DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AI08

Delegations of Authority; Nonsubstantive Miscellaneous Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the delegation of authority regulations by removing redundant material and by removing other information not required to be published in the Federal Register.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Dawn McGowan, Chief, Directives, Forms, Records Management, Headquarters Health Administration Service (161A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–7444. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that the rule will not have a significant economic impact on a substantial number of small entitles as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely consists of nonsubstantive changes.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies).

Approved: April 29, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 2 is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 302; 38 U.S.C. 501, 512; 44 U.S.C. 3702.

§§ 2.3, 2.72, 2.73, 2.74, 2.91, 2.93, 2.94 [Removed]

2. In part 2, §§ 2.3, 2.72, 2.73, 2.74, 2.91, 2.93, and 2.94 are removed.

[FR Doc. 96–11278 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AH87

Removal of References to ''Vicious Habits''

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: Certain Department of Veterans Affairs (VA) regulations state that to be eligible for pension a veteran must be permanently and totally disabled from nonservice-connected disability not due to the veteran's own willful misconduct or vicious habits. The statute upon which these regulations is based was changed in 1978 to delete references to ''vicious habits.'' The purpose of this rule is to conform the regulations to the statute.

EFFECTIVE DATE: This amendment is effective May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Before 1978, the statute governing entitlement to pension for nonservice-connected disability (now 38 U.S.C. 1521(a)) provided that VA pension was potentially payable to a veteran who was permanently and totally disabled from non-service-connected disability not the result of the veteran's willful misconduct or vicious habits. In 1978 the Veterans' and Survivors' Pension Improvement Act of 1978, Public Law 95–588, deleted the words ''vicious habits'' from the pension statute.

In 1990 VA amended 38 CFR 3.301(b) to delete the reference to ''vicious habits'' (55 FR 13529). 38 CFR 3.301(b) now states simply that ''disability pension is not payable for any condition due to the veteran's own willful misconduct.''

There are additional references to ''vicious habits'' in 38 CFR sections 3.314(b)(2), and 3.323(b) which apparently were overlooked when 38 CFR 3.301(b) was amended in 1990. This rule deletes those references and conforms the rules to the current language of 38 U.S.C. 1521(a).

Since these amendments are in the nature of a technical correction, the Secretary finds that notice and public procedure thereon are unnecessary. Accordingly, these amendments are promulgated without regard to the notice-and-comment and effective-date provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking 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. This amendment will directly affect VA beneficiaries but will not affect small businesses.

The catalog of Federal Domestic Assistance program number is 64.104.

List of Subjects in 38 CFR Part 3

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

Approved: April 19, 1996.

Jesse Brown,

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.

§ 3.314 Basic pension determinations.

2. In § 3.314(b)(2) remove the words ''or vicious habits''.

§ 3.323 Combined ratings.

3. In § 3.323(b)(1) and (b)(2) remove the words ''or vicious habits''.

[FR Doc. 96–11280 Filed 5–6–96; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 4

RIN 2900–AH05

Schedule for Rating Disabilities; Fibromyalgia

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by adding a diagnostic code and evaluation criteria for fibromyalgia. The intended effect of this rule is to ensure that veterans receive consistent evaluations for this condition.

DATES: This interim final rule is effective May 7, 1996. Comments must be received on or before July 8, 1996.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye St., NW., Washington, DC 20001. Comments should indicate that they are submitted in response to ''RIN 2900–AH05.'' All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye St., NW., Washington, DC 20001 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: The VA Schedule for Rating Disabilities, which constitutes 38 CFR Part 4, is a guide for the evaluation of disability resulting from diseases or injuries. This document adds to the musculoskeletal section of the Schedule, § 4.71a, a new diagnostic code, 5025, for fibromyalgia, also called fibrositis or primary fibromyalgia syndrome, and establishes criteria for its evaluation.

Fibromyalgia is a syndrome of chronic, widespread musculoskeletal pain associated with multiple tender or ''trigger'' points, and often with multiple somatic complaints. Sleep disorders are present in more than half of the patients. Anxiety, fatigue, headache, and irritable bowel symptoms are also common. Some patients complain of neurologic symptoms such as numbness and weakness, but objective neurologic abnormalities are not found. Other associated findings include depression, Raynaud's-like symptoms, and stiffness. The etiology is unknown.

Classification criteria for fibromyalgia for research and epidemiological purposes were established by the American College of Rheumatology in 1990. The first requirement is a history of widespread pain, which means pain in both the left and right sides of the body, pain both above and below the waist, and pain in both the axial (cervical spine, anterior chest, thoracic spine, or low back) and peripheral (extremity) skeleton. The second requirement is the presence of pain on digital palpation at a minimum of 11 of the following 18 tender point sites: occiput, low cervical, trapezius, supraspinatus, second rib, lateral epicondyle, gluteal, greater trochanter, knee (there is a left site and a right site at each location). In clinical practice, the diagnosis is often made on less stringent criteria, with fewer tender points required.

We are providing three levels of evaluation: 10, 20, and 40 percent, consistent, in our judgment, with the clinical range of impairment of this condition. While patients may have numerous symptoms that may be chronic, it is a benign disease that does not result in loss of musculoskeletal function. For the 40 percent level, the requirements are that the widespread pain and multiple tender points, with or without certain associated complaints, be constant, or nearly so, and refractory to therapy. For the 20 percent level, the requirements are that the pain and tender points, etc., be episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but present more than one-third of the time. For the 10 percent level, the requirement is that the pain and tender points, etc., require continuous medication for control.

It is necessary to make this rule effective upon publication. Conditions not listed in the Schedule may be evaluated under a closely related condition in which anatomical localization, functions affected, and symptomatology are closely analogous. (See 38 CFR 4.20.) However, because of the variety of analogous conditions under which fibromyalgia may be evaluated, it is necessary to establish a final rule immediately in order to avoid inconsistency in evaluations. Comments are being solicited for 60 days after publication of this document. VA may modify the rule in response to comments, if appropriate.

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, this amendment would not directly affect any small entities since it would affect only individuals.

This rule has been reviewed as a ''significant regulatory action'' under E.O. 12866 by the Office of Management and Budget.

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

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: December 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 4, subpart B is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. In § 4.71a, diagnostic code 5025 is added immediately after the sentence that follows diagnostic code 5024, to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

	Rating
* * * * * * *	
5025 Fibromyalgia (fibrositis, primary fibromyalgia syndrome)	
With widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms:	
That are constant, or nearly so, and refractory to therapy	40
That are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time	20
That require continuous medication for control	10
* * * * * * *	

Note: Widespread pain means pain in both the left and right sides of the body, that is both above and below the waist, and that affects both the axial skeleton (i.e., cervical spine, anterior chest, thoracic spine, or low back) and the extremities.

[FR Doc. 96–11275 Filed 5–6–96; 8:45 am]
BILLING CODE 8320–01–P

38 CFR Part 4

RIN 2900–AE41

Schedule for Rating Disabilities; Endocrine System Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Endocrine System. The effect of this action is to update the endocrine portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances which have occurred since the last review.

DATES: This amendment is effective June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: As part of the first comprehensive review of the rating schedule since 1945, VA published a proposal to amend 38 CFR 4.119, which addresses the endocrine system, in the Federal Register of January 22, 1993 (58 FR 5691–95). Interested persons were invited to submit written comments on or before March 23, 1993. We received comments from The American Legion, Disabled American Veterans, Veterans of Foreign Wars, Paralyzed Veterans of America, and VA employees.

There were a number of general comments. Two commenters requested that we establish more objective criteria, especially for thyroid disease, parathyroid disease, and diabetes mellitus. One of them noted that a substantial number of subjective descriptors remained. The other recommended that we remove ambiguous and undefined terms. One commenter said that the schedule should eliminate, as much as possible, the potential for inconsistency and error. Another suggested that removing comparative descriptions such as ''severe,'' ''moderate'', etc., would not disturb the remaining criteria and would result in more uniform rating decisions.

Although the commenters offered no specific alternatives for consideration, VA agrees that objective rating criteria help assure consistency of evaluations. With that in mind, we have revised the proposed criteria. In some cases we have simply removed subjective terms such as ''marked'', ''increasingly severe'', and ''pronounced'' when they did not substantively explain or clarify the evaluation criteria. In other cases, we have supplied objective definitions of terms. In still others, establishing more objective, consistent, and unambiguous criteria required more detailed modification of the proposed criteria, which will be discussed under the affected diagnostic codes.

One commenter, while agreeing with the removal of ambiguous words such as ''severe,'' urged that the rules not be made too concrete and thus sterile.

We believe that providing clear and objective criteria is the best way to assure that disabilities will be evaluated fairly and consistently. Judgment and flexibility are required in the evaluation process, since patients do not commonly present as textbook models of disease, and those evaluating disabilities always have the task of assessing which evaluation level best represents the overall picture. (See 38 CFR 4.7.)

One commenter stated that it would be helpful to have additional notes, such as the note under DC 7913 on the evaluation of the complications of diabetes mellitus, discussing pertinent clinical and nonclinical factors to be considered in assigning evaluations.

In general, we have retained or expanded upon such notes. Where it seemed more appropriate, we have incorporated the content of notes into the evaluation criteria. We have not added notes containing background material, such as general medical information that is available in standard textbooks, or other material that neither prescribes VA policy nor establishes procedures a rating board must follow, because such material is not appropriate in a regulation.

We have revised hyperthyroidism, DC 7900, in response to the comment suggesting more objectivity. The proposed criteria required ''severe tachycardia'' at the 100 percent level and ''tachycardia'' at all other levels. According to ''The Merck Manual'' (463, 16th ed. 1992), tachycardia is a heart rate greater than 100 beats per minute, but the medical literature does not define ''severe'' tachycardia. Using the word ''severe'' therefore imposed upon the rater the burden of subjectively determining its meaning, and we have removed ''severe'' at the 100 percent level. We have also made the criteria more objective by indicating that tachycardia means more than 100 beats per minute.

We proposed that the criteria for hyperthyroidism include ''marked sympathetic nervous system, cardiovascular, or gastrointestinal symptoms'' at the 100 percent level and ''marked emotional instability'' at the 60 percent level. In both cases, we have removed the indefinite word ''marked'' because it does not substantively explain or clarify the evaluation criteria, and the criteria are clear without it.

One commenter suggested that we specify the symptoms of the sympathetic nervous system proposed as criteria at the 100 percent level of evaluation under DC 7900.

VA does not concur. The sympathetic nervous system innervates thoracic, abdominal, and pelvic viscera as well as blood vessel walls. Therefore, exaggerated sympathetic nervous system activity can have widespread manifestations including, but not limited to, elevated blood pressure, increased cardiac output, increased metabolic rate, sweating, nervousness, weight loss, tachycardia, palpitations, increased frequency of bowel movements, and heat intolerance. Certain conditions, hyperthyroidism among them, are known as sympathomimetic conditions because they mimic the effects of increased activity of the sympathetic nervous system, although the sympathetic nervous system itself is normal. Since the particular signs and symptoms that might be exhibited vary widely from individual to individual, limiting the criteria at the 100 percent level to a few selected symptoms of the sympathetic nervous system would be inappropriate.

We proposed that increased pulse pressure be one of the criteria for the 60 percent and 30 percent levels of hyperthyroidism. One commenter questioned the use of pulse pressure as a criterion, stating that it is not a diagnostic marker and is not routinely recorded on an examination report.

Pulse pressure is the difference between the systolic and diastolic blood pressures, and it is readily available for anyone who has had a blood pressure recorded. Hyperthyroidism is one of a number of diseases that may produce an increased (or widened) pulse pressure, which results from an elevated systolic blood pressure and a lowered diastolic blood pressure. Because increased pulse pressure is a common sign of hyperthyroidism, it is an appropriate criterion to use in evaluating hyperthyroidism.

One commenter suggested that tremor (one of several proposed criteria for hyperthyroidism at the 10 and 30