DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS NEW MEXICO (SSN 779) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective August 28, 2009 and is applicable beginning 20 August 2009.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, (Admiralty and Maritime Law), Office of the Judge Advocate, General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS NEW MEXICO (SSN 779) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the height placement of the masthead light above the hull; Annex I, paragraph 2(k), pertaining to the height and relative positions of the anchor lights; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by adding, in alpha numerical order, by vessel number, an entry for USS NEW MEXICO (SSN 779); and

■ B. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS NEW MEXICO (SSN 779).

The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height § 2(a)(i), Annex I
* * * * *	*	*
USS NEW MEXICO	SSN 779	2.76
* * * * *	*	*

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TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	*
USS NEW MEXICO	SSN 779	.....	.....	206.4°	4.37	11.05	2.8	0.30 below.
*	*	*	*	*	*	*	*	*

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Approved: August 20, 2009.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. E9–20746 Filed 8–27–09; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN16

Presumption of Service Connection for Osteoporosis for Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations to establish a presumption of service connection for osteoporosis for former Prisoners of War (POWs) who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling. The amendment implements a decision by the Secretary to establish such a presumption based on scientific studies.

VA is additionally amending its adjudication regulations to establish a presumption of service connection for osteoporosis for POWs who were detained or interned for any period of time, have a diagnosis of posttraumatic stress disorder (PTSD), and whose osteoporosis is at least 10 percent disabling. This amendment reflects statutory provisions of the Veterans' Benefits Improvement Act of 2008.

DATES: *Effective Dates:* September 28, 2009.

Applicability Dates: For information concerning the dates of applicability for certain provisions, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725.

SUPPLEMENTARY INFORMATION: On January 14, 2009, VA published a proposal in the **Federal Register** (74 FR 2016) to amend VA's regulations at 38 CFR 3.309(c)(2) to establish a presumption of service connection for osteoporosis for POWs who were detained or interned for at least 30 days and whose osteoporosis is at least 10 percent disabling. Interested persons were invited to submit written comments on or before February 13, 2009. We received one comment based on the proposed rule.

38 CFR 3.309(c)(2)

The commenter stated that the proposed rule creating a presumption of service connection for POWs for osteoporosis does not eliminate the possibility that service connection may be denied under 38 CFR 3.307(d), Rebuttal of service incurrence or aggravation. Section 3.307(d) states that a presumption may be rebutted if the evidence is of the nature that would, in ''sound medical reasoning and in consideration of all evidence of record, support a conclusion that the disease was not incurred in service.'' The commenter stated that, for example, if a veteran who was a POW claimed service connection for osteoporosis and also used corticosteroids, VA could deny the veteran's claim under § 3.307(d) based on medical treatises that state that osteoporosis is a common problem associated with corticosteroids. The commenter stated that the rule ''seems to be another example of the Secretary offering to grant service connection knowing that he will never have to actually [sic] do so.'' The commenter inquires about whether VA will ''grant service connection for osteoporosis in a veteran with a history of treatment with corticosteroids.''

As stated in the proposed rulemaking, VA has established a policy to grant presumptive service connection for osteoporosis that is at least 10 percent disabling for POWs detained or interned for at least 30 days. We make no change based on this comment because VA is obligated to follow Congress' directive in 38 U.S.C. 1113, which is implemented by 38 CFR 3.307(d), to deny service connection ''[w]here there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases or disabilities within the purview of [38 U.S.C. 1112, 1116, 1117, or 1118], has been suffered between the date of separation from service and the onset of any such diseases or disabilities, or the disability is due to the veteran's own willful misconduct.'' Additionally, Congress has directed that ''the Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary.'' 38 U.S.C. 5107(a). VA, therefore, may not ignore any evidence relevant to deciding a claim.

However, we are making a change to the proposed regulation text by adding language specifying the date on which the rule will be applicable to avoid confusion with the amendment to 38 CFR 3.309(c)(1) discussed *infra*, which implements section 106 of the Veterans Benefits Improvement Act of 2008, Public Law 110–389, 122 Stat. 4145, 4149. The amendment at 38 CFR 3.309(c)(2) applies to all applications for benefits that are received by VA on or after the effective date of September 28, 2009, or that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit