

violating section 404 of the Controlled Substances Act qualifies:

(i) For the disposition available under 18 U.S.C. 3607(a) to persons with no prior conviction under a Federal or State law relating to controlled substances, or

(ii) For an order, under 18 U.S.C. 3607(c), expunging all official records (except the nonpublic records to be retained by the Department of Justice) of the arrest and any subsequent criminal proceedings relating to the offense.

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Dated: July 13, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01-18155 Filed 7-19-01; 8:45 am]

BILLING CODE 4410-FB-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900-AK66

Special Monthly Compensation for Women Veterans Who Lose a Breast as a Result of a Service-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of special monthly compensation for a woman veteran who loses one or both breasts as a result of service-connected disability. The intended effect of this amendment is to implement legislation authorizing VA to provide this benefit.

DATES: Comments must be received by VA on or before August 20, 2001.

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; 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-AK66." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Carol McBrine, M.D., Consultant, Regulations Staff (211A), Compensation

and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 1114(k) of title 38, United States Code, provides a list of service-connected disabilities for which Congress has authorized a special benefit to be paid, independent of any other compensation provided under section 1114 for schedular disability rated under 38 CFR part 4, VA's Schedule for Rating Disabilities. This additional compensation is commonly referred to as special monthly compensation "k" or SMC "k." Section 302 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106-419, 114 Stat. 1822, amended section 1114(k) by making anatomical loss of one or both breasts (including loss by mastectomy) by a woman veteran a condition warranting this special monthly compensation.

The provisions governing special monthly compensation under 38 U.S.C. 1114(k) are codified in title 38 of the Code of Federal Regulations under paragraph (a) of § 3.350, which is titled "Special monthly compensation ratings." Paragraph (a) currently states that special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. In order to implement Public Law 106-419, we propose to remove "or" preceding "complete organic aphonia" in this paragraph and to add following "speech" the phrase "or, in the case of a woman veteran, the anatomical loss of one or both breasts (including loss by mastectomy)."

We also propose to add new paragraph (7) under paragraph (a) to define "anatomical loss of a breast" for purposes of this benefit. Consistent with the assignment of special monthly compensation for certain other losses, for example, for loss of use of a foot, only when there is complete, but not partial, peroneal nerve paralysis, we propose to require that there be complete loss of breast tissue in order to qualify for this benefit. Therefore "anatomical loss of a breast" would exist when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). Various types of breast surgery—radical mastectomy, modified

radical mastectomy, simple (or total) mastectomy, and wide local excision (including partial mastectomy, lumpectomy, tylectomy, segmentectomy, and quadrantectomy)—are defined under diagnostic code 7626 (breast surgery) in 38 CFR 4.116. Radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy would be the equivalent of "anatomical loss of a breast" because they entail complete removal of breast tissue, but wide local excision, defined as removal of a portion of the breast tissue, would not be because it involves less than complete removal of breast tissue. We therefore propose that paragraph (7) state that "anatomical loss of a breast" exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury) and that as defined in 38 CFR 4.116, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.

The exclusion of wide local excision, which can range from undetectable removal of a small amount of breast tissue up to any extent of breast surgery less than a simple (total) mastectomy, would eliminate the need to attempt to define how much removal of breast tissue less than complete removal would qualify for the benefit. There is no standard or feasible way to define such partial removal of breast tissue, so proposing that nothing short of total mastectomy (or equivalent loss of breast tissue due to injury) will qualify as anatomical loss of a breast would ensure consistency in assigning this benefit.

In addition, as we have done for other conditions that warrant special monthly compensation listed in 38 CFR 4.116, the section of the rating schedule that addresses gynecological conditions and disorders of the breast, we propose to annotate all evaluations under diagnostic code 7626 (breast surgery) except for zero percent (which is assigned for wide local excision) with a reference to a footnote instructing raters to review for entitlement to Special Monthly Compensation. The footnote, which is in the current regulation, reads: "Review for entitlement to special monthly compensation under § 3.350 of this chapter." We also propose to amend an existing note at the beginning of § 4.116, which now reads in part, "When evaluating any claim involving loss or loss of use of one or more creative organs, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special

monthly compensation," to include a reference to anatomical loss of one or both breasts. These provisions will promote consideration of the new provision by raters.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries 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 sections 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

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, Pension, Individuals with disabilities, Veterans.

Approved: July 12, 2001.

Anthony J. Principi,

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.

2. In § 3.350, paragraph (a) introductory text, the first sentence is revised; and a new paragraph (a)(7) is added immediately following the authority citation for paragraph (a)(6), to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(a) * * * Special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, complete organic aphonia with constant inability to communicate by speech or, in the case of a woman veteran, the anatomical loss of one or both breasts (including loss by mastectomy). * * *

(7) Anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined in 38 CFR 4.116, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.

(Authority: 38 U.S.C. 501, 1114(k))

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PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

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

4. Section 4.116, Note 2 is amended by removing “one or more creative organs,” and adding, in its place, “one or more creative organs or anatomical loss of one or both breasts.”

5. Diagnostic code 7626 in 38 CFR 4.116 is revised to read as follows:

§ 4.116 Schedule of ratings—gynecological conditions and disorders of the breast.

	Rating
* * * * *	
7626 Breast, surgery of:	
Following radical mastectomy:	
Both	180
One	150
Following modified radical mastectomy:	
Both	160
One	140
Following simple mastectomy or wide local excision with significant alteration of size or form:	
Both	150
One	130
Following wide local excision without significant alteration of size or form:	

	Rating
Both or one	0

Note: For VA purposes:

¹ **Radical mastectomy** means removal of the entire breast, underlying pectoral muscles, and regional lymph nodes up to the coracoclavicular ligament.

² **Modified radical mastectomy** means removal of the entire breast and axillary lymph nodes (in continuity with the breast). Pectoral muscles are left intact.

³ **Simple (or total) mastectomy** means removal of all of the breast tissue, nipple, and a small portion of the overlying skin, but lymph nodes and muscles are left intact.

⁴ **Wide local excision** (including partial mastectomy, lumpectomy, tylectomy, segmentectomy, and quadrantectomy) means removal of a portion of the breast tissue.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 123–1123; FRL–7016–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP). EPA is approving a revision to Missouri rule “Control of Emissions From Industrial Surface Coating Operations.” This revision will ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state’s air program rule revision pursuant to section 110 of the Clean Air Act.

In the final rules section of the **Federal Register**, EPA is approving the state’s submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in