

in PW ASB No. A6272, dated September 24, 1996.

(b) Report the number of completed inspections on a monthly basis and report findings of cracked fan hubs in accordance with Accomplishment Instructions, Paragraph F, of Attachment 1 to PW ASB No. A6272, dated September 24, 1996, within 48 hours after inspection to Robert Guyotte, Manager, Engine Certification Branch, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7142, fax (617) 238-7199; Internet: Robert.Guyotte@faa.dot.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 14, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.
[FR Doc. 97-4370 Filed 2-21-97; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718, 722, 725, 726 and 727

RIN 1215-AA99

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended; Extension of Comment Period

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for filing comments regarding the proposed rule to amend and revise the regulations implementing the Black Lung Benefits Act. This action is taken to permit additional comment from interested persons.

DATE: Comments must be received on or before May 23, 1997.

ADDRESSES: Send written comments on the proposed rule to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C-3520, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 219-6692.

SUPPLEMENTARY INFORMATION: In the Federal Register of the January 22, 1997 (62 FR 3338-3435), the Department of Labor published a proposed rule intended to amend and revise the regulations implementing the Black Lung Benefits Act, subchapter IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Interested persons were requested to submit comments on or before March 24, 1997.

The Department has received requests for an extension of the comment period from groups representing coal mine operators, coal mine construction companies, the insurance industry, organized labor, and black lung claimants. Because of the interest in this proposal, the Department believes that it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, amending and revising 20 CFR parts 718, 722, 725, 726 and 727, is extended through May 23, 1997.

Signed at Washington, DC, this 18 day of February, 1997.

Bernard E. Anderson,
Assistant Secretary for Employment Standards.

[FR Doc. 97-4467 Filed 2-21-97; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900-AH41

Service Connection of Dental Conditions for Treatment Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing to amend its adjudication regulations for determining service connection of dental conditions for purposes of eligibility for outpatient dental treatment. Current regulations contain overlapping provisions which do not clearly state requirements for service connection, and provide that service connection will be granted for certain dental conditions shown after a

"reasonable period of service" without defining what constitutes such a period. We intend to consolidate the information, and replace the term "reasonable period of service" with a precise period of 180 days. We also propose to eliminate redundant material, and to clearly state requirements for service connection for purposes of eligibility for outpatient dental treatment.

DATES: Comments must be received on or before April 25, 1997.

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 that they are submitted in response to "RIN 2900-AH41." All written comments will be made available for public inspection at the above address 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: Lorna Fox, Consultant, Regulations Staff, Compensation and Pension Service (213), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273-7223.

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 1712 (restated in 38 CFR 17.123) set forth eligibility requirements for VA outpatient treatment of dental conditions and disabilities. This section provides that veterans with non-compensable service-connected dental conditions are entitled to a one-time correction of the dental condition provided that certain requirements are met, including application for dental treatment made within 90 days of service discharge. Following completion of this initial care, subsequent additional treatment may be provided in certain other cases, i.e., if the veteran was a prisoner of war, if the dental condition or disability is due to combat or other in-service trauma, or if the veteran has service-connected disabilities rated at 100 percent.

38 CFR part 4, the Schedule for Rating Disabilities, provides evaluations for dental conditions considered disabling in nature. (See § 4.150, Schedule of ratings—dental and oral conditions.) There are other dental conditions, however, which are not considered disabling and thus do not generally fall under the purview of § 4.150. The issue of service connection arises for these conditions only for the purpose of

determining eligibility for outpatient dental treatment. These conditions are listed at 38 CFR 4.149, "Rating diseases of the teeth and gums", and include treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, periodontal disease, and Vincent's stomatitis (also referred to as Vincent's infection, Vincent's disease, or acute necrotizing gingivitis).

The Schedule for Rating Disabilities is a guide for evaluating disabilities for compensation purposes. Because the dental conditions listed in § 4.149 are not evaluated for compensation, but only to determine eligibility for treatment, it is more appropriate to list them in 38 CFR part 3, which contains general rules for determining service connection. We therefore propose to list these non-compensable dental conditions in § 3.381(a) and to delete section § 4.149.

The current regulations at 38 CFR 3.381 and 3.382 set forth the principles for determining whether a dental condition was incurred or aggravated during service for purposes of treatment. Provisions for determining which conditions are service connected for outpatient treatment purposes, and which are not, are scattered throughout both sections. Section 3.381 establishes the conditions under which dental conditions that were present at entry into service will be service connected; § 3.382 (a) and (b) list the evidence requirements for establishing service connection; and § 3.382(c) states that certain dental conditions will not be service connected. We propose to rewrite the regulations to consolidate the information, make requirements for service connection for treatment purposes clear, list specific conditions that will not be service connected, and eliminate redundant material.

The regulations at §§ 3.381 and 3.382 currently state that service connection for certain non-compensable dental conditions is warranted only if the conditions are shown after a "reasonable period of service." The condition of "reasonable period of service" was intended to provide a basis for determining those dental conditions which would be considered as incurred or aggravated during active duty. (See 38 U.S.C. 1110, 1131.) In the absence of a definition for the term "reasonable period of service," the Court of Veterans Appeals held in *Manio v. Derwinski*, 1 Vet. App. 140 (1991), that four months "is sufficient to satisfy the 'reasonable period of service' requirement" under the facts of that case.

We propose to revise § 3.381 to replace the subjective term "reasonable period of service" with the objective

requirement of 180 days or more of active service. Dental caries and other dental pathology take time to develop, often a year or two in permanent teeth. Thus it is more likely than not that caries or pathology that became apparent within the first 180 days of a person's active service pre-existed that service. Periodontal disease, which results from the long term effects of plaque on the periodontium, also develops over time, and we believe the same period is appropriate for effects of this condition.

In § 3.381, paragraph (c) currently states that effective principles relating to the establishment of service connection for dental diseases and injuries by reason of their association with other service-connected diseases and injuries will be observed. The provisions governing such secondary service connection are contained in § 3.310. Therefore, inclusion of this statement here is unnecessary and we propose to delete it.

In § 3.381, paragraph (d) currently states that the presumption of soundness does not apply to non-compensable dental conditions. However, 38 CFR 3.304(b) provides that a veteran shall be considered to have been in sound condition when entering service "except as to defects, infirmities, or disorders noted at entrance into service." In order to maintain consistency between the provisions of 38 CFR part 3, we propose to eliminate the statement in § 3.381, paragraph (d) that the presumption of soundness does not apply to non-compensable dental conditions.

In § 3.381, paragraph (b) currently states that treatment during service is not considered per se as aggravation of a condition noted as present at entry because such treatment is considered ameliorative. We propose to retain that principle in proposed § 3.381, paragraph (c) but will replace the phrase "per se" with a statement that treatment in service is not evidence that a condition noted at entry has been aggravated, unless additional pathology developed after 180 days or more of service. The use of the 180-day time period has already been explained.

We propose to place in § 3.381, paragraph (d), specific rules for determining whether dental conditions that are noted at entry into service and treated during active duty are service connected for treatment purposes. This paragraph will incorporate provisions now listed at § 3.381(b) for teeth that are noted as carious but restorable, filled, and defective but not restorable. We propose to include new provisions for teeth normal at entry but which are

filled or extracted during service and teeth missing at entry because these situations frequently require decision but are not addressed in the current regulation.

In § 3.381, paragraph (d)(1), we propose to state that teeth noted as normal at the time of entry into service will be service connected only if filled or extracted after 180 days or more of active service. Setting a precise period of 180 days for development of dental pathology as a requirement for service connection is consistent with our statement that conditions that manifested before expiration of 180 days of active service more likely than not pre-existed that service.

In § 3.381, paragraph (d)(2), we propose to state that teeth noted as filled at entry into service will be service connected if they were extracted, or if the existing filling was replaced, after 180 days or more of service. This is not a change from the current provision, but substitutes a precise period of 180 days for the "reasonable time" provision of the current rule.

In § 3.381, paragraph (d)(3), we propose to state that teeth that are carious but restorable at entry will not be service connected if they are filled during service, but that if new caries develop in the same tooth 180 days or more after a filling has been placed, service connection will be granted. This substitutes a precise period for the current language granting service connection if such new caries develop "a reasonable time" after the original cavity has been filled.

In § 3.381, paragraph (d)(4), we propose to state that teeth noted as carious but restorable at entry will be service connected, regardless of whether or not they are filled, if extraction is required after 180 days or more of active service. This is not a change from the current provision, but substitutes the precise period of 180 days for the "reasonable time" provision of the current rule.

In § 3.381, paragraph (d)(5), we propose to state that teeth noted to be defective and non-restorable at entry will not be service connected, regardless of treatment during service. This is not a change from the current provision.

In § 3.381, paragraph (d)(6), we propose to state that teeth noted at entry as missing will not warrant service connection for treatment purposes, notwithstanding treatment which may have been administered during active duty. This provision is consistent with proposed § 3.381(c) which states that treatment in service for a pre-existing condition does not represent aggravation of that condition.

In § 3.381, paragraph (e), we propose to list conditions that will not be service connected for treatment purposes. Conditions now listed at § 3.382(c) for which service connection will not be granted include: salivary deposits; gingivitis; acute Vincent's disease; pyorrhea; impacted or malposed teeth and third molars (wisdom teeth).

Impacted and malposed teeth are considered developmental defects, as is the presence of third molars. As noted above, these conditions are not service connected under current provisions, unless separate pathology develops "after a reasonable time." In the revised § 3.381 (e)(3) and (e)(4), we propose to replace this term with the precise period of 180 days or more of active service. We have already explained our use of the 180-day time period.

We have incorporated current medical terminology in the regulation, and; therefore, have substituted the term "calculus" for "salivary deposits" and "periodontal disease" for the terms "gingivitis," "Vincent's disease," and "pyorrhea."

The current regulation states that gingivitis is not a disease entity and thus is not ratable. Gingivitis is an inflammatory condition which is usually an acute condition, but can be a precursor of more serious inflammatory processes. Vincent's disease is a form of gingival inflammation also called "trench mouth" or "necrotizing ulcerative gingivitis" which the current regulation does not service connect in its acute state. Periodontitis is a more current term for pyorrhea. All of these conditions are encompassed by the broader, more general term periodontal disease. Periodontal disease is related to dental hygiene and can be affected by such other factors as diet, abnormal stress, other disease processes, and reaction to certain drugs or chemicals. With proper treatment, most periodontal disease resolves with no residuals. For this reason, service connection for acute periodontal disease is not warranted. However, under the current regulation, chronic periodontal disease (pyorrhea), which may result in tooth extraction, warrants service connection for the lost teeth. We propose to retain this provision, with the clarification that such tooth loss will be service connected only if extraction is required after at least 180 days of service.

We propose to eliminate as unnecessary paragraphs (a) and (b) of § 3.382, "Evidence to establish service connection for dental disabilities." These paragraphs contain information about kinds of evidence needed to establish service connection and

alternate sources of evidence when service medical records are unavailable. Evidence requirements are adequately covered elsewhere in the regulations and stating them here is unnecessary. (See regulations at 38 CFR 3.303, "Principles relating to service connection" and § 3.304 "Direct service connection; wartime and peacetime.")

Regulatory Flexibility Act

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

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects

38 CFR Part 3

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

38 CFR Part 4

Disability benefits, Pensions, Individuals with disabilities, Veterans.

Approved: November 6, 1996.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 3 and 4 are 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 3.381 is revised to read as follows:

§ 3.381 Service connection of dental conditions for treatment purposes.

(a) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease will be considered service connected solely for the purpose of establishing eligibility for outpatient dental treatment as

provided in section 17.123 of this chapter.

(b) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service. When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the veteran was interned as a prisoner of war.

(c) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.

(d) The following principles apply to dental conditions noted at entry and treated during service:

(1) Teeth noted as normal at entry will be service connected if they were filled or extracted after 180 days or more of active service.

(2) Teeth noted as filled at entry will be service connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(e) The following will not be considered service connected for treatment purposes:

(1) Calculus;
(2) Acute periodontal disease;
(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and

(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.

(f) Chronic periodontal disease. Teeth extracted because of chronic periodontal disease will be service connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

§ 3.382 [Removed]

3. Section 3.382 is removed.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

4. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

§ 4.149 [Removed]

5. Section 4.149 is removed.

[FR Doc. 97-4419 Filed 2-21-97; 8:45 am]

BILLING CODE 8320-01-P

38 CFR Part 4

RIN 2900-AI22

Intervertebral Disc Syndrome

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for diagnostic code 5293, intervertebral disc syndrome. The intended effect of this amendment is to clarify the criteria to ensure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: Comments must be received by VA on or before April 25, 1997.

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 that they are in response to "RIN 2900-AI22." 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: Carroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273-7230.

SUPPLEMENTARY INFORMATION: The central portion of one or more intervertebral discs, cartilages that separate the spinal vertebrae, may protrude or rupture through the outer fibrous part of the disc and compress or irritate the adjacent nerve root. Intervertebral disc syndrome is a group of signs and symptoms due to nerve root irritation that commonly includes back pain and sciatica (pain along the course of the sciatic nerve) in the case of lumbar disc disease, and neck and arm or hand pain in the case of cervical disc disease. It may also include scoliosis, paravertebral muscle spasm, limitation of motion of the spine, tenderness over the spine, limitation of straight leg raising, and neurologic findings corresponding to the level of the disc. If the disc compresses the cauda equina (the collection of nerve roots extending from the lower end of the spinal cord), bowel or bladder sphincter functions or sexual function may also be affected.

Intervertebral disc syndrome has a variable course and variable manifestations. Many people have a series of relapses and remissions of back pain and sciatica over a long period of time with no symptoms during remission; other patients experience chronic signs and symptoms.

The current evaluation criteria for intervertebral disc syndrome (DC 5293) include: a 60-percent evaluation for persistent sciatic neuropathy or other neurologic findings, with little intermittent relief; a 40-percent evaluation for severe recurring attacks; a 20-percent evaluation for moderate recurring attacks; a 10-percent evaluation if the condition is mild; and a zero-percent evaluation if the condition is postoperative, cured. These criteria require rating agencies to make a subjective determination as to whether the condition is "mild," "moderate," or "severe." In addition, they raise questions as to whether any neurologic manifestation, regardless of severity, warrants a 60-percent evaluation, or whether intervertebral disc syndrome with neurologic manifestations may be evaluated higher or lower than 60 percent.

In order to clarify the evaluation criteria, and thereby assure more consistent evaluations, we propose to eliminate subjective terms such as mild, moderate, and severe in favor of more objective criteria, and to provide specific instructions for evaluating both the orthopedic and neurologic manifestations of intervertebral disc syndrome. We also propose that these criteria apply both pre-operatively and post-operatively.

We propose to evaluate intervertebral disc syndromes that are primarily disabling because of periods of acute symptoms that require bed rest according to the cumulative amount of time over the course of a year that the patient is incapacitated, i.e., requires bed rest and treatment by a physician. Incapacitating episodes of at least six weeks total duration per year would be evaluated at 60 percent; incapacitating episodes of at least four but less than six weeks total duration per year at 40 percent; incapacitating episodes of at least two but less than four weeks total duration per year at 20 percent; and incapacitating episodes of at least one but less than two weeks total duration per year at 10 percent. Evaluating the condition in this manner will assure more consistent evaluations when the disc disease is episodic because percentage evaluations will be assigned based on an objective standard—yearly cumulative duration of incapacitating episodes—rather than a subjective assessment of whether the condition is mild, moderate, or severe.

We propose to evaluate intervertebral disc syndromes that are disabling primarily because of chronic orthopedic manifestations (e.g., painful muscle spasm or limitation of motion), chronic neurologic manifestations (e.g., footdrop, muscle atrophy, or sensory loss), or a combination of both, by assigning separate evaluations for the orthopedic and neurologic manifestations, using DC 5293 hyphenated with the appropriate orthopedic or neurologic code. Assigning separate evaluations for the orthopedic and neurologic manifestations will assure that evaluations accurately reflect the actual disabling effects of the condition, and that neurologic manifestations in particular will not be over- or under-evaluated by being considered categorically rather than individually.

When an intervertebral disc syndrome is disabling both because of incapacitating episodes and persistent orthopedic or neurologic manifestations, we propose that the rating agency use whichever alternative method of evaluation results in a higher evaluation.

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),