

diagnoses are to be avoided. This has sometimes been unclear to raters. We propose to retitle this section "Avoiding overlapping of evaluations," which more clearly reflects its intent. We propose that there be four paragraphs, with the first (a) directing raters not to use the same sign(s) or symptom(s) to support more than one evaluation (under different diagnostic codes) for a single disability. We propose that paragraph (b) direct raters not to use the same sign(s) or symptom(s) to support an evaluation for more than one disability. Paragraphs (c) and (d) would be the converse of (a) and (b), with (c) directing raters not to evaluate the same disability at the same time (under different diagnostic codes) using the same sign(s) or symptom(s) as the basis of evaluation, and (d) directing raters not to evaluate more than one disability using the same sign(s) or symptom(s) as the basis of evaluation. This section means, for example, that low back pain present in someone who has both lumbar intervertebral disc syndrome (diagnostic code 5293) and limitation of motion of the lumbar spine due to degenerative arthritis (diagnostic code 5292) cannot be used to support separate evaluations for these two back conditions, and cold injury residuals such as numbness of the toes cannot be used to support both an evaluation for cold injury under diagnostic code 7122 (cold injury residuals) and another evaluation for peripheral neuropathy with numbness due to cold injury under diagnostic code 8521 (paralysis of external popliteal nerve). In our judgment, the revised language is more straightforward and clearer and will resolve the difficulty raters have had in interpreting the current language.

#### Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, 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 rule would have no consequential effect on State, local, or tribal governments.

#### Regulatory Flexibility Act

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

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

#### List of Subjects

##### 38 CFR Part 3

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

##### 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: October 24, 2002.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, we propose to amend 38 CFR parts 3 and 4 as set forth below:

#### 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. In § 3.350 paragraph(a)(2)(i)(c) is added to read as follows:

##### § 3.350 Special monthly compensation ratings.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(c) Amputation of the thumb and any three fingers of a single hand will constitute loss of use of the hand.

\* \* \* \* \*

#### PART 4—SCHEDULE FOR RATING DISABILITIES

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

**Authority:** 38 U.S.C. 1155, unless otherwise noted.

##### Subpart A—General Policy in Rating

4. Section 4.14 is revised to read as follows:

##### § 4.14 Avoiding overlapping of evaluations.

(a) Do not use the same sign(s) or symptom(s) to support more than one evaluation (under different diagnostic codes) for a single disability.

(b) Do not use the same sign(s) or symptom(s) to support an evaluation for more than one disability.

(c) Do not evaluate the same disability at the same time (under different diagnostic codes) using the same sign(s) or symptom(s) as the basis of evaluation.

(d) Do not evaluate more than one disability using the same sign(s) or symptom(s) as the basis of evaluation.

(Authority: 38 U.S.C. 1155)

##### Subpart B—Disability Ratings

5. Section 4.40 is revised to read as follows:

##### § 4.40 Evaluation of musculoskeletal disabilities.

The evaluation criteria provided for each condition, or to which the rater is referred for evaluating a given condition, are generally to be the sole basis of evaluation. In conditions where pain is a complaint, but pain is not addressed in the evaluation criteria under the diagnostic code for the condition, however, apply the provisions of § 4.59, combining an evaluation for pain with an evaluation under the diagnostic code for the condition. Factors such as fatigability or impaired coordination, speed, or endurance are encompassed by the evaluation criteria under each diagnostic code. An additional evaluation based on one of these factors will not be assigned.

(Authority: 38 U.S.C. 1155)

##### § 4.41 [Removed and Reserved]

6. Section 4.41 is removed and reserved.

7. Section 4.42 is revised to read as follows:

##### § 4.42 Examination of joints

For VA rating purposes, the range of motion of a joint must be determined by measurement with a goniometer. The normal ranges of motion for major joints