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Dated: February 11, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-116733-98]

RIN 1545-AW79

#### **Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Change of date and time of public hearing.

**SUMMARY:** This document contains a notice of date and time change of a public hearing on proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition.

**DATES:** The public hearing originally scheduled for Wednesday, January 26, 2000, is rescheduled for Thursday, March 2, 2000, at 10 a.m. The due date for outlines of topics to be discussed at the hearing was January 5, 2000.

**ADDRESSES:** The public hearing is being held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

**FOR FURTHER INFORMATION CONTACT:** Concerning the hearing, and/or to be placed on the building access list to attend the hearing LaNita VanDyke, (202) 622-7190 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations (REG-116733-98) that was published in the **Federal Register** on Thursday, August 24, 1999 (64 FR 46155).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 00-3565 Filed 2-15-00; 8:45 am]

BILLING CODE 4830-01-U

## 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:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations governing determinations of whether disability or death is service-connected. The proposed changes appear necessary to implement a recent statutory amendment providing with certain exceptions 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:** Comments must be received on or before April 17, 2000.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate they are submitted in response to RIN 2900-AJ59. All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Donald England, Chief, Regulations

Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** 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. Subsection (a) of section 1103 provides that "a veteran's disability or death shall not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service for purposes of this title on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service."

Subsection (b) of section 1103 provides that subsection (a) does not preclude service connection for disability or death that is otherwise shown to have been incurred or aggravated during service or that becomes manifest to the requisite degree of disability during any applicable presumptive period specified in section 1112 or 1116 of title 38, United States Code.

This document proposes to amend VA regulations by adding new § 3.300 to title 38, Code of Federal Regulations, to implement the provisions of 38 U.S.C. 1103. Section 3.300(a) provides that, for claims received by VA after June 9, 1998, a disability or death will not be considered service-connected on the basis that it resulted from injury or disease attributable to the veteran's use of tobacco products during service.

Section 3.300(a) also defines "tobacco products" to mean "cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco." This definition is based on the definition of the same term in 26 U.S.C. 5702(c). Under the rule of statutory construction of statutes in pari materia, statutes which relate to the same person or thing or class of persons or things, or which have the same purpose or object, should be construed together. Further, the meaning of words in one statute which are capable of more than one meaning may be determined by referring to another statute relating to the same subject matter in which the same words are used. We believe that, based upon these rules of statutory construction, it is appropriate to define the term "tobacco products" in a manner consistent with 26 U.S.C. 5702(c).

Section 3.300(b) provides that § 3.300(a) does not prohibit service connection for a disability or death if it resulted from a disease or injury otherwise shown to have been incurred or aggravated during service, or that became manifest to the required degree of disability within a period that establishes eligibility for a presumption of service connection under 38 CFR 3.307, 3.309, 3.313, or 3.316, or that may be secondarily service-connected under § 3.310(b).

Sections 3.307 and 3.309 implement the statutory presumptions of 38 U.S.C. 1112 and 1116, which are specifically mentioned at 38 U.S.C. 1103(b). These sections of the statute govern the presumptions that the following diseases are service-connected: chronic and tropical diseases (section 1112(a)); diseases appearing in former prisoners of war (section 1112(b)); diseases appearing in radiation-exposed veterans (section 1112(c)); and diseases associated with exposure to certain herbicide agents (section 1116).

Sections 3.313 and 3.316 are regulatory, rather than statutory, presumptions issued pursuant to the general rulemaking authority of the Secretary of Veterans Affairs. 38 U.S.C. 501(a). They govern, respectively, service connection for non-Hodgkins' lymphoma developing subsequent to service in Vietnam and service connection for diseases developing subsequent to exposure to mustard gas and Lewisite. Also, § 3.310(b), a regulatory presumption, governs secondary service connection of ischemic heart disease and other cardiovascular disease as the proximate result of certain service-connected amputations of the lower extremities. 38 U.S.C. 1103(b) explicitly provides that nothing in section 1103(a) shall be construed as precluding establishment of service connection if disability or death resulted from a disease or injury otherwise shown to have been incurred or aggravated during service or that appeared to the required degree within a statutory presumptive period.

In our view, 38 U.S.C. 1103 was not intended to affect a veteran's ability to establish service connection on the basis of any legal presumption, including regulatory presumptions authorized by 38 U.S.C. 501(a) as well as statutory presumptions. Section 1103(a) only precludes establishment of service connection for a disability or death "on the basis that" it resulted from injury or disease attributable to the veteran's use of tobacco products. We believe that section 1103(b) was enacted as a safeguard to assure that VA did not misinterpret section 1103(a) as barring

otherwise valid claims for service connection. Based on our interpretation of section 1103, new § 3.300(b) specifies that if disability or death can be service-connected under the regulatory presumptions of § 3.310(b), 3.313, or 3.316, a claim will not be denied on the basis of § 3.300(a).

New § 3.300(c) provides that, for claims received by VA after June 9, 1998, a disability that is proximately due to or the result of an injury or disease previously service-connected on the basis of the veteran's use of tobacco products during service will not be service-connected. According to current § 3.310(a), "[d]isability which is proximately due to or the result of a service-connected disease or injury shall be service connected." Section 3.310(a) provides for service connection of disability not itself incurred or aggravated in service but nevertheless resulting from a disease or injury incurred or aggravated in service. Just as with directly service-connected disabilities, secondarily service-connected disabilities are the result of service-incurred or service-aggravated injury or disease, only they are somewhat more remotely related to such disease or injury. When a disability is proximately due to or the result of an injury or disease previously service-connected on the basis of the veteran's use of tobacco products during service, the secondary condition results from a disease or injury attributable to the use of tobacco products. Consequently, service connection of such a condition is barred by 38 U.S.C. 1103(a). New § 3.300(c) therefore provides that secondary service connection may not be established under § 3.310(a) in a claim received by VA after June 9, 1998, for a disability proximately due to or the result of an injury or disease previously service-connected on the basis that it is attributable to a veteran's tobacco use during service. Under § 3.300(c), a condition cannot be service-connected under § 3.310(a) as secondary to a disease such as nicotine dependence, for example, that was previously service-connected solely on the basis that it resulted from the veteran's use of tobacco products during service. We also propose to amend § 3.310(a) to make explicit that it is subject to the provisions of § 3.300(c).

Section 8202 of Public Law 105-178, as amended (38 U.S.C. 1103 note), provides that 38 U.S.C. 1103 shall apply to claims received by VA after June 9, 1998.

#### Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the proposed rule would 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 the proposed rule would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

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, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 3, 2000.

**Togo D. West, Jr.**,  
*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be 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.

2. Section 3.300 is added under the undesignated centerheading "Ratings and Evaluations; Basic Entitlement Considerations" to read as follows:

#### § 3.300 Claims based on the effects of tobacco products.

(a) For claims received by VA after June 9, 1998, a disability or death will not be considered service-connected on the basis that it resulted from injury or disease attributable to the veteran's use of tobacco products during service. For the purpose of this section, the term "tobacco products" means cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

(b) The provisions of paragraph (a) of this section do not prohibit service connection if:

(1) The disability or death resulted from a disease or injury that is otherwise shown to have been incurred or aggravated during service;

(2) The disability or death resulted from a disease or injury that appeared to the required degree of disability within any applicable presumptive period under §§ 3.307, 3.309, 3.313, or 3.316; or

(3) Secondary service connection is established for ischemic heart disease or other cardiovascular disease under § 3.310(b).

(c) For claims for secondary service connection received by VA after June 9, 1998, a disability that is proximately due to or the result of an injury or disease previously service-connected on the basis that it is attributable to the veteran's use of tobacco products during service will not be service-connected under § 3.310(a).

(Authority: 38 U.S.C. 501(a), 1103, 1103 note)

### § 3.310 [Amended]

3. In § 3.310, paragraph (a) is amended by removing "Disability" and adding, in its place, "Except as provided in § 3.300(c), disability".

[FR Doc. 00-3662 Filed 2-15-00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 268

[FRL-6538-2]

RIN 2050-AE76

### Deferral of Phase IV Standards for PCB's as an Underlying Hazardous Constituent in Soil

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to temporarily defer a portion of the rule applying Land Disposal Restrictions (LDR) under the Resource Conservation and Recovery Act (RCRA) to underlying hazardous constituents (UHC) in soils contaminated with certain characteristic hazardous wastes. EPA promulgated this rule on May 26, 1998. Specifically, EPA is proposing to temporarily defer the requirement that polychlorinated biphenyls (PCBs) be considered a UHC when they are present in soils that exhibit the Toxicity Characteristic for metals. EPA is proposing this action because the regulation appears to be discouraging generators from cleaning up contaminated soils, which is contrary to what EPA intended when we promulgated alternative treatment standards for contaminated soils. In addition, EPA needs more time to restudy the issue of appropriate treatment standards for metal-contaminated soils which also contain PCBs as UHC. If this proposal is finalized, the Agency would still require generators to treat these soils to meet

LDR standards for all hazardous constituents except PCBs. Generators would also be required to treat PCBs if the total concentration of halogenated organic compounds in the soil equals or exceeds 1000 parts per million.

**DATES:** Submit comments on or before April 3, 2000.

**ADDRESSES:** Address written comments on this proposed rule to the docket clerk at the following address: RCRA Information Center (RIC), Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-2000-PCBP-FFFFF. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the Agency recommends that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, D.C. metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of this rulemaking, contact Ernesto Brown, Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, D.C. 20460-0002, (703) 308-8608, brown.ernie@epa.gov

**SUPPLEMENTARY INFORMATION:** You can find the index and the following supporting materials on the Internet at: <http://www.epa.gov/epaoswer/hazwaste/ldr/index.htm>

#### Preamble Outline:

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- II. Purpose
- III. How Can I Influence EPA's Thinking on this Rule?
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  - B. Soils Subject to LDR Requirements
  - C. Alternative Treatment Standards for Contaminated Soils
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    - A. Executive Order 12866
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- D. Paperwork Reduction Act
- E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- F. National Technology Transfer and Advancement Act
- G. Executive Order 12898: Environmental Justice
- H. Executive Order 13132: Federalism
- I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

### I. Authority

EPA is proposing these regulations under the authority of sections 1006(B), 2002, and 3004 of RCRA, as amended, 42 U.S.C. 6905, 6012(a), 6921, and 6924.

### II. Purpose

EPA is proposing this action because the existing regulation appears to discourage remediation of certain contaminated soils, contrary to EPA's intent in promulgating alternative treatment standards for contaminated soils. In addition, EPA needs more time to review the issue of appropriate treatment standards for metal-contaminated soils that also contain PCBs as UHC.

### III. How Can I Influence EPA's Thinking on this Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.