

operating regulations are listed at 33 CFR 117.223.

The bridge owner, the National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance at the bridge. This deviation from the operating regulations allows the bridge owner to need not open the Amtrak Bridge for vessel traffic from 10 p.m. on April 4, 2001 through 10 p.m. on April 6, 2001. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

The bridge owner provided less than 30 days notice to the Coast Guard of its request to deviate from the drawbridge regulations on the specified dates. However, a deviation was previously approved to perform this work March 5, 2001 through March 8, 2001; that work was cancelled due to severe weather conditions during that period. Delaying the commencement of this maintenance to require an additional 30 days notice would be unnecessary and contrary to the public interest since this work involves vital maintenance that must be performed without undue delay. Known waterway users were contacted regarding the proposed closure period; none had any objection. Furthermore, performing the repairs before the recreational boating season begins will lessen the impact and inconvenience to other mariners that use this waterway.

In accordance with 33 CFR 117.35(c) this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 29, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AK07

Signature by Mark

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation that explains how a claimant can use a mark or a

thumbprint in place of a signature. This amendment is necessary to present the existing regulation in plain language and to remove an obsolete manual provision from VA's Adjudication Procedural Manual, M21-1. This document also adds a new subpart D to part 3 along with a section setting forth the scope of applicability of subpart D.

DATES: *Effective Date:* April 6, 2001.

FOR FURTHER INFORMATION CONTACT:

Candice Weaver, Consultant, Plain Language Regulations Project, or Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone 202-273-7235 and 202-273-7228 respectively.

SUPPLEMENTARY INFORMATION: VA published a proposal in the **Federal Register** on July 26, 2000 (65 FR 45952-53) to rewrite 38 CFR 3.113 in plain language. We proposed to create new § 3.2130 to restate the current regulation and to remove the obsolete requirement in the Adjudication Procedure Manual that eligibility verification reports signed by mark or thumbprint be accompanied by a separate sheet of paper certifying that the information contained on the form is true and correct. Interested persons were invited to submit written comments on or before September 25, 2000. We received one comment from the National Service Director of the Disabled American Veterans.

The comment suggested improving the proposed rule by permitting the acceptance of signatures on documents by mark or thumbprint when witnessed by accredited agents, attorneys, or service organization representatives. The commenter referred to VA's recently proposed amendment to 38 CFR 3.203 to authorize the acceptance of copies of military records certified as true and exact copies by claimants' representatives (65 FR 39580). This proposal was consistent with the partnership being developed between accredited representatives and VA for the purpose of improving claims processing. VA concurs with the commenter and has modified the proposed rule to reflect the comment. Proposed § 3.2130 has been amended by redesignating proposed paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and by adding a new paragraph (b) to read "They are witnessed by an accredited agent, attorney, or service organization representative, or".

No comments were received with regard to the addition of subpart D or

§ 3.2100 on the scope of applicability of subpart D.

VA appreciates the comment submitted in response to the proposed rule which, based on the rationale set forth in the proposal and this document, is now adopted with the change explained above.

Executive Order 12866

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

Regulatory Flexibility Act

The Secretary hereby certifies that these final rules will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these final rules do not directly affect any small entities. Only VA beneficiaries are directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these final rules are exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, and 64.127.

List of Subjects in 38 CFR Part 3

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

Approved: February 15, 2001.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

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.

§ 3.113 [Removed]

2. Section 3.113 is removed.

Subpart C—[Reserved]

3. Subpart C is added and reserved.

4. A new subpart D is added to read as follows:

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

General

Sec.

3.2100 Scope of Applicability.

3.2130 Will VA accept a signature by mark or thumbprint?

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

Authority: 38 U.S.C. 501(a), unless otherwise noted.

General

5. Section 3.2100 is added to read as follows:

§ 3.2100 Scope of Applicability.

Unless otherwise specified, the provisions of this subpart apply only to claims governed by part 3 of this title.

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

6. Section 3.2130 is added to read as follows:

§ 3.2130 Will VA accept a signature by mark or thumbprint?

VA will accept signatures by mark or thumbprint if:

(a) They are witnessed by two people who sign their names and give their addresses, or

(b) They are witnessed by an accredited agent, attorney, or service organization representative, or

(c) They are certified by a notary public or any other person having the authority to administer oaths for general purposes, or

(d) They are certified by a VA employee who has been delegated authority by the Secretary under 38 CFR 2.3.

(Authority: 38 U.S.C. 5101).

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AJ59

Claims Based on the Effects of Tobacco Products

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA)

adjudication regulations governing determinations of whether disability or death is service-connected. These changes are necessary to implement a statutory amendment providing that a disability or death will not be service-connected on the basis that it resulted from injury or disease attributable to a veteran's use of tobacco products during service.

DATES: *Effective Dates:* June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 16, 2000 (65 FR 7807-7809), we proposed to amend the adjudication regulations to provide that a disability or death will not be service-connected on the basis that it resulted from injury or disease attributable to a veteran's use of tobacco products during service. The comment period ended April 17, 2000. We received written comments from the Disabled American Veterans, the Paralyzed Veterans of America, the Veterans of Foreign Wars (Department of Maine), and four individuals. Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule with changes discussed below.

Statutory Requirements

Four commenters asserted that it would be wrong to preclude service members from service connection for disability or death based upon tobacco use during service because the military encouraged them to use tobacco products. One commenter asserted that the proposed regulations are unfair because the federal government has filed a lawsuit against the tobacco companies to recover the cost of smoking-related illnesses and VA should therefore provide compensation for smoking-related illnesses. We have made no changes based on these comments. The final rule merely reflects the statutory provision stating that a disability or death will not be service-connected on the basis that it resulted from injury or disease attributable to a veteran's use of tobacco products during service. (Section 9014(a) of the "Internal Revenue Service Restructuring and Reform Act of 1998," Public Law 105-206, amended section 8202 of the "Transportation Equity Act for the 21st Century," Public Law 105-178, by adding section 1103 to title 38, United States Code). We have no authority to

change statutory provisions by regulation.

Another commenter requested that the effective date of the proposed regulations be the date of publication of the final rule rather than June 9, 1998, as set forth in the proposed rule. We have retained the effective date of June 9, 1998, because this is the effective date imposed by statute (section 8202(c) of Pub. L. No. 105-178, as amended by section 9014(b) of Pub. L. No. 105-206). Again, we have no authority to change statutory provisions by regulation.

Definition of Tobacco Products

We proposed to define "tobacco products" to mean "cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco." The term "tobacco products" is not defined in 38 U.S.C. 1103. We based our proposed definition on provisions in the Internal Revenue Code (26 U.S.C. 5702(c)) that define tobacco products for purposes of levying excise taxes. The proposal stated that it was appropriate to rely on the definition in 26 U.S.C. 5702(c) because a rule of statutory construction provides that statutes that are *in pari materia* (relating to the same matter) should be construed together. Under this rule, the meaning of words in one statute may be determined by referring to another statute on the same subject matter in which the same words are used. Black's Law Dictionary 794 (7th ed. 1999).

One commenter stated that the definition of "tobacco products" in section 3.300(a) is too broad because from the inception of the legislative proposal for 38 U.S.C. 1103, the concern was about the effects of smoking tobacco. In this regard, the commenter disagreed with VA's reliance on the definition of "tobacco products" in 26 U.S.C. 5702(c), stating that the rule of statutory construction regarding statutes *in pari materia* does not apply because 26 U.S.C. 5702(c) is unrelated to 38 U.S.C. 1103. In further support of his argument, the commenter noted that a heading on two VA budget proposals including this proposed legislation referred to "Smoking-Related Disabilities," that the cost savings estimate in the FY 1999 budget was derived from a study regarding smoking-related diseases, and that a letter from the Office of Management and Budget (OMB) referred to the legislation as relating to "smoking-related disabilities."

We agree, upon further consideration, that although 26 U.S.C. 5702(c) and 38 U.S.C. 1103 deal with the same class of things, i.e., tobacco products, the statutes do not relate to the same subject