Appendix B to Part 4—Officials Authorized To Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act

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OFFICE OF THE SECRETARY

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Office of the General Counsel: Deputy General Counsel; Deputy General Counsel for Administration; Assistant General Counsel for Employment, Litigation and Information

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[FR Doc. 2026–03080 Filed 2–13–26; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AS49

Evaluative Rating: Impact of Medication

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends 38 CFR 4.10 within the VA Schedule for Rating Disabilities (VASRD). This amendment clarifies VA's longstanding interpretation of § 4.10 and, in doing so, amends the text to correct judicial interpretations that VA has concluded misconstrue the role of medication and treatment in evaluating functional impairment. Specifically, this amendment clarifies that veterans should be compensated for the actual level of functional impairment they experience and, therefore, that the ameliorative effects of medication should not be estimated or discounted when evaluating the severity of a veteran's disability at the time of the disability examination. This regulation is needed immediately to minimize the negative impact of an erroneous line of cases culminating in the recent decision of *Ingram* v. *Collins,* 38 Vet. App. 130 (2025), which could be applied broadly to over 500 separate diagnostic codes, requiring re-adjudications of over 350,000 currently pending claims. This in turn would overburden VA's claims adjudicatory capacity. In addition, *Ingram* requires VA to retrain all of its medical examiners and adjudicators to make assessments and decisions based not on the evidence before them but instead based on what they hypothesize the evidence would show if a veteran's disability were left untreated. For these and other reasons explained below, this regulation is critical to the integrity of the VA disability claims system.

DATES: This interim final rule is effective February 17, 2026.

Comments must be received on or before April 20, 2026.

ADDRESSES: You may submit comments through *www.regulations.gov* under RIN 2900–AS49. That website includes a plain-language summary of this rulemaking. Instructions for accessing agency documents, submitting comments, and viewing the rulemaking docket are available on *www.regulations.gov* under ''FAQ.''

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Executive Director, Office of Regulatory Oversight and Management, (202) 461–9700.

SUPPLEMENTARY INFORMATION: This amendment clarifies VA's longstanding interpretation of § 4.10 and, in doing so, amends the text to correct judicial interpretations that VA has concluded misconstrue the role of medication and treatment in evaluating functional impairment. This interim final rule thus reaffirms the proper understanding of VA policy related to the evaluation and compensation of a veteran's disability. Congress directed that veterans be compensated for ''disability'' that results when service causes or aggravates an injury or disease. 38 U.S.C. 1110. To capture the effects of disability, the rating schedule is ''based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations.'' 38 U.S.C. 1155. This means that VA must determine how the disability impacts the veteran's ability to earn wages.

In effectuating these statutes, VA regulations have long focused on the actual level of disability experienced by a veteran. The VASRD, which is located in 38 CFR part 4, contains criteria for specific disabilities and general rules governing the assignment of ratings. Under 38 CFR 4.1, disability ratings are intended to ''represent as far as can practicably be determined the average impairment in earning capacity resulting from'' a service-connected disability based on ''accurate and fully descriptive medical examinations'' that emphasize ''limitation of activity imposed by the disabling condition.'' Section 4.1 requires that the rating assigned be based on the disability presented to the examiner and recognizes that future reevaluations may be required based on changes to the veteran's condition. The need for the examiner to make findings based on the actual condition of the veteran is re-emphasized in § 4.10, which ''imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person's ordinary activity.'' Section 4.10 further directs attention to the body's ability ''to function under the ordinary conditions of daily life.'' Similarly, § 4.2 instructs claim processors to present ''a consistent picture so that the current rating may accurately reflect the elements of disability present . . . . considered from the point of view of the veteran working or seeking work.'' Consistent with these authorities, the U.S. Court of Appeals for the Federal Circuit has observed that the VASRD is designed to compensate for ''the *actual* level of the earning impairment on the veteran.'' *Nat'l Org. of Veterans' Advocs., Inc.* v. *Sec'y of Veterans Affs.,* 927 F.3d 1263, 1264 (Fed. Cir. 2019) (emphasis added).

None of these authorities are phrased in the hypothetical, or contemplate that rating a disability should require supposition. Rather, they consistently direct VA personnel to evaluate the disability as it actually exists, in the conditions of the veteran's daily life. This simple, straightforward conclusion is required on the face of longstanding regulatory authorities and consonant with the phrasing of 38 U.S.C. 1155 itself. The *Ingram* court erred by converting large portions of the VA disability rating system into an exercise in prognostication. This error must be corrected as quickly as possible to ensure the continued proper functioning of the disability rating system. Despite these legal and practical imperatives to base evaluations on the evidence of actual functional impairment, on March 12, 2025, the U.S. Court of Appeals for Veterans Claims (CAVC) determined in *Ingram* that, for the purposes of evaluating musculoskeletal conditions, examiners should not consider the evidence of disability before them. *Ingram,* 38 Vet. App. at 138. Rather, the court held that VA must estimate what level of functional impairment a disability might present if the veteran were not taking medication that ameliorated the effects of a service-connected disability. *Id.* at 135–38. *Ingram* further held that, if the record does not disclose a disability's ''baseline severity''—in which the effects of medication in lessening functional impairment are discounted—adjudicators must return the claim for VA to obtain that contrafactual information. *Id.* at 137–39.

The *Ingram* decision is the latest and most disruptive in a line of CAVC cases that have ignored the purpose of disability ratings and VA's longstanding historical practices and policies in assigning such ratings. In *Jones* v. *Shinseki,* 26 Vet. App. 56 (2012), the CAVC held that, when the rating criteria of a specific diagnostic code does not contemplate the effects of medication on a veteran's disability, the Board of Veterans' Appeals (Board) errs by denying a higher rating on the basis of the ameliorative effects of medication. *Id.* at 63. The CAVC reasoned that, by not excluding the effects of medication, the Board was effectively treating responsiveness to medication as a rating criterion that could have been, but was not, specified in the relevant diagnostic code. *Id.* at 61–62. The CAVC deemed this a deliberate policy decision by VA, since some diagnostic codes explicitly contemplate the effects of medication as a relevant rating criterion, though most diagnostic codes do not. *Id.* at 62. The CAVC rejected VA's argument that rating principles grounded in regulatory text clearly contemplate compensating veterans for their actual level of disability, whether or not that level is lessened by medication. *Id.* at 62–63.

The CAVC took another step in *McCarroll* v. *McDonald,* 28 Vet. App. 267 (2016) (*en banc*). There, the CAVC concluded that the *Jones* rule did not apply in the case because the specific diagnostic code at issue contemplated the effects of medication when assigning a rating. *Id.* at 273. However, in the course of concluding that the *Jones* rule was inapplicable, the CAVC in *McCarroll* for the first time stated that the rule required the Board ''to discount the ameliorative effects of medication'' when assigning a rating. *Id.* at 271. *Jones* itself did not use the word ''discount'' in the rating context.

In *Ingram,* the Board denied ratings for a veteran's service-connected musculoskeletal disabilities under diagnostic codes based on limitation of motion. 38 Vet. App. at 132–35. On appeal, the CAVC rejected VA's arguments to distinguish or limit *Jones* and concluded that the Board erred when it did not ''discuss and discount[ ] the beneficial effects of medication used to treat the veteran's disabilities.'' *Id.* at 139.

But as noted above, 38 CFR 4.10 codifies VA's policy for evaluating functional impairment and states, in part, that the basis of an evaluation is the veteran's ability to function under the ordinary conditions of daily life, and the medical examiner should provide a description of the effects of the disability upon the veteran's ordinary activity. VA's governing regulations thus already focus on functional impairment and a veteran's actual level of disability as it presently manifests in everyday life—which necessarily requires the examiner to consider the disability severity level without estimating or discounting the effect of current medication on the disability. If medication or other treatment lessens the functional impairment a disability causes and thereby improves a veteran's earning capacity, that is the proper disability level for which the veteran should be compensated. Moreover, contrary to the imperative to assign ratings based on available evidence, the CAVC's caselaw ''invites medical speculation in trying to guess what a veteran's symptoms might be without the medication.'' *McCarroll,* 28 Vet. App. at 279 (Kasold, J., concurring in part). Thus, the *Jones* rule, as interpreted and extended by *Ingram,* contravenes central principles of the VASRD's rating scheme.

In addition to contravening governing rating principles, this line of CAVC cases is based on a mistaken premise of regulatory interpretation. In *Jones,* the CAVC concluded that, because (on its reading) some diagnostic codes explicitly contemplate the ameliorative effects of medication as a relevant rating criterion while most diagnostic codes do not, assigning a rating based on ameliorative effects under a diagnostic code that does not contemplate that criterion would be inserting language into the diagnostic code that VA deliberately chose to omit. *Id.* at 62. But the CAVC misunderstood the role that medication plays as a rating criterion in the VASRD. ''[A]lthough some diagnostic codes mention the fact of medication usage as a rating criterion, *none* require the affirmative use of information about the 'ameliorative effects' of the medication in evaluations.'' *McCarroll,* 28 Vet. App. at 278 (Kasold, J., concurring in part) (emphasis added). ''Otherwise stated, nothing in the rating schedule warrants subtracting whatever positive influences medication has on'' a veteran's disability. *Id.* at 277.

As a general rule, an agency ''remains free to amend or clarify those regulations'' it believes have been misconstrued by a court. *Nat'l Org. of Veterans' Advocs., Inc.* v. *Sec'y of Veterans Affs.,* 260 F.3d 1365, 1374 n.9 (Fed. Cir. 2001). Consistent with this precept, the CAVC has emphasized that, because the *Jones* rule is based on the CAVC's interpretation of the VASRD, VA can abrogate that interpretation through corrective rulemaking. *Jones,* 26 Vet. App. at 63; *Ingram* v. *Collins,* No. 23–1798, 2025 WL 1442991, at *2 (Vet. App. May 20, 2025) (Falvey, J., concurring in the denial of en banc review). Immediate correction is now crucial because, following *Ingram,* it is clear that ''*Jones*'s rule that the Board can't insert new criteria into the diagnostic code when it decides a case has been twisted to now require that the Board affirmatively discount medication for diagnostic codes that don't say anything about medication.'' *Ingram,* 2025 WL 1442991, at *1.

Therefore, VA will add the following two sentences to 38 CFR 4.10: ''To ensure that disability evaluations are based on the actual level of functional impairment under the ordinary conditions of daily life, the medical examiner will not estimate or discount improvements to the disability due to the effects of medication or treatment, whether or not medication or treatment is included within specific rating criteria. If medication or treatment lowers the level of disability, the rating will be based on that lowered disability level.''

While VA believes this is already the correct construction of current regulations, this change will make more explicit in regulation VA's longstanding policy and practice to include, among other factors, the ameliorative effects of medication when conducting disability evaluations. Without this change, VA could be required to specifically ascertain and then discount the ameliorative effects of medication on certain disabilities and then assign a disability rating based on the level of disability a veteran *would* suffer if not for that medication. This is an unquantifiable, hypothetical, and unwarranted standard that would compensate veterans for a level of disability they are not actually experiencing. By explicitly stating in regulation that disability evaluations consider the ameliorative effects of medication, VA will ensure that its historic principles for rating disabilities remain intact, thereby leading to consistent results for veterans in accordance with statutory and regulatory schemes and preventing systemic disruptions.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) to publish this interim final rule because providing advance notice and prior opportunity for public comment is impracticable and contrary to the public interest. This rulemaking simply makes explicit longstanding VA policy and practice in rating and adjudicating disability benefits. It is

impracticable because *Ingram* creates the immediate risk of significant disruption systemwide and delays in the adjudication and award of benefits. Specifically, if VA does not issue this interim final rule, the erroneous interpretation announced by *Ingram* will (1) generate considerable administrative costs, (2) create systemic delays in the adjudication system, (3) burden VA adjudicators and examiners, and (4) cause an overall increase in compensation expenditures based on a disability level that veterans are not actually experiencing. Issuing this interim final rule without delay is in the public interest because it will prevent a significant negative impact on veterans awaiting claim decisions from VA.

For these same reasons, the Secretary finds that there is also good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon the date of publication.

Thus, VA is issuing this rule as an interim final rule with immediate effect. However, VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this regulatory action is a major rule under the Congressional Review Act (5 U.S.C. 804(2)) because it is likely to result in an annual effect on the economy of $100 million or more. Although this regulatory action is a major rule under 5 U.S.C. 804(2), the Secretary of Veterans Affairs finds that good cause exists under the provisions of 5 U.S.C. 808(2) to forgo the 60-day delayed effective date under 5 U.S.C. 801 and make this rule effective immediately and prior to end of the full Congressional review period. If this rule is not made effective upon publication, there is potential for significant disruption and delay to the award of benefits, as detailed above. Because of these burdens, further notice and public procedure would be impracticable and contrary to the public interest. 5 U.S.C. 808(2). Accordingly, the Secretary finds that there is good cause to publish this final rule with an operative and effective date of February 17, 2026. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of the regulation and impact analysis.

Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Order 12866 (Sept. 30, 1993) and Executive Order 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866. VA also examined the impact of this rulemaking as required by Executive Order 14192 (Jan. 30, 2025), which directs agencies to ensure that the cost of planned regulations is responsibly managed and controlled through a rigorous regulatory budgeting process. The Office of Information and Regulatory Affairs has determined that this interim final rule is a deregulatory action under Executive Order 14192. The regulatory impact analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov*.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

This interim final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on February 11, 2026 and authorized the undersigned to sign and submit to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Nicole R. Cherry,

Alternate Federal Register Liaison Officer, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 4 as set forth below:

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

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

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart A—General Policy in Rating

■ 2. Revise § 4.10 to read as follows:

§ 4.10 Functional impairment.

The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment. To ensure that disability evaluations are based on the actual level of functional impairment under the ordinary conditions of daily life, the medical examiner will not estimate or discount improvements to the disability due to the effects of medication or treatment, whether or not medication or treatment is included within specific rating criteria. If medication or other treatment lowers the level of disability, the rating will be based on that lowered disability level. Whether the upper or lower extremities, the back or abdominal wall, the eyes or ears, or the cardiovascular, digestive, or other system, or psyche are affected, evaluations are based upon lack of usefulness, of these parts or systems, especially in self-support. This imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person's ordinary activity. In this connection, it will be remembered that a person may be too disabled to engage in employment although he or she is up and about and fairly comfortable at home or upon limited activity.

[FR Doc. 2026–03068 Filed 2–13–26; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0789; FRL–12976–01]

Glufosinate; Pesticide Tolerances

Correction

In rule document 2025–20399, appearing on page 52252 in the issue of Thursday, November 20, 2025, make the following correction: