



441 G St. N.W.
Washington, DC 20548

B-332768

December 14, 2020

The Honorable Jerry Moran
Chairman
The Honorable Jon Tester
Ranking Member
Committee on Veterans Affairs
United States Senate

The Honorable Mark Takano
Chairman
The Honorable Dr. Phil Roe
Ranking Member
Committee on Veterans Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Schedule for Rating Disabilities: Musculoskeletal System and Muscle Injuries*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Veterans Affairs (VA) entitled "Schedule for Rating Disabilities: Musculoskeletal System and Muscle Injuries" (RIN: 2900-AP88). We received the rule on December 1, 2020. It was published in the *Federal Register* as a final rule on November 30, 2020. 85 Fed. Reg. 76453. The final rule has an effective date of February 7, 2021.

According to VA, the final rule amends VA's Schedule for Rating Disabilities (rating schedule) by revising the portion of the rating schedule that addresses the musculoskeletal system. VA stated the purpose of this revision is to ensure that this portion of the rating schedule uses current medical terminology and provides detailed and updated criteria for the evaluation of musculoskeletal disabilities.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(1). The final rule was published on November 30, 2020. 85 Fed. Reg. 76453. VA informed us that it was having difficulty sending the final rule to Congress due to the ongoing novel coronavirus 2019 pandemic. Email from Regulations Development Coordinator, VA, to Senior Staff Attorney, GAO (Dec. 3, 2020). Because of this difficulty, VA stated it would not be able to submit the final rule to Congress until more normal operations resume across the federal government. *Id.* The final rule has an effective date of February 7, 2021. Because Congress will not receive the rule until more normal operations resume, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of VA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Michael P. Shores
Director
Office of the Secretary
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
“SCHEDULE FOR RATING DISABILITIES:
MUSCULOSKELETAL SYSTEM AND MUSCLE INJURIES”
(RIN: 2900-AP88)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) determined that there are transfer savings as a result of the final rule. The transfer savings associated with the final rule are estimated to be \$138.7 million in 2021 and \$1.4 billion over 5 years.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

VA certified the final rule would not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

VA determined the final rule will not have an effect on state, local, and tribal governments, or on the private sector above the statutory threshold.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On August 1, 2017, VA published a proposed rule. 82 Fed. Reg. 35719. VA received comments from the National Organization of Veterans' Advocates, American Association of Nurse Practitioners, Paralyzed Veterans of America, and nine individuals. VA addressed the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

VA determined the final rule contained no information collection requirements subject to the Act.

Statutory authorization for the rule

VA promulgated the final rule pursuant to section 1155 of title 38, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

VA stated the Office of Information and Regulatory Affairs determined the final rule was economically significant under the Order.

Executive Order No. 13132 (Federalism)

VA did not discuss the Order in the final rule.