borrower(s); and,

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) *Property inspection.* (1) The holder shall make an inspection of the property securing the loan whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made:

(i) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier; and

(ii) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

(2) Whenever a holder obtains information which indicates that a property securing a loan is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under 36.4280(e) within 15 days after the holder confirms the property is abandoned.

(j) *Collection records.* The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the

Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s);

(2) Dated summaries of each personal servicing contact and the result of same;

(3) The indicated reason(s) for default; and

(4) The date and result of each property inspection.

(k) *Reporting to the Secretary.* A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4280.

(l) *Quality control procedures.* No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate the effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in various reports published by the industry, investors and others; and

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(m) Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Approved by the Office of Management and Budget under Control Number 2900–0530)

7. Section 36.4280 is amended by revising paragraph (e) and by adding paragraph (f) to read as follows:

§ 36.4280 Reporting of defaults.

* * * * *

(e) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, repossess the security, or accelerate the loan, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by certified mail to the Secretary of a notice of intention to take such action; provided, that immediate action as required under 38 CFR 36.4278(i) may be taken if the property to be affected thereby has been abandoned by the debtor, or has been or may be otherwise subjected to extraordinary waste or hazard.

(f) The notice required under subparagraph (e) of this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty pursuant to VA Regulation 36.4286(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include:

(1) A search of the holder's automated and physical loan record systems to identify the name and current or last address of the original veteran and any other liable obligors;

(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;

(3) Conducting the trace inquiry using an in-house credit reporting terminal;

(4) Obtaining the results of the inquiry;

(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and

(6) Documentation of the holder's records.

8. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

9. Section 36.4301 is amended by revising the definition of the term *Holder* to read as follows:

§ 36.4301 Definitions.

* * * * *

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred.

* * * * *

10. Section 36.4313 is revised by redesignating paragraph (b)(7) as paragraph (b)(8) and by adding a new paragraph (b)(7) to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(7) Reasonable and customary costs of property inspections, * * *

11. Section 36.4317 is revised to read as follows:

§ 36.4317 Notice of intention to foreclose.

(See also § 36.4319.) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Secretary of a notice of intention to take such action: Provided, That

(a) Immediate action as required under 38 CFR 36.4346 (i), may be taken if the property to be affected thereby has been abandoned by the debtor or has been or may be otherwise subjected to extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment);

(b) Any right of a holder to repossess personal property may be exercised without prior notice to the Secretary; but notice of any such action taken shall be given by certified mail to the Secretary within ten days thereafter; and

(c) The notice required under this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include, but is not limited to:

(1) A search of the holder's automated and physical loan record systems to identify the name and current or last known address of the original veteran and any other liable obligors;

(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;

(3) Conducting the trace inquiry using an in-house credit reporting terminal;

(4) Obtaining the results of the inquiry;

(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and,

(6) Documentation of the holder's records.

(Approved by the Office of Management and Budget under Control Number 2900–0530)

12. Section 36.4331 is amended by adding to the first sentence of paragraph (a) the words "as required under § 36.4346 and any other requirements of 38 U.S.C. and the regulations" after the word "adequately".

13. Section 36.4332 is revised to read as follows:

§ 36.4332 Delivery of notice.

Any notice required by §§ 36.4300 to 36.4375 to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4342 and delivered, by mail or otherwise, to the VA office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by §§ 36.4300 to 36.4375. This paragraph does not apply to legal process.

14. Section 36.4346 is added to read as follows:

§ 36.4346 Servicing procedures for holders.

(a) *Establishment of loan servicing program.* The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) *Procedures for providing information.* (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required.

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) *Statement for income tax purposes.* Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) *Change of servicing.* Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.

(e) *Escrow accounts.* A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.

(f) *System for servicing delinquent loans.* In addition to the requirements of the Real Estate Settlement Procedures Act, concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) *Collection actions.* (1) Holders shall employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum the holder's collection procedures must include the following actions:

(i) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(ii) An effort, concurrent with the written delinquency notice to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(iii) A letter to the borrower(s) if payment has not been received within

30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.

(iv) In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

(2) The holder must provide a valid explanation of any failure to perform these collection actions when reporting loan defaults to the Secretary. A pattern of such failure may be a basis for sanctions under 38 CFR 36.4331.

(h) *Conducting interviews with delinquent borrowers.* When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The present income and employment of the borrower(s);

(3) The current monthly expenses of the borrower(s) including household and debt obligations;

(4) The current mailing address and telephone number of the borrower(s); and

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) *Property inspections.* (1) The holder shall make an inspection of the property securing the loan whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times:

(i) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier; and,

(ii) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

(2) Whenever a holder obtains information which indicates that the property securing the loan is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under § 36.4317(a) within 15 days after the holder confirms the property is abandoned.

(j) *Collection records.* The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s);

(2) Dated summaries of each personal servicing contact and the result of same;

(3) The indicated reason(s) for default; and,

(4) The date and result of each property inspection.

(k) *Reporting to the Secretary.* A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to §§ 36.4315 and 36.4317.

(l) *Quality control procedures.* No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others; and,

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(m) Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Approved by the Office of Management and Budget under Control Number 2900-0530)

[FR Doc. 93-11818 Filed 5-18-93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8E3574/R1194; FRL-4580-8]

RIN 2070-AB78

Pesticide Tolerance for Terbufos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a 2-year time-limited import tolerance for the combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) coffee beans. This regulation to establish a maximum permissible level for residues of the insecticide/nematicide in or on the commodity was requested in a petition submitted by the American Cyanamid Co.

EFFECTIVE DATE: This regulation becomes effective May 19, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 8E3574/R1194], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1993 (58 FR 13236), EPA issued a proposed rule that gave notice that the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, had submitted pesticide petition (PP) 8E3574 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for the combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.05 part per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.352, by adding new paragraph (b), to read as follows:

§ 180.352 Terbufos; tolerances for residues.

* * * * *

(b) A time-limited tolerance to expire (*insert date 24 months after date of publication in the* **Federal Register**) is established for combined residues of the insecticide/nematicide terbufos (*S*-[(1,1-dimethyl)thio]methyl] *O,O*-diethyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodity.

Commodity	Parts per million
Coffee beans	0.05

There are no U.S. registrations as of March 10, 1993 for coffee beans.

[FR Doc. 93-11873 Filed 5-18-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, 186

[PP 2F4076 & FAP 2H5626/R1185; FRL-4577-1]

RIN 2070-AB78

Food and Feed Additive Regulations and Exemption From the Requirement of a Pesticide Tolerance for the Microbial Pest Control Agent Metarhizium Anisopliae Strain ESF1

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule

SUMMARY: EPA is establishing food and feed additive regulations as well as an exemption from the requirement of a pesticide tolerance on all raw agricultural commodities regarding the use of the microbial pest control agent *Metarhizium anisopliae* strain ESF1 in food-handling establishments, feed-handling establishments, and greenhouses in accordance with certain prescribed conditions. EcoScience Corp. requested this regulation.

EFFECTIVE DATE: This regulation becomes effective on May 19, 1993.

ADDRESSES: Written objections, identified by the document control number [PP 2F4076 & FAP 2H5626/R1185], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Philip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 10, 1992 (57 FR 24645, 24656), EPA issued notices announcing that EcoScience of Worcester, MA, had submitted a pesticide petition (PP 2F4076) and a food/feed additive petition (FAP 2H5626) to EPA proposing that 40 CFR part 180 be amended by establishing a regulation for permanent exemption from the requirement of a tolerance for *Metarhizium anisopliae* in or on all raw agricultural commodities and that 40 CFR parts 185 and 186 be amended by exempting *Metarhizium anisopliae*, when used to control cockroaches, from the requirement of a tolerance in or on processed food and animal feed.

On July 23, 1992, EcoScience amended both petitions to limit the uses covered by the proposed exemption from the requirement of a tolerance and food and feed additive regulation to traps and bait stations. In publishing these food and feed additive regulations and tolerance exemption, EPA chose to use the broader term "attractant stations" in place of the terms "traps and bait stations." This was done because risk concerns remain the same and the term "attractant stations" includes traps and bait stations as well as other products that attract target pest(s) to stations containing the active ingredient. EPA chose to limit the applicability of these regulations to *Metarhizium anisopliae* strain ESF1 because different strains of *Metarhizium anisopliae* may have differing results in toxicity/pathogenicity studies.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. The scientific data submitted in the petitions and other relevant material have been evaluated.