

and Saturday nights and evenings preceding Federal holidays.

Discussion of Comments and Changes

Two letters were received in response to the public notice. The State of Florida, Department of Community Affairs stated in their letter that the proposal is consistent with the Florida Coastal Management Program. The National Marine Fisheries Service concluded in their letter that any adverse affects that might occur to living marine resources would be minimal and offered no objection. No objections were received from the marine public regarding the revised weekend evening restriction.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We concluded this because of a lack of demand for openings between 10 p.m. and 6 a.m. on weekends and on evenings preceding Federal holidays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because of the exemption for tugs with tows.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and has determined pursuant to Figure 2-1, paragraph 32(e) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A categorical exclusion determination for this rulemaking is available in the public docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard amends 33 CFR part 117, as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Revise § 117.285(b) to read as follows:

§ 117.285 Grand Canal.

* * * * *

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that from 10 p.m. to 6 a.m. from Sunday evening through Friday morning, the draw shall open on signal if at least 2 hours advance notice is given. From 10 p.m. to 6 a.m. on Friday and Saturday and on evenings immediately preceding Federal holidays, the draw shall open on signal if at least 30 minutes advance notice is given.

Dated: May 20, 1999.

N.T. Saunders,

*Rear Admiral, U.S. Coast Guard, Commander,
Seventh Coast Guard District.*

[FR Doc. 99-14510 Filed 6-1-99; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AJ64

Surviving Spouse's Benefit for Month of Veteran's Death

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation governing payment of death benefits to an eligible surviving spouse for the month of the veteran's death. This amendment allows payment of such benefits at the rate that would have been paid to the veteran had he or she not died where the monthly amount of dependency and indemnity compensation or pension payable to the veteran's spouse is equal to the amount of benefits the veteran would have otherwise received for the month of his or her death. This amendment is required by statute.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 5111(a) of title 38, United States Code, prohibits payment of compensation, pension, or dependency and indemnity compensation (DIC) benefits for any period before the first day of the month following the month in which an award or increased award of benefits was effective. In effect, VA generally may not pay first-time or increased benefits for any part of the first calendar month of entitlement. (See also 38 CFR 3.31).

Section 5111(c) provides certain exceptions to the general prohibition in section 5111(a), including the following:

(Section 5111) shall apply to payments made pursuant to section 5310 of this title only if the monthly amount of [DIC] or pension payable to the surviving spouse is greater than the amount of compensation or pension the veteran would have received, but for such veteran's death, for the month in which such veteran's death occurred.

38 U.S.C. 5111(c)(1).

Section 5310 of title 38, United States Code, provides authority under which VA may pay to a surviving spouse the amount of benefits which the veteran would otherwise have received for the month of his or her death. (When a veteran receiving compensation or pension dies, VA terminates his or her benefit payments effective the last day

of the month prior to the month of death. See 38 U.S.C. 5112(b)(1).) Under section 5310(a), if a surviving spouse is entitled to certain death benefits for the month of the veteran's death, the amount of benefits payable for that month "shall be not less" than the amount of compensation or pension the veteran would have received if he or she had not died.

VA has implemented the provisions of section 5111(c)(1) at 38 CFR 3.20(b) and 3.31(c)(1). In a recent opinion (VAOPGCPREC 10-98), VA's General Counsel pointed out that language in 38 CFR 3.20(b) is inconsistent with 38 U.S.C. 5111(c)(1). Section 5111(c)(1) provides, with respect to payments under section 5310, that payment for the first calendar month of entitlement is prohibited only if the amount of DIC or death pension payable exceeds the amount of compensation or pension that would have been payable to the veteran. Section 3.20(b), however, provides that payment for the first calendar month is permitted only if the amount of compensation or pension that would have been payable to the veteran exceeds the amount of DIC or death pension payable. These two provisions give different results if the amount of DIC or death pension payable equals the amount of compensation or pension that would have been payable to the veteran. In this situation, the statute would allow payment for the month of death, but the regulation would not. To that extent, 38 CFR 3.20(b) is inconsistent with section 5111(c)(1) of the statute.

Accordingly, we are amending § 3.20(b) to make it consistent with the statute. It now provides that a surviving spouse may receive payment for the month of the veteran's death if the veteran's rate of benefits is equal to or greater than the rate of death pension or DIC payable to the surviving spouse.

This final rule simply corrects VA regulations to reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

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

List of Subjects in 38 CFR Part 3

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

Approved: May 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

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

§ 3.20 [Amended]

2. In § 3.20, the first sentence of paragraph (b) is amended by adding "equal to or" immediately after "if such rate is".

[FR Doc. 99-14141 Filed 6-7-99; 8:45 am]

BILLING CODE 8320-01-P

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: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs adjudication regulations for determining whether dental conditions are service-connected for purposes of eligibility for outpatient dental treatment. This amendment clarifies requirements for service connection of dental conditions and provides that VA will consider certain dental conditions service-connected for treatment purposes if they are shown in service after a period of 180 days.

DATES: *Effective Date:* June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Lorna Fox, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-7223.

SUPPLEMENTARY INFORMATION: On February 24, 1997, VA published in the

Federal Register (62 FR 8201), a proposal to amend those sections of 38 CFR part 3 and part 4 that govern whether dental conditions are service-connected for purposes of eligibility for outpatient dental treatment under 38 U.S.C. 1712 (implemented by 38 CFR 17.161). Interested persons were invited to submit written comments, suggestions or objections. We received comments from Paralyzed Veterans of America and one individual.

Section 1712 of 38 U.S.C. states that veterans with noncompensable service-connected dental conditions are entitled to a one-time correction of the dental conditions by VA under certain circumstances. VA regulations at 38 CFR 3.381 and 3.382 previously stated that for purposes of outpatient dental treatment, service connection for certain noncompensable dental conditions is warranted only if the conditions are shown after a "reasonable period of service." We proposed to replace the subjective term "reasonable period of service" with the objective requirement of 180 days or more of active service.

One commenter stated that a 180 day requirement "seems to clash significantly" with both 38 U.S.C. 1111, which requires VA to consider every veteran to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at the time, and § 1153, which requires VA to consider preexisting injury or disease to have been aggravated by active military service where there is an increase in disability during such service that was not due to the natural progress of the disease. Section 1111 states that "[f]or the purposes of section 1110 of this title," the presumption of soundness shall apply. Section 1110 of title 38, United States Code, applies to payment of compensation for disability. Section 1111 is therefore not applicable to determining eligibility to outpatient dental treatment under 38 U.S.C. 1712. In addition, section 1153 of title 38, United States Code, applies only to disabilities. Because noncompensable dental conditions are not considered to be disabilities (see former 38 CFR 4.149) section 1153 is also not applicable to 38 U.S.C. 1712 determinations. Therefore, we make no change based on this comment. We acknowledge that in the notice of proposed rulemaking, we stated that, for purposes of consistency with 38 CFR 3.304(b), VA was proposing to delete 38 CFR 3.381(d), which stated that the presumption of soundness does not apply to noncompensable dental conditions. 62 FR 8201, 8202 (1997). Notwithstanding this statement, as explained above,