initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalogue 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, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 10, 1995.

Jesse Brown,

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

2. In § 3.500, paragraph (e) is amended by removing the first sentence and adding in its place ''The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective.''; and by adding an authority citation to read as follows:

§ 3.500 General.

* * * * *

(e) * * *

(Authority: 5 U.S.C. 8116)

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[FR Doc. 95–4165 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 3

RIN 2900–AH07

Claims Based on Exposure to Ionizing Radiation (Radiogenic Diseases)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning claims based on exposure to ionizing radiation. This amendment is necessary to implement a decision by the United States Court of Appeals for the Federal Circuit and recent legislation providing that VA's regulatory list of radiogenic diseases is no longer an exclusive list of conditions which may be considered service-connected solely on the basis of exposure to ionizing radiation. The effect of this amendment is to provide claimants who base their claims on conditions not on that regulatory list an opportunity to establish service connection by demonstrating that their conditions are radiogenic diseases.

EFFECTIVE DATE: This amendment is effective September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420; telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542) required VA to develop regulations establishing standards and criteria for adjudicating veterans' claims for service-connected compensation for diseases arising from exposure to ionizing radiation during service. The law also required that the Secretary, after receiving the advice of the Veterans Advisory Committee on Environmental Hazards, determine which conditions could be considered service-connected on the basis of exposure to ionizing radiation and include those conditions in VA's regulations.

In September 1985 VA published 38 CFR 3.311b, since redesignated as 3.311, to implement the radiation provisions of Pub. L. 98–542. As threshold requirements for entitlement to compensation under this regulation, a veteran must have been exposed to ionizing radiation during atmospheric testing of nuclear weapons, the occupation of Hiroshima and Nagasaki during World War II, or through other activities as claimed, and must have subsequently developed a radiogenic disease within a specified time period. Conditions not specifically listed in the regulation at 3.311(b)(2) as radiogenic diseases were excluded from consideration (See § 3.311(h)). Since 1985, VA has added a number of conditions to the list of radiogenic diseases.

On September 1, 1994, the United States Court of Appeals for the Federal Circuit reversed the decision of the United States Court of Veterans Appeals in *Combee* v. *Brown,* No. 93–7107. The Federal Circuit held that Public Law 98–542 did not authorize VA to establish an exclusive list of radiogenic conditions for which a claimant might establish entitlement to direct service connection under § 3.311. On November 2, 1994, Public Law 103–446, the ''Veterans' Benefits Improvements Act of 1994, was signed into law. Section 501(b) of that law amended 38 U.S.C. 1113(b) to clarify that nothing contained in Public Law 98–542 precludes a claimant from attempting to establish direct service connection for a disability or disease based upon exposure to ionizing radiation in service.

The amendment provides that if a claimant cites or submits competent scientific or medical evidence that the claimed condition is a radiogenic disease, the claim will be considered under the provisions of § 3.311. That provision is consistent with a decision by the U.S. Court of Veterans Appeals that, where a determinative issue involves medical causation, competent medical evidence to the effect that the claim is plausible or possible is required to establish that the claim is well grounded. (See *Grottveit* v. *Brown* 5 Vet. App. 91 (1993)) The amendment also deletes 3.311(h), which set out VA's previous policy that the list of radiogenic diseases is an exclusive list, because that policy has been superseded by the Court of Appeals' decision in *Combee* and section 501(b) of Public Law 103–446.

We are making technical changes throughout § 3.311 to conform with the Court of Appeals' decision and Public Law 103–446, including a revision in § 3.311(b)(2) to define the term ''radiogenic disease'' for the purposes of this regulation as a disease which may be induced by ionizing radiation. We are also replacing all references to ''Chief Medical Director'' and ''Chief Benefits Director'' with ''Under Secretary for Health'' and ''Under Secretary for Benefits'' respectively, which are the correct statutory titles.

The amendment is effective September 1, 1994, the date of the decision by the United States Court of Appeals for the Federal Circuit in *Combee* v. *Brown,* which changed VA's legal interpretation of this issue. Making the amendment effective that date rather than the date of publication of the final rule works to the advantage of claimants who may be entitled to the effective date considerations of 38 U.S.C. 5010(g) and 38 CFR 3.3114(a) without working to the detriment of any other claimant.

It has been determined that the final rule, insofar as it relates to radiogenic diseases, constitutes an interpretive rule and restatement of statutory provisions, and, consequently, is exempt from the notice and comment provisions and the 30 day delay provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5