

Office, LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If delivered by means of the United States Postal Service, comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. Telephone (202) 707-8380; telefax (202) 707-8366.

SUPPLEMENTARY INFORMATION: The Copyright Office of the Library of Congress is currently conducting proceedings mandated by the Digital Millennium Copyright Act, which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. See 17 U.S.C. 1201(a)(1)(C). The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. If there are, the Librarian may exempt such classes from the statutory prohibition.

Comments proposing classes of works to be exempted were due December 18, 2002. However, in order to provide flexibility in this rulemaking proceeding and to take into account unforeseen developments that might significantly affect the recommendation of the Register of Copyrights, the Office's October 15, 2002 Notice of Inquiry provided an opportunity to petition the Register for consideration of new information that could not reasonably have been known prior to the December 18 deadline. See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 67 FR 63578, 63582 (October 15, 2002). The Notice of Inquiry states that a petition to consider new classes of works proposed for exemption must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also set forth the proposed class or classes of works to be exempted, a summary of the argument, the factual basis for such an exemption and the legal argument supporting such an exemption. The Register's determination whether to

accept such a petition is based on the stage of the rulemaking process at which the request is made and the merits of the petition.

Static Control Components, Inc. ("Static Control") has petitioned for consideration of the following classes of works:

1. Computer programs embedded in computer printers and toner cartridges and that control the interoperation and functions of the printer and toner cartridge;
2. Computer programs embedded in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; and
3. Computer programs embedded in a machine or product and that control the operation of a machine or product connected thereto, but that do not otherwise control the performance, display or reproduction of copyrighted works that have an independent economic significance.

The Register of Copyrights has determined that Static Control has adequately explained why the information set forth in its petition could not have been made available earlier, and that Static Control has set forth sufficiently serious arguments on the merits to warrant consideration of its proposal after the initial deadline. Accordingly, the "Petition of Static Control Components, Inc. for Consideration of New Information" has been accepted as a comment proposing three classes of works to be exempted from the prohibition on circumvention, and interested parties are invited to submit reply comments responsive to this comment, either in support of or opposition to the Static Control proposal. Static Control's comment is available on the Copyright Office Web site at <http://www.copyright.gov/1201/2003/petitions/>.

Reply comments responsive to this new comment will be accepted from February 24, 2003 until March 10, 2003, at 5 pm Eastern Standard Time. Commenters are encouraged to file their comments electronically. See **ADDRESSES**, above. Please review the initial Notice of Inquiry for format requirements for comments. See 67 FR at 63582 (October 15, 2002).

Dated: February 5, 2003.

David O. Carson,

General Counsel, Copyright Office.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AL36

Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning presumptive service connection for certain diseases. The proposed amendment would add cirrhosis of the liver to the list of diseases for which entitlement to service connection is presumed for former prisoners of war (POWs). The intended effect is to make it easier for former POWs to obtain compensation for cirrhosis based on scientific and medical research showing a significantly higher risk of death from cirrhosis in former World War II POWs than in the general population.

DATES: Comments must be received on or before April 11, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW., Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL36." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 111 W. Huron Street, Room 22, Buffalo, NY 14202, (716) 551-4842.

SUPPLEMENTARY INFORMATION: Section 1112(b) of title 38, United States Code, designates 15 diseases considered to have been incurred in or aggravated during active duty service by former POWs detained or interned for at least 30 days, even though there is no record of such diseases during the period of service. Each listed disease must have become manifest to a degree of 10 percent or more after active duty service. VA implemented the provisions of 38 U.S.C. 1112(b) at 38 CFR 3.309(c). Former POWs are entitled to service connection for any of the 15 listed

diseases, even though there is no record of the disease during service, if it becomes manifest to a degree of 10 percent or more any time after discharge from active military, naval, or air service.

Presumptions of service connection under § 3.309 (c) are rebuttable under the provisions of § 3.307(d), which states that the presumption of service connection for a disease under § 3.309 may be rebutted by competent evidence. The presumption of service connection may be rebutted with affirmative evidence that the disease was not incurred in service based on sound medical reasoning and consideration of all evidence of record.

In October 2000, the Institute of Medicine (IOM) published results of a study that found a significantly higher risk of cirrhosis among former World War II POWs compared with control groups. POWs held in the Pacific and European theaters had roughly 1.5 times the risk of death due to cirrhosis compared to non-POW controls. (Page WF, Miller R: Cirrhosis Mortality among Former American Prisoners of War of World War II and the Korean Conflict: Results of a 50-year Follow-up. *Military Medicine* 2000; 165: 781–785.) Cirrhosis mortality was not found to be associated with any differences in levels of alcohol consumption among World War II and Korean POWs and Korean controls, which were similar to those among U.S. males. Therefore, it appears that alcohol consumption does not provide an explanation for the higher mortality rates identified in POWs.

IOM initially conducted a 30-year follow-up of American POWs of World War II and the Korean Conflict. (Nefzger MD: Follow-up of World War II and Korean prisoners. I. Study plan and mortality findings. *Am J Epidemiology* 1970; 91: 123–38.) Sampling began in the early 1950s of three groups of POWs (WWII Pacific theater prisoners, WWII European theater prisoners, and Korean conflict prisoners) along with sampling of non-POW military veteran controls. In the 30-year study, IOM found evidence of increased mortality from cirrhosis in American former POWs compared to the U.S. general population.

In the 2000 IOM study, the authors used federal records, primarily from VA and the Social Security Administration, to extend the follow-up to 50 years with similar results. Cirrhosis Mortality, 165 *Military Medicine* at 781. By crosschecking federal records, they estimate that their mortality statistics are 99.6 percent complete. *Id.* Furthermore, the design of their study not only allowed them to compare

World War II and Korean POW mortality with that of the U.S. general population, but also permitted a direct comparison of POW mortality with that of non-POW military veteran controls. *Id.* at 782. The purpose was to avoid biases inherent in a general population comparison attributable to the general fitness of military veterans. *Id.*

The results of the 2000 IOM study are consistent with earlier studies. In 1999, a mortality follow-up of POWs held in the Far East found that British POWs had a higher mortality rate from diseases of the liver, including chronic liver disease and cirrhosis, than the general population. (Gale CR, Braidwood EA, Winter PD, Martyn CN: Mortality from Parkinson's disease and other causes in men who were prisoners of war in the Far East. *Lancet* 1999; 354: 2116–8.) Also, a 1968 mortality study of Australian World War II POWs taken prisoner after the fall of Singapore revealed twice as many deaths from cirrhosis as those expected during the period from 1951 to 1963. (Freed G, Stringer PB: Comparative Mortality Experience 1946–1963 among Australian prisoners of war of the Japanese. *Aust Repat Med Dept Bull* 1968; 150: 378–382.)

The Secretary believes that the research cited above constitutes sound scientific evidence supporting the conclusion that an association exists between cirrhosis and POW status. The 2000 IOM study indicates a “significantly higher risk of cirrhosis” for World War II POWs only; however, World War II POWs comprise 93 percent of the estimated 46,417 living POWs from the last five conflicts in which the United States was involved. The Secretary has therefore determined that it is appropriate to add cirrhosis of the liver to the list of diseases in § 3.309(c) for which VA presumes service connection in all former POWs interned or detained for at least 30 days.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

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.

The Catalog of Federal Domestic Assistance number is 64.109.

List of Subjects in 38 CFR Part 3

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

Approved: November 12, 2002.

Anthony J. Principi,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3 continues to read as follows:

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

§3.309 [Amended]

2. Section 3.309(c) is amended by adding “Cirrhosis of the liver.” following “Peripheral neuropathy except where directly related to infectious causes.” and before the explanatory note.

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