

§ 37.7 of this chapter, a registered derivatives transaction execution facility may only implement a new rule or rule amendment relating to a security futures product if the registered derivatives transaction execution facility has certified the rule or rule amendment pursuant to the procedures of paragraph (a) of this section.

(c) *Voluntary submission of rules for Commission review and approval.* A designated contract market, registered derivatives transaction execution facility, or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of § 40.5 of this chapter, provided however that the registered entity shall include the certifications required by § 41.22 with its submission under § 40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

§ 41.25 Additional conditions for trading for security futures products.

(a) *Common provisions.—*(1) *Reporting of data.* The designated contract market or registered derivatives transaction execution facility shall comply with chapter 16 of this title requiring the daily reporting of market data.

(2) *Regulatory Trading Halts.* [Reserved for contemporaneous rulemaking.]

(3) *Speculative Position Limits.* The designated contract market or registered derivatives transaction execution facility shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month. The designated contract market or registered derivatives transaction execution facility shall,

(i) Adopt a net position limit no greater than 13,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; except where,

(A) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a net position limit no greater than 22,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; or

(B) For security futures products where, for the most recent six-month period, the average daily trading volume in the underlying security exceeds 20 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market or registered derivatives transaction execution facility may adopt a position accountability rule. Upon request by the designated contract market or registered derivatives transaction execution facility, traders who hold net positions greater than 22,500 (100-share) contracts, or such lower level specified by exchange rules, must provide information to the exchange and consent to halt increasing their positions when so ordered by the exchange.

(ii) For a security futures product comprised of more than one security, to be eligible for paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section, the average daily trading volume required must apply to the least liquid security in the index.

(iii) Exchanges may approve exemptions from these position limits pursuant to rules that are consistent with § 150.3 of this chapter.

(b) *Special requirements for cash-settled contracts.* For cash-settled security futures products, the cash-settlement price must be reliable and acceptable, be reflective of prices in the underlying securities market and be not readily susceptible to manipulation. To meet these requirements, the designated contract market or registered derivatives transaction execution facility must have rules providing that: [Reserved for contemporaneous rulemaking.]

(c) *Special requirements for physical delivery contracts.* For security futures products settled by actual delivery of the underlying security or securities, payment and delivery of the underlying security or securities must be effected through a clearing agency that is registered pursuant to section 17A of the Securities Exchange Act of 1934.

Issued in Washington, DC, on July 12, 2001, by the Commission.

Jean A. Webb,
Secretary.

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DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 235-2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice currently exempts the following system of records from subsection (d) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): Controlled Substances Act Nonpublic Records (JUSTICE/JMD-002). This proposed rule makes changes to reflect the current statutory authority, as well as the primary reason for exempting the system.

DATES: Submit any comments by August 20, 2001.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307-1823.

SUPPLEMENTARY INFORMATION: The system notice for "Controlled Substances Act Nonpublic Records (JUSTICE/JMD-002)" is being published in full text in the Notice section of today's **Federal Register**.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR Part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend § 16.76 by revising paragraph (b)(1) as follows:

§ 16.76 Exemption of Justice Management Division.

* * * * *

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Access to and use of the nonpublic records maintained in this system are restricted by law. Section 3607(b) of Title 18 U.S.C. (enacted as part of the Sentencing Reform Act of 1984, Public Law 98-473, Chapter II) provides that the sole purpose of these records shall be for use by the courts in determining whether a person found guilty of

violating section 404 of the Controlled Substances Act qualifies:

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

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

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Dated: July 13, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

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

BILLING CODE 4410-FB-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900-AK66

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

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

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

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

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AK66." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

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

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

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

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

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

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

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

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