

732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule

would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 924**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 2001.

**Ervin J. Barchenger,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 01-27543 Filed 11-1-01; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 4**

**RIN 2900-AI44**

**Ankylosis and Limitation of Motion of Digits of the Hands**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for ankylosis and limitation of motion of the fingers and thumb. This change is necessary to ensure that

veterans diagnosed with these conditions receive consistent evaluations.

**DATES:** Comments must be received by VA on or before January 2, 2002.

**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](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are in response to "RIN 2900-AI44." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:**

Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-7230.

**SUPPLEMENTARY INFORMATION:** This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by clarifying the method of evaluation for ankylosis and limitation of motion of the digits of the hands.

Current diagnostic codes (DC's) 5216 through 5227 represent ankylosis of individual digits or combinations of digits, and they are grouped in the following way: DC's 5216 through 5219 represent unfavorable ankylosis of multiple digits; DC's 5220 through 5223 represent favorable ankylosis of multiple digits; and DC's 5224 through 5227 represent ankylosis of individual digits. Explanatory notes preceding DC 5216, following DC 5219, preceding DC 5220, following DC 5223, and following DC 5227 give specific directions on evaluating limitation of motion or ankylosis of single and multiple digits, determining whether ankylosis is favorable or unfavorable, and evaluating combinations of digit amputations at various levels or any combination of digit amputation, ankylosis, or limitation of motion of the digits.

The United States Court of Veterans Appeals (now the Court of Appeals for Veterans Claims), in *Hill v. Principi*, 3 Vet. App. 540, 541 (1992), noted that "[n]either the format of the code pertaining to finger injuries nor its interpretive notes are a model of clarity." We therefore propose to clarify the method of evaluation of ankylosis

and limitation of motion of single and multiple digits by revising and reorganizing the diagnostic codes and explanatory notes that address the evaluation of these conditions. The intent of this revision is to assure fair and consistent evaluations of these disabilities by clarifying existing evaluation criteria.

We propose to relocate the interpretive notes regarding evaluations of ankylosis and limitation of motion of the digits of the hands into a single set of instructions preceding DC 5216 and to delete current notes (1), (2), (3), and (4) preceding DC 5216; notes (a), (b), and (c) following DC 5219; notes (1), (2), (3) and (4) preceding DC 5220; notes (a) and (b) following DC 5223; and the note following DC 5227. We propose to incorporate the content of these notes into the proposed instructions preceding DC 5216, with modifications as discussed below.

We propose to change the term used for the third digit from "middle finger" to "long finger," the currently preferred terminology. We also propose to add descriptions of the position of function of the hand, and of the normal range of motion of the index, long, ring, and little fingers, in order to assist the rating agency in assessing impairment due to limitation of motion or ankylosis. We also propose to add Roman numeral designations for the digits: The thumb is digit I; the index, long, ring, and little fingers are digits II, III, IV, and V, respectively.

In the current schedule, ankylosis, *i.e.*, immobility of a joint, and limitation of motion, *i.e.*, loss of any portion of the normal range of motion of a joint, are evaluated using the same criteria. We propose to revise the criteria under diagnostic codes 5216 through 5227 so that they address ankylosis only, and to add three new diagnostic codes, 5228, 5229, and 5230, to evaluate limitation of motion of the thumb, the index or long finger, and the ring or little finger, respectively. The proposed criteria are derived from the material contained in note (3) preceding DC 5216 and note (3) preceding DC 5220, which state that with only one joint of a digit ankylosed or limited in its motion, evaluation will be based on whether motion is possible to within 2 inches (5.1 cms.) of the median transverse fold of the palm, and in note (a) following DC 5223, which states that limitation of motion of less than 1 inch (2.5 cms.) in either direction is not considered disabling. We propose to evaluate limitation of motion of the index, long, ring, and little fingers on either the number of degrees by which extension is limited, or on a measurement of the gap between the

finger and the palm when the finger is flexed to the extent possible. We propose to evaluate the thumb based on its most important function, opposing the fingers, as measured by the gap between the thumb pad and the fingers with the thumb attempting to oppose the fingers. These criteria are consistent with § 4.71, "Measurement of ankylosis and joint motion," which states that motion of the thumb and fingers should be described by appropriate reference to the joints whose movement is limited, with a statement as to how near, in centimeters, the tip of the thumb can approximate the fingers, or how near the tips of the fingers can approximate the median transverse fold of the palm.

Current note (a) under DC 5219 indicates that extremely unfavorable ankylosis, *i.e.*, all joints in extension or in extreme flexion, will be evaluated as amputation; note (1) preceding DC 5216 establishes that ankylosis of both the metacarpophalangeal and proximal interphalangeal joints, with either in extension or extreme flexion, will be evaluated as amputation. We propose to evaluate an ankylosed digit as amputation when both joints are ankylosed, and either is in extension or "full" flexion. (Flexion of the fingers is not possible beyond "full," or complete, flexion.)

In DC's 5217 through 5223, we propose to simplify the criteria where feasible by indicating, for example, "thumb and any three fingers," rather than separately listing "thumb, index, middle, and ring," "thumb, index, middle, and little," etc.

The current schedule refers to motion of the fingertips to within certain distances of the "median transverse fold of the palm." Since that fold is mentioned neither in standard anatomy texts nor in "Dorland's Illustrated Medical Dictionary," we propose to change that term to "proximal transverse crease of the palm," an anatomic landmark where the fingertips normally meet the palm when they are in full flexion. The current schedule uses different language in different places to describe limited motion between the fingers and the palm or between the thumb and the fingers, *e.g.*, using "whether motion is possible to within 2 inches (5.1 cms.) of the median transverse fold of the palm" in one place and "limited motion preventing flexion of tips to within 2 inches (5.1 cms.) of median transverse fold of the palm" in another place. For the sake of clarity, we propose to measure these distances in terms of the gap, expressed in inches or centimeters, between the fingertips and the proximal transverse crease of the palm, with the finger

flexed to the extent possible, or between the pad of the thumb and the fingers, with the thumb attempting to oppose the fingers.

#### Paperwork Reduction Act

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

#### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### 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, 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.

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

#### List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: October 2, 2001.

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

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be 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, unless otherwise noted.

#### Subpart B—Disability Ratings

2. Section 4.71a is amended by removing the tables "MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS"; "MULTIPLE FINGERS: FAVORABLE ANKYLOSIS"; and "ANKYLOSIS OF INDIVIDUAL FINGERS" and adding, in their place, the following table to read as follows:

#### § 4.71a Schedule of ratings—musculoskeletal system.

\* \* \* \* \*

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND

	Rating	
	Major	Minor
<p>(1) For the index, long, ring, and little fingers (digits II, III, IV, and V), zero degrees of flexion represents the fingers fully extended, making a straight line with the rest of the hand. The position of function of the hand is with the wrist dorsiflexed 20 to 30 degrees, the metacarpophalangeal and proximal interphalangeal joints flexed to 30 degrees, and the thumb (digit I) abducted and rotated so that the thumb pad faces the finger pads. Only joints in these positions are considered to be in favorable position. For digits II through V, the metacarpophalangeal joint has a range of zero to 90 degrees of flexion, the proximal interphalangeal joint has a range of zero to 100 degrees of flexion, and the distal (terminal) interphalangeal joint has a range of zero to 70 or 80 degrees of flexion.</p> <p>(2) When two or more digits of the same hand are affected by any combination of amputation, ankylosis, or limitation of motion that is not otherwise specified in the rating schedule, the evaluation level assigned will be that which best represents the overall disability (<i>i.e.</i>, amputation, unfavorable or favorable ankylosis, or limitation of motion), assigning the higher level of evaluation when the level of disability is equally balanced between one level and the next higher level.</p> <p>(3) Evaluation of ankylosis of the index, long, ring, and little fingers:</p>		

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
<p>(i) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation without metacarpal resection, at proximal interphalangeal joint or proximal thereto.</p> <p>(ii) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position.</p> <p>(iii) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as unfavorable ankylosis.</p> <p>(iv) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as favorable ankylosis.</p> <p>(4) Evaluation of ankylosis of the thumb:</p>		

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
<p>(i) If both the carpometacarpal and interphalangeal joints are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation at metacarpophalangeal joint or through proximal phalanx.</p> <p>(ii) If both the carpometacarpal and interphalangeal joints are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position.</p> <p>(iii) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as unfavorable ankylosis.</p> <p>(iv) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as favorable ankylosis.</p> <p>(5) If there is limitation of motion of two or more digits, evaluate each digit separately and combine the evaluations.</p>		
<p><b>I. Multiple Digits: Unfavorable Ankylosis</b></p>		
<p>5216 Five digits of one hand, unfavorable ankylosis of</p>	60	50

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
<b>Note:</b> Also consider whether evaluation as amputation is warranted		
5217 Four digits of one hand, unfavorable ankylosis of:		
Thumb and any three fingers .....	60	50
Index, long, ring, and little fingers .....	50	40
<b>Note:</b> Also consider whether evaluation as amputation is warranted.		
5218 Three digits of one hand, unfavorable ankylosis of:		
Thumb and any two fingers .....	50	40
Index, long, and ring; index, long, and little; or index, ring, and little fingers .....	40	30
Long, ring, and little fingers .....	30	20
<b>Note:</b> Also consider whether evaluation as amputation is warranted.		
5219 Two digits of one hand, unfavorable ankylosis of:		
Thumb and any finger	40	30
Index and long; index and ring; or index and little fingers .....	30	20
Long and ring; long and little; or ring and little fingers .....	20	20
<b>Note:</b> Also consider whether evaluation as amputation is warranted.		

**II. Multiple Digits: Favorable Ankylosis**

5220 Five digits of one hand, favorable ankylosis of	50	40
5221 Four digits of one hand, favorable ankylosis of:		
Thumb and any three fingers .....	50	40
Index, long, ring, and little fingers .....	40	30
5222 Three digits of one hand, favorable ankylosis of:		
Thumb and any two fingers .....	40	30
Index, long, and ring; index, long, and little; or index, ring, and little fingers .....	30	20
Long, ring and little fingers .....	20	20

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
5223 Two digits of one hand, favorable ankylosis of:		
Thumb and any finger	30	20
Index and long; index and ring; or index and little fingers .....	20	20
Long and ring; long and little; or ring and little fingers .....	10	10
<b>III. Ankylosis of Individual Digits</b>		
5224 Thumb, ankylosis of:		
Unfavorable .....	20	20
Favorable .....	10	10
<b>Note:</b> Also consider whether evaluation as amputation is warranted.		
5225 Index finger, ankylosis of:		
Unfavorable or favorable .....	10	10
<b>Note:</b> Also consider whether evaluation as amputation is warranted.		
5226 Long finger, ankylosis of:		
Unfavorable or favorable .....	10	10
<b>Note:</b> Also consider whether evaluation as amputation is warranted.		
5227 Ring or little finger, ankylosis of:		
Unfavorable or favorable .....	0	0
<b>Note:</b> Also consider whether evaluation as amputation is warranted.		

**IV. Limitation of motion of individual digits**

5228 Thumb, limitation of motion:		
With a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	20	20
With a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	10	10

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
With a gap of less than one inch (2.5 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	0	0
5229 Index or long finger, limitation of motion:		
With a gap of one inch (2.5 cm.) or more between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or; with extension limited by more than 30 degrees .....	10	10
With a gap of less than one inch (2.5 cm.) between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, and; extension is limited by no more than 30 degrees .....	0	0
5230 Ring or little finger, limitation of motion:		
Any limitation of motion .....	0	0

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**ENVIRONMENTAL PROTECTION AGENCY**  
**40 CFR Parts 89, 90, 91, 94, 1048, 1051, 1065, and 1068**  
**[AMS-FRL-7096-9]**  
**RIN 2060-A111**  
**Control of Emissions from Nonroad Large Spark Ignition Engines and Recreational Engines (Marine and Land-based); Correction**  
**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Proposed rule; correction.  
**SUMMARY:** The Environmental Protection Agency published in the **Federal Register** of October 5, 2001 a document