(Lat. 38°38′18″ N., long. 121°30′55″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Sacramento International Airport, excluding that airspace within a 2-mile radius of Riego Flight Strip, and that airspace within a 2-mile radius of Natomas Field, and that airspace east of the 002(bearing from Natomas Field; and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Sacramento International Airport.

* * * * *

Paragraph 6002—Class E Airspace Designated as Surface Areas.

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AWP CA E2 Sacramento, McClellan AFB, CA [New]

Sacramento, McClellan AFB, CA
(Lat. 38°40′04″ N., long. 121°24′02″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of McClellan AFB excluding that airspace within the Sacramento International Airport Class C surface area.

* * * * *

Issued in Washington, DC on November 23, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–31283 Filed 12–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ44

Well-grounded Claims

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning a claimant's statutory responsibility to support his or her claim with adequate evidence to make the claim ''well grounded.'' The proposed rule also addresses VA's duty to help claimants who have filed well-grounded claims obtain evidence pertinent to their claims. The intended effect of this amendment is to establish clear guidelines regarding the types of evidence that make a claim well grounded; VA's duty to help claimants obtain evidence; and exceptions to the well-grounded claim requirement.

DATES: Comments must be received on or before January 31, 2000.

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–AJ44.'' All written comments received will be 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: Janice Jacobs, Consultant, Policy and Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7223.

SUPPLEMENTARY INFORMATION: Section 5107(a) of title 38, United States Code, states that, except when otherwise provided by the Secretary, a person who submits a claim for benefits under a law administered by VA shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. Section 5107(a) further requires the Secretary of Veterans Affairs to assist ''such a claimant'' in developing the facts pertinent to the claim. Both the United States Court of Appeals for Veterans Claims (CAVC) and the United States Court of Appeals for the Federal Circuit (Federal Circuit) have construed this statutory language as requiring a claimant to submit a well-grounded claim before VA has a duty to help him or her obtain any additional evidence it needs to decide the claim on its merits.

Although VA has not defined the term ''well grounded,'' CAVC and the Federal Circuit have issued a number of decisions defining that term. A well-grounded claim is ''a plausible claim, one which is meritorious on its own or capable of substantiation. Such a claim need not be conclusive but only possible to satisfy the initial burden of [5107(a)].'' *Murphy* v. *Derwinski*, 1 Vet. App. 78, 81 (1990). The Federal Circuit has affirmed CAVC decisions holding that VA's statutory duty to assist attaches only after a claimant submits a well-grounded claim. *Epps* v. *Gober*, 126 F.3d 1464, 1468–69 (Fed. Cir. 1997), *cert. denied sub. nom. Epps* v. *West*, ____ U.S. ____, 118 S.Ct. 2348 (1998). In *Morton* v. *West*, 12 Vet. App. 477, 486 (1999), the CAVC held that VA has no authority to issue regulations inconsistent with the statutory requirement that claimants submit enough evidence to well ground their claims before VA is required to assist in developing the claims. The *Morton* decision, in effect, invalidated any internal VA directives or procedures which purport to volunteer VA assistance in all claims, even if they are not well grounded, by holding that such directives or procedures are inconsistent with section 5107(a).

In a number of cases, both the Board of Veterans' Appeals (BVA) and CAVC have found that claims developed and adjudicated at VA's regional offices were not well grounded. The Veterans' Claims Adjudication Commission, established under Public Law 103–446, questioned the prudence of investing time and resources in developing claims that are not well grounded. Furthermore, the CAVC has noted that if the Secretary, as a matter of policy, volunteers assistance to establish well groundedness, grave questions of due process can arise if there is apparent disparate treatment among claimants in this regard. See *Grivois* v. *Brown*, 6 Vet. App. 136 (1994).

Recognizing the need for clear guidelines that can be consistently applied both on well-grounded claims and VA's duty to assist, VA published an advance notice of proposed rulemaking in the **Federal Register** on October 30, 1998 (63 FR 58336). This notice invited comments on the proposed policy and procedures VA should adopt with respect to these issues. We received comments from the American Legion (AL); Disabled American Veterans (DAV); the State of Florida Department of Veterans Affairs (FDVA); joint comment from AMVETS, the National Organization of Veterans Advocates (NOVA), and the Paralyzed Veterans of America (PVA); Vietnam Veterans of America (VVA); and three concerned individuals.

Need to Write Regulations

Several commenters, maintaining that the courts have misconstrued section 5107(a) by holding that a well-grounded claim is a prerequisite to VA's duty to assist claimants in developing evidence, stated that VA should not undertake rulemaking on these issues and thereby ingrain the error of the courts in its regulations. VA does not agree that the courts have misconstrued section 5107(a) in this respect. Moreover, VA is bound by the precedent decisions of the courts and their interpretations of statutes. We are, therefore, proposing to revise the regulations to incorporate the courts' interpretation of section 5107(a).

Another commenter stated that there is no need for VA to undertake rulemaking on this issue because it already has binding rules in its Adjudication Procedures Manual, M21–1; in agency circulars; in precedential general counsel opinions; in agency

guides; and in agency transmittal sheets. However, the *Morton* decision expressly concluded that provisions that volunteer VA assistance in all claims even if they are not well grounded, conflict with the statute and therefore create no enforceable rights for claimants. Although section 5107(a) allows the Secretary to establish exceptions, those exceptions must be established by regulation and must be consistent with the statute; it is, therefore, necessary for VA to undertake rulemaking on this issue. Provisions in VA manuals or other internal documents that are inconsistent with section 5107(a) will be revised or eliminated as necessary.

Definition of a Well-Grounded Claim

One commenter suggested that we define a well-grounded claim as one accompanied by ''sufficient supporting evidence'' to establish the possibility of entitlement. While VA agrees in principle with this concept, in our view the ''sufficient supporting evidence'' language is too vague for practical implementation.

A person submitting a claim for benefits under this part must submit sufficient evidence to justify a belief by a fair and impartial individual that the claim is well grounded. 38 U.S.C. 5107. The legislative history of 38 U.S.C. 5107 indicates that Congress intended that ''the claimant would have the burden of adducing some evidence on each element necessary to warrant the granting of the benefit at issue.'' S.Rep. No. 418, 100th Cong., 2d Sess. 32 (1988). Consistent with the legislative history, we propose to define a well-grounded claim as one for which there is some competent evidence with respect to each element necessary to establish entitlement to the particular benefit sought. We believe that it is reasonable to require a claimant to show the possibility that he or she meets a benefit's eligibility requirements before the government commits its limited resources to the time and expense of developing further evidence.

Although the criteria for entitlement to the various benefits administered by VA differ depending upon the benefit sought, the proposed general definition of a well-grounded claim is simple and flexible enough to provide a workable standard for determining whether evidence well grounds a claim. Furthermore, a simple and clear definition will not only help claimants understand what they have to submit to show they may be qualified for the benefits sought, but it will promote consistent treatment of claims by all VA decision makers.

Certain statutory and regulatory presumptions relieve claimants of having to present evidence on one or more of the elements, usually the nexus requirement, necessary to well ground a claim by presuming the establishment of those elements. To establish a well-grounded claim for any such benefit, the claimant must submit some evidence on each of the other remaining elements necessary to establish entitlement to the benefit under the applicable statute or regulation.

Claimant's Obligations and Evidentiary Requirements

One commenter suggested that the rule should state the specific types of evidence a claimant must submit to well ground a claim. We agree and propose to include in the rule examples addressing the types of evidence needed to well ground claims for the most commonly claimed benefits. Another commenter stated that requiring a claimant to establish a well-grounded claim is essentially requiring the claimant to prove entitlement on the merits. We do not agree. While evidence that is sufficient to grant a claim on its merits is unquestionably sufficient to well ground the claim, the well-grounded requirement is a minimal threshold, requiring only enough evidence to show that a claim is plausible.

The claimant's responsibility is to submit enough evidence to justify a belief that he or she plausibly meets the eligibility requirements for the specific benefit sought. While the requirements, and therefore the nature of the evidence, will vary depending on the benefit sought, we are proposing that the claimant must, at a minimum, establish the possibility of entitlement through competent lay or medical evidence.

We propose to state that medical evidence is competent when it is offered by a person who, through education, is qualified to offer a medical opinion on a matter requiring medical expertise. We are not proposing that a medical opinion, to be competent, must in all cases be rendered by an individual who is licensed as an ''M.D.'' or who is board certified in a particular field. We propose to state that lay evidence is competent when it is offered by a person who has first-hand knowledge of facts or circumstances and relates matters that can be observed and described by a lay person. A lay person is not qualified to offer medical opinions or to diagnose a medical condition. For purposes of well grounding a claim, competent lay and medical evidence would be accepted as credible unless it is incredible on its face or beyond the expertise of the person making the statement. See *Robinette* v. *Brown*, 8 Vet. App. 69, 75–76 (1995), quoting *King* v. *Brown*, 5 Vet. App.19, 21 (1993).

In our view, it would not be feasible to state specific standards for each type of VA benefit in light of the variety of benefits available. However, it is important to establish a workable general definition of a well-grounded claim which can be applied to a claim for any benefit. In this regard, we propose to state that a claim is well grounded if the claimant has submitted some competent evidence with respect to each element necessary to establish entitlement to the particular benefit sought.

We propose to define more specifically the elements that evidence must address in order to well ground claims for service-connected disability compensation, nonservice-connected disability pension (pension), and claims for increased compensation for a service-connected disability because they are the types of benefits for which we receive the most claims.

Well-Grounded Claim for Service-Connected Disability Compensation

We propose to state that to well ground a claim for service connected disability compensation the claimant must submit (1) competent medical evidence of a current disability; (2) competent lay or medical evidence that a disease or injury was incurred in or aggravated by service; and (3) competent medical evidence showing a nexus or relationship between the in-service disease or injury and the current disability. See *Caluza* v. *Brown*, 7 Vet. App. 498 (1995), aff'd 78 F.3d 604 (Fed. Cir.1996) (per curiam). Medical evidence is required to establish the first element, that the veteran have a current disability, because the determinative issue involves a medical diagnosis and lay testimony is not competent evidence on this issue. *Heuer* v. *Brown*, 7 Vet. App. 379, 384 (1995); *Grottveit* v. *Brown*, 5 Vet. App. 91, 93 (1995).

The second element, in-service incurrence or aggravation, may be established by either medical or lay evidence depending on the facts of the case. Lay evidence would be sufficient where, for instance, it consists of statements by the claimant describing circumstances surrounding an in-service injury which are of a nature that could be observed by a lay person. As previously noted, such lay testimony, for purposes of well grounding a claim, would be accepted as credible on its face. Medical evidence in service medical records, if available, could also

suffice to show that there was inservice diagnosis or treatment of a disability or injury. *Caluza*.

The third requirement, a link or ''nexus'' between the in-service incident and the current disability, requires competent medical evidence. Again, while such medical evidence need not be conclusive, it must indicate the medical plausibility of such a nexus, it must be more than speculative and assert more than a possibility of a link. See *Tirpak* v. *Derwinski*, 2 Vet. App. 609, 611 (1992); *Beausoleil* v. *Brown*, 8 Vet. App. 459, 463 (1996). This evidence may be contained, for example, as a notation in VA outpatient treatment records, in VA or private hospital reports, or in a statement from a private physician.

Alternatively, a claimant can establish service connection for a disability under the chronicity and continuity criteria stated in 38 CFR 3.303(b). The chronicity provision of § 3.303(b) applies where evidence, regardless of its date, shows that the veteran had a chronic condition in service or during an applicable presumption period and has current signs and symptoms which are present manifestations of the same chronic disability. *Savage* v. *Gober*, 10 Vet. App. 488, 495 (1997). The evidence to establish chronicity must be medical unless it relates to a condition for which lay observation is competent. If the chronicity provision does not apply, a claim may also be well grounded under the continuity provision of § 3.303(b) if there is medical evidence of a current disability, competent lay or medical evidence that a condition was noted in service or during any presumption period; competent lay or medical evidence of post-service continuity of symptoms; and competent medical, or in some circumstances lay, evidence of a nexus between the present disability and the post service symptoms. Medical evidence would usually be required to establish a nexus. *Savage*, 10 Vet. App. at 498.

Well-Grounded Claim for Pension

We propose to state that to well ground a pension claim, a claimant must submit evidence of (1) qualifying wartime service; (2) income within the statutory requirements of 38 U.S.C. 1521; (3) medical evidence that the claimant has a permanent disability; and (4) competent medical or lay evidence that the claimant is unable to work because of that disability. See *Vargas-Gonzalez* v. *West*, 12 Vet. App. 321 (1999) (stating the requirements for entitlement to pension). Lay evidence, such as a claimant's statement that he or she had war time service, could establish the first element to well ground a claim for pension. The claimant's statement or other evidence of current household income would suffice to meet the second element. The third element, that the claimant has a permanent medical condition(s), would require competent medical evidence. The fourth element, that the claimant is unable to work because of that disability, would require either competent medical evidence or competent lay evidence, such as a statement from the claimant or another individual with first-hand knowledge of that fact.

Well-Grounded Claim for Increased Compensation

We propose to state that a claimant's statement that his/her medical condition has worsened is enough to well ground a claim for an increased evaluation of a service connected disability. The courts have held that a claim that a condition has become more severe is well grounded where the condition was previously service connected and rated, and the claimant subsequently asserts that a higher rating is justified due to an increase in severity since the last evaluation. *Proscelle* v. *Derwinski*, 2 Vet. App. 629, 632 (1992); *McCaffrey* v. *Brown*, 6 Vet. App. 377, 381 (1994).

VA's Duty To Assist

It is only after a claim for benefits is well grounded that VA's duty arises to assist a claimant in developing additional evidence needed to decide the claim on its merits. 38 U.S.C. 1507; *Epps, supra; Morton, supra.* Because the evidence needed to well ground a claim is minimal, VA often will need additional evidence to decide the merits of the claim.

We propose that when a claim is well grounded, VA will help the claimant obtain the evidence specified in the regulation needed to fully decide the claim on its merits. This evidence may include records from federal, state or local government agencies as well as private medical, employment and other non-government records. To prevent misuse of time and resources, and to expedite an efficient request for such evidence, we propose to require the claimant to (1) identify where any such evidence may be located; (2) specify the approximate time frame covered by the records; and (3) authorize the release of the records in a format acceptable to the person or agency holding them. We also propose that if VA is unable to obtain these records after reasonable effort and after a reasonable period of time, it must notify the claimant of that fact and the reason, if known, as to why the records have not been received. It would also notify the claimant that although VA has a duty to help him or her obtain evidence, the claimant has the ultimate responsibility for producing it, and that unless VA hears from the claimant within 30 days from the date on the notice, VA will proceed to decide the claim on the basis of the evidence of record. VA would not pay any fees required by custodians for furnishing requested records; VA has no statutory authority to do so. This represents no change from the current requirement under 38 CFR 3.159 regarding payment of fees.

As part of its duty to assist, VA would also schedule a VA examination if medical evidence accompanying the claim is not adequate for rating purposes. See 38 CFR 3.326.

Informing Claimants of Evidence Needed To Well Ground Claims

Almost all of the commenters urged us to require VA to inform claimants of the evidence they need to submit in order to well ground their claims. We agree it is fair and equitable for VA to do so. Accordingly, when a claimant applies for a VA benefit, but the claim is not well grounded, we propose to require VA to (1) notify the claimant, in writing, of that fact; (2) notify the claimant as to the types of evidence necessary to well ground the claim; and (3) allow the claimant thirty (30) days from the date on the notice to submit it. VA believes it is fair and not unduly burdensome to allow the claimant 30 days in which to furnish evidence sufficient to well ground a claim because the ''threshold of plausibility to make a claim well grounded 'is rather low.' '' *Robinette*, 8 Vet. App. at 76, citing *White* v. *Derwinski*, 1 Vet. App. 519, 521 (1991).

We believe that the ''duty to inform'' proposed here will further the claimant's understanding of his or her responsibility to well ground a claim. This proposed procedure, moreover, should afford the claimant an early determination as to whether the claim is well grounded.

Initial Claims Processing

We propose that VA determine whether a claim is well grounded before taking any further action. If a claim is not well grounded upon an initial review, the 30-day time period will permit the claimant an opportunity to gather and submit the limited supporting documentation needed to well ground the claim.

Three commenters suggested that as part of the initial claims processing, VA

should obtain service medical records and VA medical records as well as records from other federal agencies. One commenter stated that VA should distinguish between VA records and non-VA evidence, and require the claimant to submit only non-VA records. Another commenter stressed that VA should require claimants to specifically identify any relevant VA records to include year of treatment and type of records related to the claimed disability. We agree, in part, and propose to authorize VA to request VA medical records which the claimant has identified as relevant to the claim, but only if the claimant has clearly identified the VA facilities and approximate treatment dates for the claimed conditions. We believe it is reasonable to obtain VA treatment records in all claims where the claimant asserts their relevance, because these records are in VA custody, even though they may not be in the custody of the office responsible for deciding the claim. We believe it is reasonable to require claimants to identify the location and approximate dates of VA treatment because it would otherwise be extremely difficult for VA to determine whether a claimant had ever received treatment at any of VA's numerous medical facilities and to identify and locate all records of such treatment.

We also propose to authorize VA to request service medical records in claims for service-connected disability or death where they have not already been associated with the claims file. Service medical records are records of medical treatment during active duty. Since 1992, these records have been routinely sent to VA's Records Management Center (RMC) by the military units at the time of discharge, but were not routinely sent to VA for veterans discharged prior to that date. Existing claims processing procedure already provides for the immediate transmission of these records to a VA Regional Office when it establishes a claims file for a veteran; preventing VA from taking advantage of the availability of these records would serve no purpose but to delay claims processing. In view of the long-standing practice of obtaining service medical records in all cases, we believe it would be in the best interests of claimants, as well as VA and the service departments, if VA were to continue to obtain these records in all cases, rather than requiring claimants to seek to obtain them from the service departments. Further, because service medical records are highly relevant to VA claims, it is preferable for VA to obtain these records to ensure that it has a complete and accurate copy of such records. VA believes that in some cases, service medical records may contain evidence that will well ground certain elements of a claim, e.g., evidence of a current medical condition in the case of clearly permanent conditions, such as missing extremities, or clearly chronic conditions. See *Hampton* v. *Gober*, 10 Vet. App. 481 (1997) (service medical records provided evidence of current knee condition).

Because VA does not have a duty to assist a claimant who has not established a well-grounded claim, we propose that during the 30-day period during which the claimant would be allowed to submit the evidence necessary to well ground the claim, VA would not schedule a VA examination or attempt to obtain any private medical or non-medical records, or other federal or state agency records. Deferring development until the claim is well grounded is consistent with 38 U.S.C. 5107, which states that VA's duty to assist does not arise until that time. Furthermore, it will promote administrative efficiency, by allowing VA to schedule general and special exams at one time after the 30-day period has expired, avoiding the ''piecemeal'' development which delays claims processing and decision making.

We propose that at the end of 30 days, VA will review VA medical records and service medical records together with any evidence the claimant has submitted to determine if a claim is well grounded. If it is not well grounded, VA would deny the claim as not well grounded, notify the claimant which threshold requirements for the benefit have not been met, and advise the claimant of his or her right to appeal the decision.

In cases where a claimant submits an application for benefits that contains multiple claims, some of which are well grounded and others which are not, we propose that VA notify the claimant of the types of evidence necessary to well ground each claim that is not well grounded, and allow the claimant 30 days from the date on the notice in which to submit it. During this 30-day period, VA will request service medical records. It will also request any VA medical records the claimant has identified as relevant to any of the claims, but only if the claimant has clearly identified the VA facilities and approximate dates of treatment for the claimed conditions. VA will not schedule a VA examination on the well grounded claims until the expiration of 30 days. If, after 30 days, VA has not received evidence that well grounds each claim, it will deny the claims that are not well grounded and will help the claimant obtain any additional evidence that it needs to determine entitlement to benefits for the well grounded claims, including the scheduling of a VA exam, if necessary. We believe this policy will allow VA to avoid ''piecemeal'' development and promote administrative efficiency, by allowing it to schedule general and special exams at one time after the 30-day period has expired.

Although we propose to allow a claimant 30 days to submit evidence to well ground his or her claim before VA denies it, 38 U.S.C. 5103 and its implementing regulation, 38 CFR 3.109(a), allow a claimant one year to submit evidence to complete an application for benefits, calculated from the date that VA requests the evidence. In our view, the provisions of § 3.109(a) would apply to evidence that VA advised a claimant is necessary to well ground a claim. In the event that a claimant has difficulty obtaining the evidence needed to well ground his or her claim, or there is a delay in the receipt of VA medical records or service medical records, we propose that VA would review any evidence received after the 30-day period, but within one year of the date the evidence was requested. This review would be conducted even if a prior decision within that one year previously determined that the claim was not well grounded. VA would then determine, based on all the evidence of record, whether the claim is well grounded. If the additional evidence well grounds the claim, VA will proceed to help the claimant by requesting any additional evidence needed to decide the claim on its merits. If the additional evidence does not make the claim well grounded, VA will deny the claim as not well grounded, inform the claimant of which threshold requirements for the benefit have not been met, and advise the claimant of his or her right to appeal the decision.

Exceptions to the Requirement To File a Well-Grounded Claim

Section 5107(a) provides that claimants have the burden of submitting evidence sufficient to justify a belief that the claim is well grounded, ''[e]xcept when otherwise provided by the Secretary in accordance with the provisions of this title.'' In *Morton*, the court held that VA manual provisions and other internal documents volunteering VA assistance in all claims, even when they are not well grounded, would be inconsistent with section 5107(a). VA agrees. A regulation offering VA assistance in all cases

would not merely state an exception to the general requirements of section 5107(a), but would, in effect, negate the requirements of section 5107(a).

In authorizing VA to create exceptions to the well-grounded-claim requirements, Congress plainly intended that that requirement would continue to govern most cases, and that any exceptions would be reasonably based on special circumstances. Accordingly, we have concluded that any exceptions to the well-grounded-claim requirement must be narrow, reasonably based, and not inconsistent with any statutory provision. We propose to create five exceptions to the requirement that anyone seeking VA benefits file a well-grounded claim.

First, we propose to relieve a veteran who files a claim for disability compensation within one year of his or her release from active duty from having to submit a well-grounded claim. The intent of Congress, as reflected throughout Title 38, is to afford recently-released veterans assistance in achieving a rapid social and economic readjustment to civilian life and attaining a higher standard of living for themselves and their dependents. Experience with World War II veterans has shown that it may be very difficult, many years after the fact, for a veteran to establish entitlement to compensation based on disabilities existing at the time of his or her discharge. Development of claims filed within one year of discharge will provide a disability baseline which could be helpful in adjudicating any claims for service connection filed in the future. This procedure would allow VA to compile evidence of veterans' medical conditions at the time of discharge. The one year time period is also consistent with the time period for the manifestation of most of the presumptive chronic disabilities listed in 38 CFR 3.309(a). For these reasons, we believe it is simply good policy to help veterans recently released from active duty to obtain the evidence needed to establish entitlement to disability compensation.

Second, we propose to relieve terminally ill claimants from having to submit a well-grounded claim. For this purpose, we would define a ''terminally ill person'' as one who has a medical condition that, in the opinion of a physician, is incurable, and will likely result in death within one year. VA believes it is reasonable to require some competent medical evidence supporting a claimant's entitlement to this exception because the claimant with a medical prognosis of less than a one year life expectancy is likely to be receiving treatment for the terminal illness and would have readily available medical records. We believe this exception is justified because a terminally ill claimant is likely to be too incapacitated to actively participate in the evidence-gathering process, and it is in his or her best interest for VA to determine as quickly as possible whether he or she is entitled to the claimed benefit. Furthermore, a quick determination of entitlement may be necessary to entitle the claimant to VA medical care. Finally, a quick determination of entitlement in this situation will increase the likelihood that the veteran will have the benefit of VA compensation during his or her lifetime, and in some instances, may forestall the need to apply the limitation on the payment of accrued benefits.

As one commenter noted, claimants who could not afford private medical treatment and have no access to VA medical care may be disadvantaged by a requirement that they submit medical evidence of a current disability or evidence of nexus. We agree. Therefore, as a third exception, we propose to relieve a claimant who submits evidence from a medical provider that he or she has been denied medical treatment within the past 12 months for lack of funds, from the requirement to submit a well-grounded claim.

Fourth, we propose to relieve a veteran who files a claim for service connection for post traumatic stress disorder (PTSD) from submitting a well-grounded claim if he or she submits competent evidence that he or she was engaged in combat with the enemy, and competent medical evidence that he or she is experiencing symptoms of PTSD. Medical evidence of a nexus would not be required for the purposes of well grounding the claim. While the requirement to well ground a claim is a low threshold, we are concerned that veterans who underwent the stress of combat and currently are diagnosed with PTSD not suffer additional stress in attempting to gather evidence during the claims process and should be afforded special assistance in developing the claim prior to it being determined to be well grounded.

Fifth, we propose to relieve a veteran from submitting a well-grounded claim for service connection for PTSD if he or she submits competent evidence that he or she was a victim of sexual assault in service and competent medical evidence that he or she is experiencing symptoms of PTSD. Medical evidence of a nexus would not be required for the purposes of well grounding the claim. Competent evidence would include a lay statement describing the claimed in-service incident of sexual assault. VA is aware that sexual assault in service is often undocumented. It has provided special guidance to its Regional Office personnel on developing the evidence to support such claims. VA believes that veterans who have been traumatized by sexual assault should not suffer additional stress by attempting to gather evidence during the claims process and should be afforded assistance in developing the claim prior to it being determined to be well grounded.

Consistent with these proposed changes, we also propose to revise 38 CFR 3.103 to clarify that VA's duty to assist arises after a claimant submits a well-grounded claim. The adoption of the proposed provision as a final rule would also necessitate corresponding changes in Manual M21–1, including but not limited to Part III paragraphs 1.01(a); 1.03(a); 2.01; 5.19; 5.20; Part VI, paragraphs 1.01(b), 2.08, and 2.10 which relate to VA developing all pertinent facts to well ground a claim; fully developing claims before a decision is made on well groundedness; types of evidence that may serve to establish reasonable probability of a well-grounded claim; and prohibiting the denial of a claim before all efforts to assist have been exhausted.

Applications

Claims are initiated by submitting to VA completed application forms. The forms have been approved by OMB (VA form 21–526, OMB Control No. 2900–0001; VA form 21–527, OMB Control No. 2900–0002; VA form 21–534, OMB Control No. 2900–0004; VA form 21–551, OMB Control No. 2900–0027; VA Form 21–0304, OMB Control No. 2900–0572; VA Form 21–4138, OMB Control No. 2900–0075.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) 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 final rule will have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of these amendments will not have a significant economic impact on a substantial number of small entities as

they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

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

Approved: November 18, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is 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.

§ 3.103 [Amended]

2. In § 3.103, paragraph (a) is amended by adding ''who has filed a well-grounded claim'' immediately after ''to assist a claimant''.

3. Section 3.159 is revised to read as follows:

§ 3.159 Claimant's responsibility to submit a well-grounded claim and VA's duty to help a claimant obtain evidence.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Well-grounded claim* means:

(i) A claim meeting the provisions of paragraphs (b)(2), (b)(3), or (b)(4) of this section; and

(ii) For any benefit under this part for which VA has not established specific criteria for determining whether a claim for that benefit is well grounded, means a claim for which there is some competent evidence with respect to each element necessary to establish entitlement to the particular benefit sought.

(2) *Competent evidence* means evidence offered by an individual who is qualified by training or experience to offer an opinion on a matter. Lay evidence is competent when it is offered by a person who has first-hand knowledge of facts or circumstances and relates matters that can be observed and described by a lay person. Medical evidence is competent when it is offered by a person who, through education, is qualified to offer a medical opinion on a matter requiring medical expertise.

(3) A *terminally ill* person means one who has a medical condition that in the opinion of a physician is incurable, and will likely result in death within twelve months.

(b) *Claimant's responsibility to file a well-grounded claim.* A person claiming VA benefits must submit sufficient evidence to justify a belief by a fair and impartial individual that the claim is well grounded. Evidence does not have to prove entitlement to a benefit in order to well ground a claim, but there must be some competent evidence addressing each element necessary to establish entitlement to the benefit. VA will presume evidence is credible for the purpose of making a claim well grounded unless it is incredible on its face or beyond the expertise of the person making the statement. If a regulatory or statutory presumption relieves a claimant from having to submit evidence on specific elements to establish entitlement to a benefit, the claimant need not submit evidence on those elements to well ground the claim. See, e.g., 38 CFR 3.304(f); 3.309; 3.316; 3.317.

(1) *Exceptions.* VA will help the claimant obtain additional evidence pertinent to the claim even though the claim is not well grounded:

(i) If a claimant files a claim for disability compensation within one year of his or her release from active military, naval, or air service;

(ii) If a claimant submits evidence from a medical provider that he or she has been denied medical treatment within the past 12 months due to lack of funds;

(iii) If a claimant submits competent medical evidence that he or she is terminally ill;

(iv) If a claimant submits competent evidence that he or she was engaged in combat with the enemy, and competent medical evidence that he or she is experiencing symptoms of post traumatic stress disorder; or

(v) If a claimant submits competent evidence that he or she was a victim of sexual assault in service and competent medical evidence that he or she is experiencing symptoms of PTSD.

(2) *Disability compensation.* A claimant may well-ground a claim for disability compensation in one of three ways:

(i) Generally, by submitting competent medical evidence of a current disability; competent medical or, in cases where the condition is observable by a lay person, lay evidence, that a disease or injury was incurred in or aggravated by service or during an applicable presumption period; and, in the case of inservice disease or injury, competent medical evidence indicating that there is a plausible link between the current disability and the inservice disease or injury.

(ii) Where the claimant claims service connection for a chronic disability, by submitting competent medical evidence that he or she currently has a chronic disability; competent medical or where the disability is observable by a lay person, lay evidence that the chronic disability existed in service or during an applicable presumption period; and competent medical evidence that he or she has current signs and symptoms which are manifestations of the same chronic disability. 38 CFR 3.303(b).

(iii) Where the claimant claims service connection for a disability whose symptoms have existed continuously since service, by submitting competent medical or where the disability is observable by a lay person, lay evidence that a disability existed during service or any applicable presumptive period; competent medical or where the disability is observable by a lay person, lay evidence that signs or symptoms of that disability have existed continuously from the time of service to the time the disability was first definitely diagnosed; and competent medical evidence that the claimant currently has the same disability. 38 CFR 3.303(b).

(3) *Increased disability compensation.* A veteran's statement that his or her service-connected disability has worsened is sufficient, on its own, to well ground a claim for increased compensation benefits.

(4) *Disability Pension.* To well ground a claim for nonservice-connected disability pension, a claimant must submit:

(i) Evidence of qualifying wartime service;

(ii) Evidence of income within the statutory requirements of 38 U.S.C. 1521;

(iii) Competent medical evidence that the claimant has a permanent disability; and

(iv) Competent medical or, where the disability is observable by a lay person, lay evidence that the claimant is unable to work because of that disability.

(c) *VA's duty to help claimants obtain evidence.* Upon receipt of any claim, VA will determine whether it is well grounded before taking any further action.

(1) *If a claim is well grounded,* except as otherwise provided in paragraph (c)(3) of this section for certain multiple claims, VA will help the claimant, as specified in this paragraph, obtain additional relevant lay or medical evidence, of which it is reasonably aware, that is needed to establish entitlement to the benefit sought. VA will obtain service medical records in claims for service-connected disability or death. Provided the claimant has provided enough information to identify and locate the evidence including the location and approximate dates and time frame covered by the records, VA will request, directly from the source, relevant existing evidence which is in the custody of military authorities, other Federal agencies, state and local governmental authorities, VA medical facilities, private medical providers, current and former employers, and other non-governmental individuals and entities. If necessary for such record requests, the claimant must authorize the release of records in a form acceptable to the person or agency holding the records. VA will not pay any fees charged for providing the evidence. If VA is unable to obtain any evidence it has requested after reasonable effort and after a reasonable period of time, it will advise the claimant of that fact, and of the reasons why, if known. VA will also advise the claimant that he or she is ultimately responsible for providing the evidence and that unless VA hears from the claimant within 30 days from the date on the notice, VA will proceed to decide the claim on the basis of the evidence of record.

(2) *If a claim is not well grounded,* VA will notify the claimant of the types of evidence necessary to well ground the claim, and allow him or her 30 days from the date on the notice to submit it. During this 30-day period, VA will request service medical records in claims for service-connected disability or death. It will also request VA medical records that the claimant has identified as relevant to the claim, provided the claimant has provided enough information to identify and locate the evidence including the location and approximate dates covered by the records. VA will not schedule a VA examination or request any other evidence during this period. If, after 30 days, VA has not received evidence that well grounds the claim, it will deny the claim as not well grounded.

(3) *If an application for benefits includes multiple claims* with at least one claim that is well grounded and one that is not, VA will notify the claimant of the types of evidence necessary to well ground each claim that is not well grounded, and allow the claimant 30 days from the date on the notice to submit it. During this 30-day period, VA will request service medical records. It will also request any VA medical records the claimant has identified as relevant to the claim(s), but only if the claimant has provided enough information to identify and locate the evidence including the location and approximate dates covered by the records. VA will not request any other evidence or schedule VA examinations for any of the claims during the 30-day period. If, after 30 days, VA has not received evidence that well grounds each claim, it will deny the claims that are not well grounded and will help the claimant obtain any additional evidence as set forth in paragraph (c)(1) of this section that it needs to determine entitlement to the benefits for which he or she has filed well-grounded claims.

(4) *If a claim has been denied as not well grounded,* VA will review any evidence relevant to that claim that it receives within one year from the date of notification to the claimant under paragraph (c)(2) or (c)(3) of this section to determine whether, based on all the evidence of record, the claim is well grounded. See 38 CFR 3.109(a). If the evidence received does not well ground the claim, VA will again deny the claim as not well grounded. If the evidence received well grounds the claim, VA will help the claimant obtain any additional evidence as set forth in paragraph (c)(1) of this section that it needs to determine entitlement to the benefit sought.

(Authority: 38 U.S.C. 5107)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–40–9929b; FRL–6472–9]

Approval and Promulgation of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Georgia on July 10, 1998. These revisions adopt two new rules for reducing nitrogen oxides emissions in the Atlanta ozone nonattainment area: a rule requiring specific gasoline formulation in 25 counties and a rule establishing unit-specific emission limits at certain Georgia Power generating units. The revisions also incorporate federal requirements related to permitting and wood furniture finishing and cleaning operations and make technical corrections to certain air quality rules. In addition, the revisions clarify requirements of Georgia's Clean Fueled Fleets Program. EPA will act on the rule requiring specific gasoline formulation in 25 counties and revisions submitted for regulating air emissions and operating practices of existing hospital/medical/infectious waste incinerators that commenced construction, reconstruction or modification on or before June 20, 1996 in a separate **Federal Register** document at a later date. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 3, 2000.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, Air, Pesticides, and Toxics Management Division, EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for inspection at the following locations during normal business hours. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (To make an appointment, please contact Michele Notarianni at 404–562–9031.)