

scientific and medical studies. The intended effect is to establish a rule for making determinations regarding service connection for chloracne and PCT for all veterans who were exposed to herbicides containing dioxin during military service.

**EFFECTIVE DATE:** The amendment to § 3.311a(d) is effective September 25, 1985. The amendment to § 3.311a(c) is effective October 21, 1991.

**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:** In the Federal Register of March 19, 1991 (55 FR 11536-11537), VA published a proposal to amend 38 CFR 3.311a in order to extend the period during which chloracne must appear following exposure to a herbicide containing dioxin in order to establish service connection, and to codify the Secretary's decision that there is no significant statistical association between exposure to a herbicide containing dioxin and PCT. Interested persons were invited to submit written comments, suggestions or objections on or before April 18, 1991. We received one comment from the American Legion.

The commenter submitted a report concerning a person with PCT who had been exposed to TCDD which had been published in the Morbidity Mortality Weekly Report of March 2, 1984, saying he was not aware whether the Veterans Advisory Committee on Environmental Hazards (VACEH) had considered the case. VACEH met on May 23, 1991, and reviewed the report. Due to a number of factors, including the subject's exposure to a number of chemical compounds plus his history of chronic alcohol ingestion, which has been reported to result in PCT, the report does not warrant a change in the previous determination that there is no significant statistical association between exposure to a herbicide containing dioxin and PCT.

The commenter also submitted for consideration by VACEH a copy of an article from the spring edition of *New Solutions*, Journal of Occupational and Environmental Health concerning the American Legion's Agent Orange Scientific Task Force Report.

At its meeting of May 16-17, 1990, VACEH had conducted its own review of the Agent Orange Scientific Task Force Report and found that from a scientific standpoint, the conclusions of

the Task Force represent an over-interpretation of inconclusive data and an oversimplification of a complex biological process. VACEH further found that the Task Force presented only a selective review of the literature and its review appeared to be generally uncritical and lacking of any discussion of the strengths and weaknesses of particular studies. The article submitted by the commenter is essentially a summary of the Task Force Report and its conclusions, and it contains no new evidence or insights which would warrant a change in either VACEH's assessment of the Task Force Report or VA's previous determination that there is no significant statistical association between exposure to a herbicide containing dioxin and PCT.

The commenter also noted that the National Institute for Occupational Safety and Health (NIOSH) Registry of Dioxin Workers, which was partially reported in the January 24, 1991, issue of the *New England Journal of Medicine*, will offer a further opportunity to study the relationship between dioxin and PCT, and suggested that VA defer publishing the final rule until the complete NIOSH study is available for review.

Since the body of currently available scientific and medical literature does not support a finding that there is a significant statistical association between exposure to a herbicide containing dioxin and subsequent development of PCT, delaying publication of the final rule based on speculation as to what one future study might indicate would serve no useful purpose. Should future scientific or medical studies warrant a change in the Secretary's determination, the regulation will be amended accordingly.

The Secretary finds good cause for the assigned effective dates for these regulatory amendments. Because in *Nehmer v. United States Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989), the court invalidated VA's original service connection determinations in 38 CFR 3.311a(d) *ab initio*, and because those determinations were the original regulatory response to the mandate in section 5(a)(1) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 90-542, 98 Stat. 2735 (1984), we are making the amendment to § 3.311a(d) effective retroactive to September 25, 1985, the original effective date of the section. Since § 3.311a(d) serves as a substitute for a void regulation, this effective date is appropriate.

**DEPARTMENT OF VETERANS AFFAIRS**

38 CFR Part 3

RIN 2900-AE98

**Claims Based on Exposure to Herbicides Containing Dioxin (PCT/Chloracne)**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) has amended its regulations which govern the adjudication of claims for service-connected disability compensation based on exposure to a herbicide containing dioxin. The amendments will (1) extend, from three to nine months, the period during which chloracne must appear following exposure to a herbicide containing dioxin in order to establish service connection, and (2) provide that there is no significant statistical association between exposure to a herbicide containing dioxin and porphyria cutanea tarda (PCT). These changes are necessary to implement our determinations based on a review of

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We are making the amendment to § 3.311a(c) effective the date of publication of the final rule. The Secretary finds good cause for doing so since the extension of the manifestation period for chloracne from three to nine months following exposure to a herbicide containing dioxin relieves a restriction and will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102).

VA appreciates the comment 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 numbers are 64.101, 64.109 and 64.110.

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

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

Approved: September 13, 1991.

Edward J. Derwinski,  
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: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

2. In § 3.311a(c)(1), remove the word "three" where it appears and insert, in its place, the word "nine".

3. Section 3.311a is amended by adding a new paragraph (d) and revising the authority citation at the end of the section to read as follows:

§ 3.311a Claims based on exposure to herbicides containing dioxin.

(d) Diseases not associated with exposure to herbicides containing dioxin. Sound scientific and medical evidence does not establish a significant statistical association between exposure to herbicides containing dioxin and porphyria cutanea tarda.

(Authority: Sec. 5, Pub. L. 98-542, 98 Stat. 2725, 2727 (38 U.S.C. 354 note); 38 U.S.C. 501(a))

[FR Doc. 91-24842 Filed 10-18-91; 8:45 am]

BILLING CODE 8320-01-M

COMPLIMENTS OF:  
VIETNAM VETERAN / AGENT ORANGE HEALTH STUDY  
P.O. BOX #1236  
EATONTOWN, NEW JERSEY 07724  
(908) 544-1082

1 NOVEMBER 1991

Dated: October 11, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 38, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

#### PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (zz) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

(zz) The following amendment to the Ohio regulatory program, as originally submitted by letter dated January 31, 1989, later revised and submitted by letter dated August 10, 1989, and clarified on July 18, 1990, August 24, 1990, and August 1, 1991, is approved effective October 21, 1991: Revised Amendment Number 38 which consists of revisions to the Ohio Administrative Code (OAC) at Section 1501:13-12-03 concerning subsidence control.

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BILLING CODE 4310-06-M

#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 3

RIN 2900-AE98

#### Claims Based on Exposure to Herbicides Containing Dioxin (PCT/Chloracne)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) has amended its regulations which govern the adjudication of claims for service-connected disability compensation based on exposure to a herbicide containing dioxin. The amendments will (1) extend, from three to nine months, the period during which chloracne must appear following exposure to a herbicide containing dioxin in order to establish service connection, and (2) provide that there is no significant statistical association between exposure to a herbicide containing dioxin and porphyria cutanea tarda (PCT). These changes are necessary to implement our determinations based on a review of

scientific and medical studies. The intended effect is to establish a rule for making determinations regarding service connection for chloracne and PCT for all veterans who were exposed to herbicides containing dioxin during military service.

**EFFECTIVE DATE:** The amendment to § 3.311a(d) is effective September 25, 1985. The amendment to § 3.311a(c) is effective October 21, 1991.

**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:** In the Federal Register of March 19, 1991 (58 FR 11536-11537), VA published a proposal to amend 38 CFR 3.311a in order to extend the period during which chloracne must appear following exposure to a herbicide containing dioxin in order to establish service connection, and to codify the Secretary's decision that there is no significant statistical association between exposure to a herbicide containing dioxin and PCT. Interested persons were invited to submit written comments, suggestions or objections on or before April 18, 1991.

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The commenter submitted a report concerning a person with PCT who had been exposed to TCDD which had been published in the Morbidity Mortality Weekly Report of March 2, 1984, saying he was not aware whether the Veterans Advisory Committee on Environmental Hazards (VACEH) had considered the case. VACEH met on May 23, 1991, and reviewed the report. Due to a number of factors, including the subject's exposure to a number of chemical compounds plus his history of chronic alcohol ingestion, which has been reported to result in PCT, the report does not warrant a change in the previous determination that there is no significant statistical association between exposure to a herbicide containing dioxin and PCT.

The commenter also submitted for consideration by VACEH a copy of an article from the spring edition of *New Solutions*, Journal of Occupational and Environmental Health concerning the American Legion's Agent Orange Scientific Task Force Report.

At its meeting of May 16-17, 1990, VACEH had conducted its own review of the Agent Orange Scientific Task Force Report and found that from a scientific standpoint, the conclusions of

the Task Force represent an over-interpretation of inconclusive data and an oversimplification of a complex biological process. VACEH further found that the Task Force presented only a selective review of the literature and its review appeared to be generally uncritical and lacking of any discussion of the strengths and weaknesses of particular studies. The article submitted by the commenter is essentially a summary of the Task Force Report and its conclusions, and it contains no new evidence or insights which would warrant a change in either VACEH's assessment of the Task Force Report or VA's previous determination that there is no significant statistical association between exposure to a herbicide containing dioxin and PCT.

The commenter also noted that the National Institute for Occupational Safety and Health (NIOSH) Registry of Dioxin Workers, which was partially reported in the January 24, 1991, issue of the *New England Journal of Medicine*, will offer a further opportunity to study the relationship between dioxin and PCT, and suggested that VA defer publishing the final rule until the complete NIOSH study is available for review.

Since the body of currently available scientific and medical literature does not support a finding that there is a significant statistical association between exposure to a herbicide containing dioxin and subsequent development of PCT, delaying publication of the final rule based on speculation as to what one future study might indicate would serve no useful purpose. Should future scientific or medical studies warrant a change in the Secretary's determination, the regulation will be amended accordingly.

The Secretary finds good cause for the assigned effective dates for these regulatory amendments. Because in *Nehmer v. United States Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989), the court invalidated VA's original service connection determinations in 38 CFR 3.311a(d) *ab initio*, and because those determinations were the original regulatory response to the mandate in section 5(a)(1) of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98-542, 98 Stat. 2735 (1984), we are making the amendment to § 3.311a(d) effective retroactive to September 25, 1985, the original effective date of the section. Since § 3.311a(d) serves as a substitute for a void regulation, this effective date is appropriate.

We are making the amendment to § 3.311a(c) effective the date of publication of the final rule. The Secretary finds good cause for doing so since the extension of the manifestation period for chloracne from three to nine months following exposure to a herbicide containing dioxin relieves a restriction and will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102).

VA appreciates the comment 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 numbers are 64.101, 64.109 and 64.110.

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

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

Approved: September 13, 1991.  
Edward J. Derwinski,  
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: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

2. In § 3.311a(c)(1), remove the word "three" where it appears and insert, in its place, the word "nine".

3. Section 3.311a is amended by adding a new paragraph (d) and revising the authority citation at the end of the section to read as follows:

§ 3.311a Claims based on exposure to herbicides containing dioxin.

(d) *Diseases not associated with exposure to herbicides containing dioxin. Sound scientific and medical evidence does not establish a significant statistical association between exposure to herbicides containing dioxin and porphyria cutanea tarda.*

(Authority: Sec. 5, Pub. L. 98-542, 98 Stat. 2725, 2727 (38 U.S.C. 354 note); 38 U.S.C. 501(a))

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BILLING CODE 8320-01-M

### 38 CFR Part 17

RIN 2900-AC70

#### Transportation of Claimants and Beneficiaries

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

**SUMMARY:** The Department of Veterans Affairs (VA) hereby adopts, as final regulations, a proposed regulation which was published in the Federal Register on Friday, February 1, 1991, at 56 FR 4025. The proposed regulations amended the Transportation of Claimants and Beneficiaries regulations (38 CFR, part 17, § 17.100) concerning the provision of beneficiary travel reimbursement to specified categories of eligible veterans.

This action was taken in accordance with the Veterans' Benefits and Services Act of 1988, Public Law 100-322, section 108, which restores in large part, VA travel reimbursement benefits.

**EFFECTIVE DATE:** These regulations are retroactively effective July 1, 1988, as required by law.

**FOR FURTHER INFORMATION CONTACT:** Stuart E. Mount, Medical Administration Program Specialist, Policies and Procedures Division (161B2), Medical

Administration Service, Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535-7660.

**SUPPLEMENTARY INFORMATION:** The Veterans' Benefits and Services Act of 1988, Public Law 100-322, section 108, significantly modified the authority of VA to pay travel benefits. It requires that, if VA provides any beneficiary travel reimbursement under section 111 in any given fiscal year, then payments must be provided in that year in the cases of travel for health-care services for all the categories of beneficiaries specified in the statute. In order to limit the overall cost of this program, the law imposes a \$3 one-way deductible applicable to all travel except for veterans otherwise eligible for beneficiary travel reimbursement who are traveling by special modes of transportation, or to receive a compensation and pension examination. In order to limit the overall impact on veterans whose clinical needs dictate frequent travel for VA medical care, an \$18 per calendar month cap on the deductible would apply for those veterans who are pre-approved as needing to travel on a frequent basis. The regulations contain several provisions intended to clarify the meaning of terms used in the law. They define the term "unable to defray the expenses of travel" to include service-connected veterans rated at least 30 percent, and veterans traveling in connection with treatment of a service-connected disability. That will assure that those veterans are able to receive the same benefit that nonservice-connected veterans can receive to travel by a special mode of transportation, such as an ambulance, when necessary. The regulations also clarify the meaning of severe financial hardship for purposes of waiving the deductible. They state that hardship will result when loss of employment, illness or disability cause income to drop below the maximum level of VA pension, which in 1990 was \$10,824 for a single veteran. Finally, the regulations clarify which persons in addition to veterans are eligible to receive beneficiary travel payments, including attendants when it has been determined in advance that the beneficiary's physical or mental condition requires the presence of an attendant.

On Friday, February 1, 1991, VA published a proposed regulation in the Federal Register at 56 FR 4025, amending the Transportation of Claimants and Beneficiaries regulations (38 CFR part 17, § 17.100) to incorporate the Veterans' Benefits and Services Act