

**DEPARTMENT OF VETERANS
AFFAIRS****38 CFR Parts 3 and 4**

RIN 2900-AE91

**Schedule for Rating Disabilities; the
Musculoskeletal System****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend that portion of its Schedule for Rating Disabilities that addresses musculoskeletal conditions. The intended effect is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. We also propose to make nonsubstantive editorial changes throughout this portion of the Schedule.

DATES: Comments must be received on or before April 14, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AE91." All comments received will be available for public inspection in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: As part of its first comprehensive review of the rating schedule since 1945, VA published in the **Federal Register** of December 28, 1990 (55 FR 53315), an advance notice of proposed rulemaking advising the public that it was preparing to revise and update the portion of VA's Schedule for Rating Disabilities (the rating schedule) that addresses the musculoskeletal system. On June 3, 1997, we published in the **Federal Register** a final rule (62 FR 303235) revising § 4.73, which addresses muscle injuries. This proposed rule addresses the remainder of the musculoskeletal system, § 4.71a, which addresses

primarily bone and joint disabilities. In the document revising § 4.73, we stated our intent to designate the remainder of the musculoskeletal system as the orthopedic system. However, because some of the provisions of § 4.71a also apply to muscle injuries, and some of the conditions are rheumatologic, rather than orthopedic, conditions, we now propose to retain the current designation, musculoskeletal system.

In response to the advance notice of proposed rulemaking, we received two comments, one from the American Legion and one from a physician in the Department of Orthopedics at the University of Washington.

One commenter recommended that this revision include revisions of the rating and examination guidelines in 38 CFR 4.40 to 4.70 as they relate to musculoskeletal disabilities. We are proposing to make many changes to these sections, and they are discussed in detail below.

The same commenter stated that the current rating schedule does not reflect the use of new diagnostic methods, such as computed tomography (CT) and magnetic resonance imaging (MRI) scans, or reflect new operative procedures for joint replacements. We agree that the schedule is outdated in these areas and propose changes to update the schedule for many disabilities. For example, we propose to accept not only X-ray findings, but also reports from other imaging procedures (such as MRI or CT scans), as evidence of arthritis and other musculoskeletal conditions.

The commenter also recommended that there be a review of the Veterans Health Administration's "Physician's Guide for Disability Evaluation Examinations" (a manual no longer in use that gave guidance to examining physicians who do compensation and pension examinations). The commenter felt that medical advances present an increased need for the examiner to provide specific findings and detailed measurement and assessment of disabling conditions. This comment is no longer pertinent because the former "Physician's Guide" is no longer in existence. (A new Clinician's Guide or handbook for examiners is, however, under development.) In place of the former Physician's Guide, VA developed a series of disability examination worksheets for various individual conditions or groups of conditions to assure that examiners provide all information necessary for rating. These worksheets, which are periodically updated as medical advances or rating needs arise, are now in use.

A second commenter provided a set of guidelines for evaluating spine disabilities. We are revising certain parts of the current musculoskeletal portion of the rating schedule separately. These include ankylosis and limitation of motion of the digits of the hand, disabilities of the spine, and intervertebral disc syndrome (published as a proposed rule in the **Federal Register** of February 24, 1997 (62 FR 8204)). Since these disabilities are not included in this proposed rule, this comment concerning the evaluation of spine disabilities will be addressed in the separate proposed rule providing criteria for evaluating disabilities of the spine.

In addition to publishing an advance notice, we also hired an outside contract consultant to recommend changes to the evaluation criteria to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review the portion of the rating schedule dealing with the musculoskeletal system in order to formulate recommendations. We are proposing to adopt many, although not all, of the recommendations the contractor submitted. In some cases, evaluations based on the revised criteria will be lower, in some cases, higher, and, in some cases, unchanged.

Sections 4.40 through 4.46, 4.57 through 4.59, 4.61 through 4.64, and .66 through 4.71 in subpart B of 38 CFR part 4 deal with a variety of issues, including circulatory disturbances, osteomyelitis, loss of use of both buttocks, painful motion, foot deformities, dominant hand, and examination and assessment of the bones and joints. Much of the information in these sections was originally included in rating schedules of 1925, 1933 or 1945 to provide background medical information that was not otherwise available. We propose to consolidate and reorganize these sections and to delete the parts that are simply statements of medical fact rather than substantive rules of general applicability, statements of general policy, or interpretations of general applicability that raters must follow. A regulation is an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice requirements of an agency (5 U.S.C. 551(4)). General medical information that is available in standard textbooks and other material that neither prescribes VA policy nor