

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that the rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

1. The authority citation for part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.52.

2. § 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

Item No. and description of charges	Rate (\$) Montreal to or from Lake Ontario (5 locks)	Rate (\$) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1. Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement in the United States or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time.	0.0883	0.1436
(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
(a) bulk cargo	0.9164	0.6072
(b) general cargo	2.2081	0.9717
(c) steel slab	1.9984	0.6956
(d) containerized cargo	0.9164	0.6072
(e) government aid cargo	N/a	N/a
(f) grain	0.5630	0.6072
(g) coal	0.5410	0.6072
(3) a charge per passenger per lock	1.3028	1.3028
(4) a charge per lock for transit of the Welland Canal in either direction by cargo ships:		
(a) loaded	N/a	484.93
(b) in ballast	N/a	358.29
2. Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1 (1) and (2) plus the applicable charge under items 1 (3) and (4).	13 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1 (3) and (4)
3. Minimum charge per ship per lock transited for full or partial transit of the Seaway.	16.24	16.24
4. A rebate applicable for the 2001 navigation season to the rates of item 1 to 3.	Rebate of 1.5%	Rebate of 1.5%
5. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes ¹ .	20.00	20.00

¹ The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) is \$20 U.S. or \$30 Canadian per lock. The other amounts are in Canadian dollars and are for the Canadian share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued at Washington, DC on February 8, 2002.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

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DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 3**

RIN 2900-AK87

Claims Based on Exposure to Ionizing Radiation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA regulations governing the establishment of service connection for polycythemia vera due to radiation exposure in service. This amendment clarifies that although VA does not consider polycythemia vera to be a "radiogenic disease" under its adjudication regulations, a veteran is not precluded from claiming service connection for this condition on a direct-incurrence basis due to exposure to ionizing

radiation in service. This final rule simply reflects legislative changes and case law requirements.

DATES: *Effective Date:* February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, 575 N. Pennsylvania St., Suite 309, Indianapolis, IN 46237, (317) 226-5209 extension 3058.

SUPPLEMENTARY INFORMATION: In the "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," Public Law 98-542, Congress concluded that VA had no specific guidelines, standards, or criteria for use in deciding claims for entitlement to disability benefits based on exposure to ionizing radiation. Thus, Congress required VA to undertake rulemaking to specify, among other things, which diseases result from exposure to ionizing radiation in service and the circumstances under which VA would award benefits to veterans on the basis of claimed radiation-related disabilities.

The Act established the "Veterans Advisory Committee on Environmental Hazards" and required VA to consult with this Committee in the development of the new regulations. Section 5 of the Act specifically required VA to determine whether service connection could be granted based on exposure to ionizing radiation for the following diseases: soft tissue sarcoma, porphyria cutanea tarda, chloracne, leukemia, malignancies of the thyroid, female breast, lung, bone, liver and skin, and polycythemia vera. Based on the advice of the Committee, VA concluded that service connection can be granted for all of these diseases except polycythemia vera and implemented the provisions of the governing statute by publishing 38 CFR 3.311b.

Although over the years VA added several conditions to the list, VA treated the list of radiogenic diseases in § 3.311b (later recodified as § 3.311) as an exclusive list and generally denied service connection based on radiation exposure for any disease not included on that list. However, the U.S. Court of Appeals for the Federal Circuit in *Combee v. Brown*, 34 F.3d 1039 (Fed. Cir. 1994), held that Public Law 98-542 did not authorize VA to establish an exclusive list of radiogenic diseases for which a claimant might establish entitlement to direct service connection under § 3.311. Following the Combee decision, Congress amended 38 U.S.C. 1113(b) to provide that nothing in section 5 of Public Law 98-542 shall be construed to prevent granting of service

connection for any disease or disorder shown by sound judgment to have been incurred in or aggravated by active duty service.

VA subsequently amended § 3.311 (60 FR 9627, February 21, 1995) to permit consideration of service connection for any disease other than polycythemia vera if a claimant cites or submits competent scientific or medical evidence that the claimed disease may be induced by ionizing radiation.

The list of radiogenic diseases in § 3.311(b)(2) is not an exclusive list. The fact that VA has determined that polycythemia vera is not a radiogenic disease does not deprive claimants of the opportunity to cite or submit evidence showing that polycythemia vera may be induced by exposure to ionizing radiation. We are amending § 3.311(b) to indicate that if a claimant cites or submits evidence showing polycythemia vera may be induced by exposure to ionizing radiation, VA will obtain a dose estimate, forward the claim for review by the Under Secretary for Benefits, and request an advisory medical opinion from the Under Secretary for Health under the provisions of § 3.311.

This final rule simply reflects legislative changes and case law requirements. Thus, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Paperwork Reduction Act

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

Executive Order 12866

This document has been reviewed by the Office of Management and Budget Under Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this regulatory amendment will 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 flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers are 64.102, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: October 30, 2001.

Anthony J. Principi,

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.

2. In § 3.311, paragraphs (b)(3) and (b)(4) are revised to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

* * * * *

(b) * * *

(3) Public Law 98-542 requires VA to determine whether sound medical and scientific evidence supports establishing a rule identifying polycythemia vera as a radiogenic disease. VA has determined that sound medical and scientific evidence does not support including polycythemia vera on the list of known radiogenic diseases in this regulation. Even so, VA will consider a claim based on the assertion that polycythemia vera is a radiogenic disease under the provisions of paragraph (b)(4) of this section. (Authority: Pub. L. 98-542, section 5(b)(2)(A)(i), (iii)).

(4) If a claim is based on a disease other than one of those listed in paragraph (b)(2) of this section, VA shall nevertheless consider the claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

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