## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 05–96–085]**

**RIN 2115–AE84**

### Special Local Regulations for Marine Events; US Navy Fleet Week Parade of Ships; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation.

**SUMMARY:** This notice implements regulations governing the US Navy Fleet Week Parade of Ships, a marine event to be held in the Nauticus area of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are needed to control vessel traffic in the vicinity of Nauticus Museum due to the confined nature of the waterway and the expected vessel congestion during the US Navy Fleet Week Parade of Ships activities. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

**EFFECTIVE DATES:** The regulations in 33 CFR 100.501 are effective from 10 a.m. to 2 p.m., October 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** LTJG R. Christensen, marine events coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, (804) 483–8521.

**SUPPLEMENTARY INFORMATION:** On October 11, 1996, the US Navy will sponsor the Fleet Week Parade of Ships on the Elizabeth River in the vicinity of the Nauticus Museum. The event will consist of 10 naval vessels passing in review. A large number of spectator vessels are expected. Therefore, to ensure safety of both participants and spectators, 33 CFR 100.501 will be in effect for the event. Under provisions of 33 CFR 100.501, a vessel may not enter the regulated area unless it is registered as a participant with the event sponsor or it receives permission from the Coast Guard patrol commander. These restrictions will be in effect for a limited period and should not result in significant disruption of maritime traffic. The Coast Guard patrol commander will announce the specific periods during which the restrictions will be enforced.

Additionally, 33 CFR 100.72aa and 33 CFR 117.1007(b) will be in effect while 33 CFR 100.501 is in effect. Section 110.72aa establishes special anchorages which may be used by spectator craft. Section 117.1007(b) provides that the draw of the Berkley Bridge shall remain closed from one hour prior to the scheduled event until one hour after the scheduled event unless the Coast Guard patrol commander allows it to be opened for passage of commercial traffic.

Dated: September 18, 1996.

Kent H. Williams,

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 96–25813 Filed 10–7–96; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 4

**RIN 2900–AF01**

### Schedule for Rating Disabilities; Mental Disorders

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the sections of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities pertaining to Mental Disorders. The intended effect of this action is to update the portion of the rating schedule that addresses mental disorders to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

**EFFECTIVE DATE:** This amendment is effective November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Caroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7230.

**SUPPLEMENTARY INFORMATION:** VA published in the Federal Register of October 26, 1995 (60 FR 54825–31) a proposal to amend 38 CFR 4.16 and 4.125 through 4.132, those sections of the rating schedule that address mental disorders. Interested persons were invited to submit written comments on or before December 26, 1995. We received comments from the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, the Vietnam Veterans of America, the American Psychological Association, the American Psychiatric Association, the Association of VA Chief Psychologists, and a concerned individual.

Two commenters felt that sleep and sexual disorders should be included in the rating schedule because they may affect employability and functioning.

Narcolepsy, a sleep disorder, is evaluated under diagnostic code (DC) 8108 in the neurological section of the schedule. We have published a proposed revision to the respiratory section of the schedule in the Federal Register of January 19, 1993 (58 FR 4962–69) that would add a diagnostic code (6846) and evaluation criteria for sleep apnea syndromes, another of the sleep disorders. However, in our judgment, other sleep disorders or sexual disorders would be service-connected so infrequently that they do not warrant separate diagnostic codes and evaluation criteria in the schedule. Any that are determined to be service-connected can be evaluated under ''other and unspecified neurosis'' (DC 9410) or other appropriate analogous condition and be evaluated under the general rating formula for mental disorders. (See 38 CFR 4.20.)

Another commenter suggested that we establish zero-percent evaluations for sexual dysfunction and personality disorders so that, although VA would not compensate for the conditions, they could be service-connected for treatment purposes.

A veteran is entitled to VA medical care for any mental disorder, including any sexual disorder, that is service-connected, i.e., is incurred in, or aggravated by, active military service. Whether a disability is service-connected, for treatment or compensation purposes, must be determined on a case by case basis. The determination is not based on whether the condition is included in the rating schedule; it is made under the VA regulations beginning at 38 CFR 3.303. Therefore, adding sexual dysfunction and personality disorders to the rating schedule could not have the effect of conferring service connection for treatment purposes, as the commenter believes, and we make no change based on this comment.

One commenter suggested that personality disorders should be included in the rating schedule.

As 38 CFR 4.1 emphasizes, the rating schedule is primarily a guide in the evaluation of disability resulting from diseases or injuries encountered as a result of or incident to military service. Since 38 CFR 3.303(c) specifically states that personality disorders are not diseases or injuries within the meaning of applicable legislation, they cannot be service-connected, and it would be inappropriate to include them in the rating schedule.

One commenter stated that the notice of proposed rulemaking erred in stating that DSM–IV (Diagnostic and Statistical Manual of Mental Disorders, 4th edition) categorizes dementia associated with alcoholism and drugs as subtypes of dementia due to a general medical condition. The commenter points out that DSM–IV has separate categories for dementias associated with alcoholism and other drugs and suggested that VA establish a category for substance-induced dementia.

We proposed that the title of DC 9326 be ''Dementia due to other neurologic or general medical conditions (endocrine disorders, metabolic disorders, drugs, alcohol, poisons, Pick's disease, brain tumors, etc.).'' In response to this comment, and for the sake of greater accuracy, we have revised the title to ''Dementia due to other neurologic or general medical conditions (endocrine disorders, metabolic disorders, Pick's disease, brain tumors, etc.) or that are substance-induced (drugs, alcohol, poisons).''

Another commenter suggested that by addressing the 12 dementias described in DSM–IV under only six categories, VA ignores important differences between specific types of dementias, such as whether or not they are treatable.

The six categories that we proposed, which are representative examples of the broad range of causes of dementias, are adequate for VA's purpose, which is to evaluate the severity of dementias when they occur. Since all dementias are evaluated under the General Rating Formula for Mental Disorders, increasing the number of categories would not affect evaluations.

The same commenter recommended that we retain the previous title of DC 9310, ''dementia, primary, degenerative,'' because it is more accurate and appropriate than ''dementia of the Alzheimer's type,'' as DSM–IV lists the condition.

DSM–IV is the basis for diagnosing and classifying mental disorders in the United States. Examination reports from both VA and non-VA practitioners will generally use the nomenclature adopted in DSM–IV, and it is important that the schedule use the same nomenclature whenever possible. Since the commenter offered no other reason for deviating from DSM–IV in this instance, we have retained the term ''dementia of the Alzheimer's type'' as proposed.

One commenter recommended that we retain the directions formerly found in §§ 4.125 and 4.126, which stated that the psychiatric nomenclature employed is based upon the Diagnostic and Statistical Manual of Mental Disorders; that it is imperative that rating personnel familiarize themselves thoroughly with this manual; and, that a disorder will be diagnosed in accordance with the APA manual (DSM).

The revised mental disorders sections contain similar directives about the use of DSM–IV as the former schedule had about DSM–III. If the diagnosis of a mental disorder does not conform to DSM–IV, or is not supported by the findings on the examination report, § 4.125(a) requires the rating agency to return the report to the examiner to substantiate the diagnosis. Further, a note in § 4.130 states that the nomenclature in the schedule is based on DSM–IV and that rating agencies must be thoroughly familiar with this manual to properly implement the directives in § 4.125 through § 4.129 and to apply the general rating formula for mental disorders in § 4.130. This information is direct and unambiguous, and therefore there is no need to include the same material in §§ 4.125 and 4.126.

Three commenters suggested the rating schedule cite only ''the current edition of the DSM'' rather than ''DSM–IV,'' which they felt would eliminate the need for a regulatory change when a new edition is published.

VA will need to study future revisions of the DSM to determine whether they warrant making changes in the schedule. However, such changes would require proper notice to the public through publication for review and comment in the Federal Register; having the rating schedule refer only to the ''current edition'' would not give sufficient notice under the Administrative Procedures Act. Also, VA does not avoid the need to revise the rating schedule by referring to the ''current edition'' of the DSM. This revision, for example, makes substantive revisions to the schedule itself based upon DSM–IV. If the regulations were to refer to the ''current edition'' of DSM, and another edition was published without the schedule being revised in accordance with that edition, the regulations would be internally inconsistent.

Three commenters objected to the proposed language in § 4.126(a) that would require the rating agency to assign an evaluation based on all the evidence of record ''rather than on the examiner's assessment of the level of disability at the moment of the examination.'' Two commenters suggested that revising the phrase to ''rather than solely on the examiner's assessment of the level of disability at the moment of the examination'' might be clearer.

Since such a change might more clearly indicate that the examiner's assessment is a significant, but not the only, factor in determining the level of disability, we have revised the sentence as the commenters suggested.

One commenter suggested two changes to the proposed § 4.126(a). Because the commenter felt the proposed language does not clearly instruct the adjudicator to assess current findings in light of the history of the disability, the commenter recommended that the regulation direct the rating agency to assign an evaluation based on all evidence of record ''as it bears on current occupational and social impairment rather than solely on isolated examination findings which may only represent episodic changes.'' The commenter also suggested that in order to prevent rating agencies from overestimating the value of short periods of remission, we modify the language to require rating agencies to consider the veteran's capacity for adjustment during periods of *sustained* remission.

The language proposed for § 4.126(a) reinforces § 4.2, which requires the rating agency to interpret reports of examination in light of the entire recorded history. Furthermore, § 4.126(a) requires rating agencies to consider the length of remissions and the veteran's capacity for adjustment during periods of remission, and to assign an evaluation based on all evidence of record that bears on occupational and social impairment. ''Sustained'' is a subjective term that may not be applied consistently, and, in our judgment, the language as proposed is more likely to assure that the length of remissions is considered and given appropriate weight in the context of all evidence of record. We have, therefore, made no change based on these suggestions.

One commenter opposed the proposed deletion of the statement in former § 4.130 that ''the examiner's analysis of the symptomatology'' is one of the ''essentials'' and objected to the statement in the preamble that VA will no longer rely on a subjective determination as to the degree of impairment.

The evaluation levels in the proposed general rating formula for mental disorders are based on the effects of the signs and symptoms of mental disorders. To be adequate for evaluation purposes under that formula, an examination report must describe an individual's signs and symptoms as well as their effects on occupational and social functioning. In essence, we have restructured the evaluation criteria so

that it is the severity of the effects of the symptoms as described by the examiner that determines the rating. As a result, the statement previously contained in § 4.130 regarding the examiner's analysis of symptomatology would be redundant and is no longer necessary. We have therefore made no changes based on this comment.

Another commenter suggested that the use of the word ''severe'' at the 70-percent level in the general rating formula for mental disorders violates the principle that vague, subjective terms should not be used in the rating schedule. The commenter also contends that the use of ''severe'' by an examining doctor to characterize a mental disorder will often be used as the sole basis for granting a 70-percent evaluation because a 70-percent evaluation requires ''severe'' occupational and social impairment. The commenter therefore suggested that we delete the word ''severe'' in the general rating formula for mental disorders.

Since it is VA's intent that the evaluation will be determined by the examiner's description of the signs and symptoms and their effects rather than by an overall characterization of the condition, we have deleted the word ''severe'' from the 70-percent criteria in the general rating formula for mental disorders, as the commenter suggested.

One commenter suggested we require a social and industrial survey as an integral part of an overall rating evaluation.

A social and industrial survey is not necessary to evaluate every mental disorder; the information provided by the examiner will generally be sufficient to determine the proper evaluation. Whether the additional information provided by a social and industrial survey is necessary to assure an accurate evaluation is best determined by either the examiner or rating agency on a case by case basis. Requiring a survey in every case would serve no purpose and would therefore cause unwarranted delays in the processing of claims.

One commenter stated that a 10-percent evaluation when symptoms are controlled by continuous medication is too low to allow for the side effects of medication, which may themselves be incapacitating.

In our judgment, 10 percent is an adequate evaluation in the average situation where symptoms of a mental disorder are controlled by continuous medication. 38 CFR 3.310(a) states that a disability that is proximately due to a service-connected disease or injury shall be service-connected and considered as part of the original condition. Therefore, disabling conditions that result from medication for a service-connected mental disorder and that warrant more than a ten percent evaluation can be service-connected and separately evaluated under an appropriate diagnostic code.

One commenter suggested that we adopt separate rating formulae tailored to each psychiatric disorder rather than using a general rating formula for mental disorders as proposed.

Many of the signs, symptoms, and effects of mental disorders are not unique to specific diagnostic entities, as evidenced by the fact that the Global Assessment of Functioning Scale in DSM-IV uses a single set of criteria for assessing psychological, social, and occupational functioning in all mental disorders. The symptoms in the general rating formula for mental disorders are representative examples of symptoms that often result in specific levels of disability. In our judgment, using a general rating formula for mental disorders is a better way to assure that mental disorders producing similar impairment will be evaluated consistently.

One commenter suggested that we evaluate post-traumatic stress disorder (PTSD) not under a general rating formula for mental disorders but under a separate formula based on the frequency of symptoms particular to PTSD, i.e., nightmares, flashbacks, troubling intrusive memories, uncontrollable rage, and startle response.

The distinctive PTSD symptoms listed by the commenter are used to diagnose PTSD rather than evaluate the degree of disability resulting from the condition. Although certain symptoms must be present in order to establish the diagnosis of PTSD, as with other conditions it is not the symptoms, but their effects, that determine the level of impairment. For example, it is not the presence of ''flashbacks,'' per se, but their effects, such as impaired impulse control, anxiety, or difficulty adapting to stressful situations, that determine the evaluation. We have, therefore, made no changes based on this suggestion.

One commenter argued that the proposed criteria for a total evaluation include more symptoms of thought disorders than of mood disorders, and, as a result, mood disorders are less likely than thought disorders to be evaluated as totally disabling.

As previously discussed, it is the severity of the effects of a mental disorder that determine the rating. To be assigned a 100 percent rating, a mental disorder must cause total occupational and social impairment. Mood disorders that are characterized by grossly inappropriate behavior, persistent danger of hurting self or others, or intermittent inability to perform activities of daily living, may cause total occupational and social impairment in some individuals. Since the evaluation criteria would clearly support a total evaluation for a mood disorder under those circumstances, we make no change based on this comment.

Another commenter suggested that we determine evaluation levels on the basis of an individual's earnings. For example, if there were no gainful employment, or if earnings did not exceed $3600 per year over a two year period, a disability would be considered totally disabling.

Ratings are based primarily upon the average impairment in earning capacity, that is, upon the economic or industrial handicap which must be overcome and not from individual success in overcoming it (see 38 CFR 4.15). Defining levels of disability for mental disorders in terms of an individual's earnings would be inconsistent with that principle and, furthermore, would not take into account other variables that might affect earnings, such as the presence and severity of other service-connected or non-service-connected disabilities, differences in the prevailing wage in different localities, part time employment, etc. For these reasons, it is not feasible to evaluate mental disabilities based on the veteran's earnings.

One commenter said that the evaluation criteria for the 50-percent and the 70-percent levels are too complicated and will therefore be difficult to apply; however, the commenter offered no alternative criteria for us to consider.

The criteria in the general rating formula for mental disorders include examples and indicate specific effects of social and occupational impairment for various evaluation levels. The 50-percent level, for example, requires ''reduced reliability and productivity,'' while the 70-percent level requires ''deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood.'' Examples of signs and symptoms that are typically associated with that level of impairment are listed at each level. This formula offers sufficient guidance to the rating agency to assure consistent evaluations, but not so much detail that it is impractical or inflexible. Since the commenter offered no alternative method of evaluation for us to consider, we have adopted the general rating formula as proposed.

One commenter suggested that § 4.127 be revised to establish that mental retardation and personality disorders, while not disabilities for compensation purposes, can be considered in determining whether a veteran is permanently and totally disabled for non-service-connected pension purposes.

As proposed, § 4.127 would have stated that mental retardation and personality disorders would not be considered as ''disabilities under the terms of the schedule.'' For the sake of clarity, we have revised the proposed language of § 4.127 to state that those conditions are not ''diseases or injuries for compensation purposes, and, except as provided in § 3.310(a) of this chapter, disability resulting from them may not be service-connected.''

One commenter said that § 4.127 should explain that personality disorders may be service-connected secondary to epilepsy and other conditions.

38 CFR 3.310(a) states that a disability that is proximately due to or the result of a service-connected disease or injury shall be service connected and considered part of the original condition. Therefore, organic personality disorders that develop secondary to service-connected head trauma, epilepsy, etc., (called ''personality change due to a general medical condition'' in DSM–IV) will be service-connected as secondary to those conditions and evaluated under the general rating formula for mental disorders. To reinforce that principle, we have added the phrase, ''except as provided in § 3.310(a) of this chapter,'' to § 4.127, as discussed above. For the sake of clarity, we have also revised the title of DC 9327, organic mental disorder, other, to include ''personality change due to a general medical condition.''

The former § 4.127 addressed mental deficiency and personality disorders and stated that ''superimposed psychotic disorders developing after enlistment, i.e., mental deficiency with psychotic disorder, or personality disorder with psychotic disorder, are to be considered as disabilities analogous to, and ratable as, schizophrenia, unless otherwise diagnosed.'' We proposed to revise § 4.127 to state that a mental disorder that is superimposed upon, but clearly separate from, mental retardation or a personality disorder may be a disability for VA compensation purposes.

Two commenters contend that it is not feasible to attribute signs and symptoms to one of two or more coexisting conditions, and another commenter submitted a medical statement addressing the potential difficulty of such an undertaking.

Our intent in proposing the revision was to clarify that any mental disorders, not only psychotic disorders, that are incurred or aggravated in service may be disabilities for VA compensation purposes, even if superimposed upon mental retardation or a personality disorder. In view of the commenters' concerns, however, and in order to prevent any misunderstanding, we have revised this section. We deleted ''a mental disorder that is superimposed upon, but clearly separate from, mental retardation or a personality disorder may be a disability for VA compensation purposes'' in § 4.127 and substituted the sentence, ''However, disability resulting from a mental disorder that is superimposed upon mental retardation or a personality disorder may be service-connected.'' The need to distinguish the effects of one condition from those of another is not unique to mental disorders, but occurs whenever two conditions, one service-connected and one not, affect similar functions or anatomic areas. When it is not possible to separate the effects of the conditions, VA regulations at 38 CFR 3.102, which require that reasonable doubt on any issue be resolved in the claimant's favor, clearly dictate that such signs and symptoms be attributed to the service-connected condition.

One commenter stated that the proposed change to § 4.127 precludes personality disorders from being considered as part of a service-connected disability, which the commenter felt represented an arbitrary change.

The previous schedule merely directed that psychotic disorders superimposed upon mental deficiency or personality disorder be considered analogous to, and ratable as, schizophrenia. It did not address how to carry out the evaluation, or specifically how to assess the signs and symptoms of the preexisting condition. The revised § 4.127 represents no change in rating procedures, except for expanding this provision to include all mental disorders. As explained above, procedures for determining an evaluation in such cases are not unique to mental disorders and have not been changed.

One commenter felt that the development of a mental disorder during service should establish aggravation of any preexisting personality disorder, for purposes of disability compensation; another felt that a personality disorder that worsens during service could affect employability and thus warrant disability compensation.

Section 4.127 establishes that mental retardation and personality disorders are not diseases or injuries for VA compensation purposes and that disability resulting from them may not be service-connected. Service connection of personality disorders, whether on a direct basis or by aggravation, is therefore prohibited, and we have made no change based on these comments.

The previous rating schedule stated that social inadaptability was to be evaluated only as it affected industrial inadaptability and was not to be used as the sole basis for assigning a percentage evaluation (§ 4.129). We proposed to retain this concept by stating in § 4.126(b) that the rating agency will consider the extent of social impairment, but shall not assign an evaluation solely on the basis of social impairment. Three commenters addressed this issue.

One commenter suggested that we revise § 4.126(b) to place greater emphasis on social impairment as a good indicator of the level of industrial impairment.

The evaluation criteria in the general rating formula for mental disorders include facets of both occupational and social impairment, and both may be taken into consideration in the evaluation of a mental disorder. Revision of § 4.126(b) to place greater emphasis on social impairment is therefore unnecessary because the extent of social impairment is an inherent part of the evaluation criteria. We have therefore made no revision based on this comment.

Two commenters suggested that we revise § 4.126(b) to allow service connection at zero percent for conditions that produce social impairment, but no occupational impairment, so that veterans would be eligible for VA medical treatment.

As previously discussed, service-connected conditions are entitled to VA medical care, but whether a condition is service-connected is determined under the VA regulations beginning at 38 CFR 3.303, not under the rating schedule. It would therefore be inappropriate to adopt this suggestion.

Two commenters urged that VA include substance abuse disorders in the disability rating schedule because they frequently affect employability, and any mental disorder that affects employment should be covered by the rating system.

The most common substance abuse disorders are abuse of alcohol and drugs. Since they are addressed

elsewhere in VA regulations (see 38 CFR 3.1 and 3.301(a)), they need not be included in the rating schedule.

Two commenters felt that the term ''psychic trauma'' in the title of § 4.129, Mental disorders due to psychic trauma, connotes extrasensory or paranormal influences on mental processes and suggested that we substitute the term ''traumatic stress disorders.''

Based on this suggestion, we have retitled § 4.129 as ''Mental disorders due to traumatic stress.''

As proposed, § 4.125 would require a rating agency to determine whether a change in diagnosis is a progression of a prior diagnosis, a correction of an error in a previous diagnosis, or the development of a new and separate condition. Two commenters suggested that a fourth reason for a change in diagnosis, the use of a new diagnostic term not previously available to rating agencies, be added to the list.

A ''new diagnostic term not previously available to rating agencies'' necessarily implies a diagnostic term that has evolved since publication of DSM–IV. 38 CFR 4.125(a) requires that the diagnosis of a mental disorder must conform to DSM–IV. Therefore, the only diagnostic terms for mental disorders that are acceptable for rating purposes are those in DSM–IV. Appendices in DSM–III, DSM–III–R, and DSM–IV highlight changes in terminology from the previous DSM editions, and rating agencies may refer to them to reconcile differences from earlier terminology, if necessary. However, diagnostic terms that postdate DSM–IV are not acceptable for rating purposes, and we make no change based on this comment.

If a mental disorder has been assigned a total evaluation due to a continuous period of hospitalization lasting six months or more, we proposed to require in § 4.128 that the rating agency continue the total evaluation indefinitely and schedule an examination six months after the veteran is discharged or released to nonbed care and that a change in evaluation based on that examination would be subject to the notice and effective date provisions of 38 CFR 3.105(e). One commenter suggested that we add references to 38 CFR 3.344, ''Stabilization of disability evaluations,'' and 3.340, ''Total and permanent total ratings and unemployability.''

Sections 3.340 and 3.344 are not limited to mental disorders, but are generally applicable, and, as such, must always be considered by rating agencies when revising evaluations. The provisions of § 4.128 ensure a total evaluation during a period of adjustment after a lengthy hospitalization for a mental disorder. Since §§ 3.340 and 3.344 would not apply until that temporary total evaluation is revised following the examination required by § 4.128, we make no change based on this comment.

One commenter suggested that we retain in § 4.129 historical information about stress-induced disorders formerly found in § 4.131.

The expository material that we proposed to remove from § 4.131 described the etiology and diagnosis of stress-induced disorders; it did not set forth VA policy or establish procedures that rating agencies must follow when evaluating those conditions. That material is therefore not appropriate in a regulation, and we have made no change based on this suggestion.

One commenter objected to the proposed removal of language from § 4.130 specifically stating that two of the most important determinants of disability are time lost from gainful work and decrease in work efficiency.

Those principles are reflected in the evaluation criteria of the general rating formula for mental disorders, which evaluate the signs and symptoms of mental disorders according to their effects, i.e., reduced reliability and productivity, occasional decreases in work efficiency, intermittent periods of inability to perform occupational work tasks, etc. Comments about work attendance and efficiency would be redundant in § 4.130, and we have made no change based on this comment.

38 CFR 4.16 provides that any veteran unable to secure or follow a substantially gainful occupation because of service-connected disabilities will be awarded a total evaluation even though the schedular evaluation is less than total; it also establishes criteria for establishing entitlement to such extra-schedular total evaluations. We proposed to delete § 4.16(c), which stated that mental disorders meeting certain criteria should be assigned a 100-percent evaluation under the schedule, rather than an extra-schedular total evaluation. One commenter did not object to the proposed deletion of § 4.16(c), but noted that, for a veteran with a single disability, § 4.16(a) requires that the disability be 60 percent or more disabling to establish entitlement to a total evaluation due to unemployability. The commenter stated that because there is no 60-percent evaluation level in the general rating formula for mental disorders, veterans with mental disorders would be disadvantaged. The commenter recommended that we revise § 4.16(a) to require a 50-percent rating for a single disability rather than a 60-percent rating, and to state that total disability ratings shall (rather than may) be assigned when a veteran's disabilities satisfy specified criteria.

Since revisions to § 4.16(a) and (b), which establish general criteria for total disability evaluations for compensation because an individual is unemployable, are beyond the scope of this rulemaking, which is specific to mental disorders, we make no change. VA is addressing the issue of individual unemployability, including the provisions of 38 CFR 4.16(a) and (b), in a separate rulemaking (RIN 2900–AH21). We note, however, that veterans with mental disorders are not disadvantaged under current § 4.16. Well-established regulatory procedures in 38 CFR 4.16(b) authorize VA to assign a total evaluation for unemployability to a veteran with a single disability evaluated less than 60-percent disabling, if the disability renders the veteran unemployable.

One commenter encouraged VA to recognize the value of objective assessment by psychological and neuropsychological tests and incorporate the use of these diagnostic tools within the disability rating system.

The use of specific diagnostic tools, such as psychological and neuropsychological testing, may be requested at the discretion of an examiner. However, since such tests are primarily for diagnostic, rather than evaluation, purposes, it would serve no purpose to address them in the rating schedule, which is a guide to the evaluation of disabilities.

One commenter suggested that we revise the cross references in 38 CFR 4.13 to reflect changes adopted in this rulemaking.

We have amended 38 CFR 4.13 accordingly.

The same commenter suggested that we revise the note regarding mental disorders in epilepsies under diagnostic codes 8910–8914 in the schedule for rating neurological disorders to correct the diagnostic terms and cross-referenced diagnostic codes.

The note in § 4.124a is included in the schedule for rating neurological conditions and convulsive disorders and is therefore beyond the scope of this rulemaking. VA is revising the portion of the rating schedule that addresses neurological disorders in a separate rulemaking, and we will address those issues in that revision.

One commenter recommended that VA consider incorporating the International Classification of Impairments, Disabilities, and Handicaps (ICIDH) into the VA schedule for rating mental disorders. The ICIDH, which focuses on functionality, was

developed and issued by the World Health Organization (WHO), in 1980. WHO is currently revising it. When the revised version is published, VA will review it to assess its usefulness for VA rating purposes.

On further review, we have revised the proposed language of § 4.129 for the sake of clarity and have also updated the term ''rating board'' to ''rating agency'' throughout the mental disorders sections.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted as a final rule with the changes noted above.

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 this 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 amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This rule has been reviewed under Executive Order 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: September 9, 1996.

Jesse Brown,

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 4 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 A—[Amended]

2. In § 4.13, the third sentence is revised to read as follows:

**§ 4.13 Effect of change of diagnosis.**

* * * * *

The relevant principle enunciated in § 4.125, entitled ''Diagnosis of mental disorders,'' should have careful attention in this connection.

* * * * *

**§ 4.16 [Amended]**

3. In § 4.16, paragraph (c) is removed.

### Subpart B—[Amended]

4. Section 4.125 is revised to read as follows:

**§ 4.125 Diagnosis of mental disorders.**

(a) If the diagnosis of a mental disorder does not conform to DSM–IV or is not supported by the findings on the examination report, the rating agency shall return the report to the examiner to substantiate the diagnosis.

(b) If the diagnosis of a mental disorder is changed, the rating agency shall determine whether the new diagnosis represents progression of the prior diagnosis, correction of an error in the prior diagnosis, or development of a new and separate condition. If it is not clear from the available records what the change of diagnosis represents, the rating agency shall return the report to the examiner for a determination.

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

5. Section 4.126 is revised to read as follows:

**§ 4.126 Evaluation of disability from mental disorders.**

(a) When evaluating a mental disorder, the rating agency shall consider the frequency, severity, and duration of psychiatric symptoms, the length of remissions, and the veteran's capacity for adjustment during periods of remission. The rating agency shall assign an evaluation based on all the evidence of record that bears on occupational and social impairment rather than solely on the examiner's assessment of the level of disability at the moment of the examination.

(b) When evaluating the level of disability from a mental disorder, the rating agency will consider the extent of social impairment, but shall not assign an evaluation solely on the basis of social impairment.

(c) Delirium, dementia, and amnestic and other cognitive disorders shall be evaluated under the general rating formula for mental disorders; neurologic deficits or other impairments stemming from the same etiology (e.g., a head injury) shall be evaluated separately and combined with the evaluation for delirium, dementia, or amnestic or other cognitive disorder (see § 4.25).

(d) When a single disability has been diagnosed both as a physical condition and as a mental disorder, the rating agency shall evaluate it using a diagnostic code which represents the dominant (more disabling) aspect of the condition (see § 4.14).

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

6. Section 4.127 is revised to read as follows:

**§ 4.127 Mental retardation and personality disorders.**

Mental retardation and personality disorders are not diseases or injuries for compensation purposes, and, except as provided in § 3.310(a) of this chapter, disability resulting from them may not be service-connected. However, disability resulting from a mental disorder that is superimposed upon mental retardation or a personality disorder may be service-connected.

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

7. Section 4.128 is revised to read as follows:

**§ 4.128 Convalescence ratings following extended hospitalization.**

If a mental disorder has been assigned a total evaluation due to a continuous period of hospitalization lasting six months or more, the rating agency shall continue the total evaluation indefinitely and schedule a mandatory examination six months after the veteran is discharged or released to nonbed care. A change in evaluation based on that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

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

8. Section 4.129 is revised to read as follows:

**§ 4.129 Mental disorders due to traumatic stress.**

When a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the veteran's release from active military service, the rating agency shall assign an evaluation of not less than 50 percent and schedule an examination within the six month period following the veteran's discharge to determine whether a change in evaluation is warranted.

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

**§§ 4.130 and 4.131 [Removed]**

9. Sections 4.130 and 4.131 are removed.

**§ 4.132 [Redesignated as § 4.130]**

10. Section 4.132 is redesignated as § 4.130 and newly redesignated § 4.130 is revised to read as follows:

**§ 4.130 Schedule of ratings—mental disorders.**

The nomenclature employed in this portion of the rating schedule is based upon the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, of the American Psychiatric Association (DSM–IV). Rating agencies must be thoroughly familiar with this manual to properly implement the directives in § 4.125 through § 4.129 and

to apply the general rating formula for mental disorders in § 4.130. The schedule for rating for mental disorders is set forth as follows:

| | Rating |
|---|---|
| **Schizophrenia and Other Psychotic Disorders** | |
| 9201 Schizophrenia, disorganized type<br>9202 Schizophrenia, catatonic type<br>9203 Schizophrenia, paranoid type<br>9204 Schizophrenia, undifferentiated type<br>9205 Schizophrenia, residual type; other and unspecified types<br>9208 Delusional disorder<br>9210 Psychotic disorder, not otherwise specified (atypical psychosis)<br>9211 Schizoaffective disorder | |
| **Delirium, Dementia, and Amnestic and Other Cognitive Disorders** | |
| 9300 Delirium<br>9301 Dementia due to infection (HIV infection, syphilis, or other systemic or intracranial infections)<br>9304 Dementia due to head trauma<br>9305 Vascular dementia<br>9310 Dementia of unknown etiology<br>9312 Dementia of the Alzheimer's type<br>9326 Dementia due to other neurologic or general medical conditions (endocrine disorders, metabolic disorders, Pick's disease, brain tumors, etc.) or that are substance-induced (drugs, alcohol, poisons)<br>9327 Organic mental disorder, other (including personality change due to a general medical condition) | |
| **Anxiety Disorders** | |
| 9400 Generalized anxiety disorder<br>9403 Specific (simple) phobia; social phobia<br>9404 Obsessive compulsive disorder<br>9410 Other and unspecified neurosis<br>9411 Post-traumatic stress disorder<br>9412 Panic disorder and/or agoraphobia<br>9413 Anxiety disorder, not otherwise specified | |
| **Dissociative Disorders** | |
| 9416 Dissociative amnesia; dissociative fugue; dissociative identity disorder (multiple personality disorder)<br>9417 Depersonalization disorder | |
| **Somatoform Disorders** | |
| 9421 Somatization disorder<br>9422 Pain disorder<br>9423 Undifferentiated somatoform disorder<br>9424 Conversion disorder<br>9425 Hypochondriasis | |
| **Mood Disorders** | |
| 9431 Cyclothymic disorder<br>9432 Bipolar disorder<br>9433 Dysthymic disorder<br>9434 Major depressive disorder<br>9435 Mood disorder, not otherwise specified | |
| **Chronic Adjustment Disorder** | |
| 9440 Chronic adjustment disorder<br>General Rating Formula for Mental Disorders:<br>Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name ..... | 100 |
| Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships ..... | 70 |

| | Rating |
|---|---|
| Occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships | 50 |
| Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events) | 30 |
| Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by continuous medication | 10 |
| A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication | 0 |
| **Eating Disorders** | |
| 9520 Anorexia nervosa<br>9521 Bulimia nervosa<br>Rating Formula for Eating Disorders: | |
| Self-induced weight loss to less than 80 percent of expected minimum weight, with incapacitating episodes of at least six weeks total duration per year, and requiring hospitalization more than twice a year for parenteral nutrition or tube feeding | 100 |
| Self-induced weight loss to less than 85 percent of expected minimum weight with incapacitating episodes of six or more weeks total duration per year | 60 |
| Self-induced weight loss to less than 85 percent of expected minimum weight with incapacitating episodes of more than two but less than six weeks total duration per year | 30 |
| Binge eating followed by self-induced vomiting or other measures to prevent weight gain, or resistance to weight gain even when below expected minimum weight, with diagnosis of an eating disorder and incapacitating episodes of up to two weeks total duration per year | 10 |
| Binge eating followed by self-induced vomiting or other measures to prevent weight gain, or resistance to weight gain even when below expected minimum weight, with diagnosis of an eating disorder but without incapacitating episodes | 0 |

Note: An incapacitating episode is a period during which bed rest and treatment by a physician are required.

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

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## POSTAL SERVICE

## 39 CFR Part 111

## Mailing Restrictions for Domestic Packages Weighing 16 Ounces or More

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth revised Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement restrictions on the deposit into collection receptacles of domestic packages weighing 16 ounces (1 pound) or more that bear postage stamps. This final rule extends provisions previously adopted for similar packages sent to international and APO/FPO destinations.

**EFFECTIVE DATE:** August 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** James E. Orlando or William F. Carleton, (202) 268–4360.

**SUPPLEMENTARY INFORMATION:** On September 27, 1995, the Postal Service published a final rule in the Federal Register announcing restrictions on the mailing of packages weighing 16 ounces or more to international and APO/FPO destinations (60 FR 49755–49758). These restrictions were promulgated to enhance airline security measures and to protect the traveling public, postal employees, and postal contractors who transport U.S. mail. The Postal Service developed these changes in package collection procedures in consultation with the Federal Aviation Administration (FAA).

The Postal Service has now determined, for the same reasons, to extend similar restrictions to packages that are deposited into collection receptacles and mailed to domestic addresses. These added provisions will affect only First-Class/Priority Mail packages weighing 16 ounces or more that bear postage stamps and that are mailed from domestic addresses. These new restrictions do not affect Express Mail, Periodicals (former second-class mail), or Standard Mail (B) (former fourth-class mail) at any weight up to the maximum of 70 pounds; any item weighing less than 16 ounces; and any package, regardless of weight, for which postage is paid with a postage meter or a permit imprint.

Under the revised standards set forth below, domestic First-Class/Priority Mail packages bearing postage stamps and weighing 16 ounces or more may not be deposited into collection receptacles, including street, lobby, and apartment boxes, or left in rural mailboxes. Instead, these packages must be presented by the sender at the local post office. A sender known to a Postal Service delivery employee may also give such packages to a city, rural, or highway contract letter carrier.

Any affected package weighing 16 ounces or more that requires air transportation and that is deposited into a collection receptacle will be returned to the sender with a note asking the sender to present the package personally at the local post office or to a city, rural, or highway contract letter carrier if the sender is known to the carrier. Postage on an item improperly deposited into a collection receptacle may be used when the item is remailed at the post office. A sender who does not wish to remail a returned item may apply for a postage refund for the item at any post office. Any piece without a return address will be sent to a Postal Service mail recovery center to determine the identity of the sender for appropriate return.

These changes will remain in effect until further notice. For most consumers and businesses, there should be little impact because the Postal Service believes that less than one percent of its package volume is in the affected