

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 5, 2018.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018-07261 Filed 4-9-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0272]

Drawbridge Operation Regulation; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Grassy Sound Channel (Ocean Drive) Bridge across Grassy Sound Channel, mile 1.0, at Middle Township, NJ. The deviation is necessary to accommodate the free movement of pedestrians and vehicles during the 2018 “MudHen Half Marathon”. This deviation allows the drawbridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 7:30 a.m. to 11 a.m. on April 29, 2018.

ADDRESSES: The docket for this deviation, [USCG-2018-0272], is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Mickey Sanders, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398-6587, email Mickey.D.Sanders2@uscg.mil.

SUPPLEMENTARY INFORMATION: The event director, DelMoSports LLC, with approval from the Cape May County Bridge Commission, who owns and operates the Grassy Sound Channel (Ocean Drive) Bridge, across Grassy Sound Channel, mile 1.0, at Middle Township, NJ, requested a temporary deviation from the current operating

regulations to accommodate the free movement of pedestrians and vehicles during the 2018 “MudHen Half Marathon”.

The current operating schedule is set out in 33 CFR 117.721. Under this temporary deviation, the drawbridge will be maintained in the closed-to-navigation position from 7:30 a.m. to 11 a.m. on April 29, 2018. The Grassy Sound Channel is used by a variety of vessels including small commercial vessels and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impacts caused by this temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 5, 2018.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018-07262 Filed 4-9-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AP14

Schedule for Rating Disabilities: The Organs of Special Sense and Schedule of Ratings—Eye

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is revising the portion of the VA Schedule for Rating Disabilities (VASRD or rating schedule) that addresses the organs of special sense and schedule of ratings—eye. The final rule incorporates medical advances that have occurred since the last review, updates current medical terminology, and provides clearer evaluation criteria.

DATES: This rule is effective on May 13, 2018.

FOR FURTHER INFORMATION CONTACT: Gary Reynolds, M.D., Medical Officer, Part 4 VASRD Staff (211C), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On June 9, 2015, VA published a proposed rule in the **Federal Register** at 80 FR 32513, suggesting changes to 38 CFR 4.77 through 4.79, the portion of the VASRD pertaining to the organs of special sense and schedule of ratings—eye. VA invited interested parties to submit comments on or before August 10, 2015. VA received five comments.

A. General Rating Formula for Eye Diseases

VA proposed several revisions to the General Rating Formula for Diseases of the Eye, including a new definition of incapacitating episodes that used the number of clinic visits required to treat active eye disease as a means of quantifying the level of disability. VA also proposed to apply the formula to more diagnostic codes (DCs).

Two comments regarding the proposed updates to the General Rating Formula, specifically regarding missing definitions, were received. One commenter asked for clarification of “per year” in regard to measuring the number of visits for medical treatment. VA appreciates the comment concerning how “per year” is defined, and will further clarify the relevant time period by substituting the phrase “within the past twelve months” for the phrase “per year.” The change of phrasing to “within the past twelve months” is consistent with VA’s practice of assigning “staged ratings” where the evidence shows that different ratings are appropriate for distinct periods of time. *See Hart v. Mansfield*, 21 Vet. App. 505, 509 (2007) (citing *Fenderson v. West*, 12 Vet. App. 119, 126 (1999)). The same commenter asked why VA did not define “active eye disease” in the proposed rule. VA appreciates the comment, and for the reasons outlined below, will remove “active eye disease” as a term that requires definition.

The majority of the comments regarding the proposed updates, however, concerned the revision to “incapacitating episodes.” Two commenters did not agree with using the number of clinic visits to quantify the severity of incapacitating episodes, noting that many conditions are

severely disabling even though they may not require frequent visits to a medical professional. We note that the rating schedule already provides for ratings based on impairment of visual acuity, as well as other disabling features such as disfigurement. This new general rating formula provides an alternative basis for evaluating impairment of earning capacity where a veteran's functioning might be minimally impaired but where the eye condition causes lost work time due to treatment. In addition, these two particular comments cite conditions which would be more appropriately evaluated under criteria other than the general rating formula, as the general rating formula as proposed was directed toward active eye diseases, not conditions where the severity of visual impairment or disfigurement is relatively static. Other commenters expressed concern that the definition only considered the frequency of episodes, not the severity of each episode or of the actual disability itself. Another comment questioned the effect of the proposed definition of incapacitating episodes for eye conditions, noting that the same term was defined differently when applied to other body systems within the rating schedule. One commenter stated the use of clinician visits disadvantaged veterans without readily available access to specialty care. The purpose of the proposed rule was to provide evaluations based on the duration of treatment for an active eye disease. Treatment for an active eye disease is generally available to veterans, whether through VA, VA-authorized community care, or care from providers completely independent of VA. Additionally, we note that current rating criteria define an incapacitating episode in terms of acute symptoms requiring treatment, so any concern arising out of access to care would apply equally to current regulations.

After reviewing all of the comments pertaining to "incapacitating episodes," and "clinic visits," VA will further clarify how it will incorporate specified clinical visits to this body system. These visits are typically associated with time away from work (an earnings loss proxy) applicable to the definition of "incapacitating episodes." See 38 U.S.C. 1155, 38 CFR 4.1 (stating that the purpose of the rating schedule is to represent the average impairment in earning capacity resulting from diseases and injuries in civil occupations).

The current definition for incapacitating episodes calls for acute symptoms that require prescribed bedrest and treatment by a provider.

Evaluation is based on the total duration of incapacitating episodes. While prescribed bedrest may be an excellent proxy for earnings loss, modern medicine rarely, if ever, uses it for treatment.

The definition for incapacitating episodes in the proposed rule sought to use more quantifiable measures than the current regulation. It called for active eye disease that required a visit to a provider for treatment, monitoring, or management of complications related to the active eye disease. VA would base the evaluation on the number of clinic visits within a one-year period. While clinic visits provide an easily quantifiable and consistent metric, the correlation between clinic visits and impairment in earning capacity may be strong or weak depending on the purpose of the visits.

Based on the comments received, as well as the underlying intent for the changes in the proposed rule, VA believes that targeted modifications to the definition for "incapacitating episodes" and to the criteria in the General Rating Formula effectively address the concerns raised in the comments, as well as remain consistent with the intent of the proposed rule. First, VA will use Note (1) under the General Rating Formula to clarify that an incapacitating episode is "an eye condition severe enough to require a clinic visit to a provider specifically for treatment purposes." This definition distinguishes between treatment visits and visits for other purposes. Treatment visits can typically require two to three days away from work to allow for recovery from the treatment, in addition to the time needed for the treatment visit itself. In contrast, a clinic visit for diagnostic, monitoring, or screening purposes would only require time away from work for the visit itself. The criteria are specifically designed to account for situations when a Veteran can have relatively normal function, but has to take extensive time off work due to the treatment program. Therefore, counting only treatment visits as opposed to all clinic visits provides a better proxy for average impairment in earning capacity because it has a stronger correlation to the impact on the ability to work. We will move the list of treatment examples found in the second sentence to Note (1) of proposed § 4.79 to Note (2) and renumber proposed § 4.79 Note (2) as Note (3).

The current criteria for the General Rating Formula base evaluations on the total number of days spent incapacitated within a 12-month period. The criteria in the proposed rule, on the other hand, bases evaluations on the number of

clinic visits for treatment or monitoring of an active eye disease within a year. As VA is changing the criteria in the final rule to count only those clinic visits made for the purpose of treatment, VA will modify the number of visits required for all evaluations. The criteria will now read: For the 60 percent evaluation, "With documented incapacitating episodes requiring 7 or more treatment visits for an eye condition during the past 12 months." The 40 percent evaluation will read, "With documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months." The 20 percent evaluation will read, "With documented incapacitating episodes requiring at least 3 but less than 5 treatment visits for an eye condition during the past 12 months." Finally, the 10 percent evaluation will read, "With documented incapacitating episodes requiring at least 1 but less than 3 treatment visits for an eye condition during the past 12 months."

B. Organizational Changes

VA proposed organizing most of the DCs within § 4.79 under headings that reflected the part of the eye affected by ratable conditions. Two commenters supported these organizational changes. Other commenters recommended moving various diagnostic codes from one proposed category to another proposed category. VA thanks the commenters for their support and suggestions; however, VA has reconsidered this organizational change, noting that it would create more administrative complexity in rating by making it more difficult to locate the most appropriate DC for evaluation purposes. Therefore, VA is withdrawing the proposed organizational changes found in the proposed rule.

C. Application of Visual Impairment

One commenter suggested that the definition of visual impairment should be revised to include multiple images, ghosting, halos, starbursts, sensitivity to light, ability to drive at night or participate in low-light activities, and read a computer screen without eyestrain and headaches. VA disagrees with this proposal, as the symptoms noted are almost always accompanied by measurable changes in visual acuity, visual field defects or muscle function, all of which form the basis of the current definition of visual impairment under 38 CFR 4.75. If VA followed the commenter's suggestion, a Veteran could have a complete resolution of disability associated with visual acuity, visual fields, and/or muscle testing, but

still receive compensation for non-occupationally significant symptoms. Therefore, VA declines to make any changes based on this comment.

The same commenter also suggested that VA provide a minimum evaluation of 50 percent when the symptoms in the proposed definition affected a normal lifestyle. Section 1155 of title 38, United States Code, requires VA to base disability ratings, as far as practicable, on the average impairments of earnings capacity in civil occupations resulting from such injuries, and not on disruptions to lifestyle. See also 38 CFR 4.1. For this reason, VA is unable to make any changes based upon this comment.

Another commenter suggested that VA should not consider Goldmann charts and electronic medical records generated during treatment at a VA Blind Rehabilitation Center, VA eye clinic, or private provider when rating visual conditions, because such examinations are not created for VA rating purposes. The commenter stated that Goldmann charts at VA Blind Rehabilitation Centers are often marked as “NOT FOR VA RATNG PURPOSES.” However, electronic treatment records from a VA Blind Rehabilitation Center do not always include the notation. The commenter stated that Veterans may “not want to risk a potential reduction in their VA disability rating” if VA would use evidence generated by treatment for disability rating purposes. VA disagrees. Such marks on VA Blind Rehabilitation Center records indicate only that they were generated as part of a treatment program, not as a part of the VA disability claims process. The evidentiary standard has already been established in 38 CFR 4.77. If the VA Blind Rehabilitation examination or other eye examination meets the standard outlined in 38 CFR 4.77, then VA reserves the option to use the examination as evidence for rating purposes, consistent with the general legal requirement that VA consider all evidence of record. See 38 U.S.C. 5107(b), 38 CFR 3.303(a). Further, we disagree with the commenter’s premise that VA should deliberately ignore relevant medical evidence for rating purposes on the theory that evidence showing improvement in a veteran’s disability might warrant a reduction in disability rating. VA regulations already explicitly contemplate the possibility of a reduced rating in the event a veteran’s condition improves. See 38 CFR 3.327.

D. Evaluations and Visual Acuity

One commenter stated that VA should evaluate visual disability based on uncorrected visual acuity, rather than

corrected visual acuity. This commenter noted that this approach would be more equitable, as it is similar to the criteria used for auditory conditions (with evaluations based on the unaided hearing). VA disagrees with this recommendation as aural and visual disabilities are distinctly different. Medical interventions for auditory conditions typically preserve or improve residual function to an extent, but do not completely restore function. On the other hand, medical interventions for visual conditions may often completely restore function. For example, hearing aids typically amplify volume at a frequency identified with hearing loss, but the amplification fails to completely restore hearing and may amplify ambient noise, adding an aural confusion not previously present. In contrast, lenses and/or surgery for visual acuity may, in most cases, actually restore normal acuity. Also, hearing aids often cost significantly more than spectacles or contact lenses, so VA would not expect or require disabled individuals to routinely own and wear them to ameliorate that disability. The visually impaired are more readily tested and fitted with corrective devices (e.g., eyeglasses or contact lenses) at far more facilities than the hearing impaired. Such significant differences in nature and treatment preclude VA from handling these two types of disabilities similarly. Therefore, VA declines to make any changes based on this comment.

Another commenter suggested developing rating requirements (providing a minimum rating) for visual conditions that cause a greater overall disability than a visual acuity test can properly record, and provided an example of a situation that focused mainly on quality of life issues. VA cannot make any changes based on this comment. As stated previously, Section 1155 of title 38, United States Code, requires VA to base disability ratings, as far as practicable, on the average impairment in earning capacity in civil occupations resulting from such diseases and injuries, and not on disruptions to lifestyle. See also 38 CFR 4.1. The example given by the commenter does not provide sufficient evidence of occupational impairment to support entitlement to the minimum rating proposed. VA will not make any changes to the final rule based on this comment.

E. Ability To Use Corrective Devices

One commenter noted that VA should consider the ability to wear corrective lenses for an entire workday, noting that some lenses cause pain. VA

acknowledges that some individuals may tolerate corrective lenses better than others, but finds it impractical and unnecessary to incorporate this level of individual specificity into the evaluation criteria under DC 6035. VA notes that under 38 CFR 3.321, ratings are based upon average impairments of earning capacity as far as practicable. Under § 3.321, when an exceptional case renders the rating schedule inadequate, VA may consider an extraschedular evaluation commensurate with the earnings loss due exclusively to the disability or disabilities. When evidence of marked interference with employment renders the regular rating schedule impractical, VA may assign an extraschedular evaluation. VA will not make any changes based on this comment.

F. Goldmann Charts

One commenter rejected VA’s proposal to no longer require the use of a Goldmann chart for visual field and/or muscle function testing. The commenter stated that a Goldmann chart is critical to detecting errors in the administration of visual examinations and in application of the rating criteria. Contrary to the statements from the commenter, VA does not use a Goldmann chart to detect errors in the examination or rating process. VA can test visual field and muscle function using manual methods (a Goldmann bowl or a tangent screen) or through automated perimetry. The automated perimetry employs software to automatically produce measurements and populate them in both chart and table format. The manual method, on the other hand, requires the examiner to manually record the values (either in table or chart format). Regardless of the method of testing, the recording of data on a chart or table has no bearing on whether the actual test values are accurate. If the test values are inaccurate, VA must reexamine the condition. As such, VA proposed to remove the Goldmann chart requirement because the actual test values, not how they are plotted on the chart, determines the evaluation assigned. This allows a rating veterans service representative to evaluate disabilities based on the test results, regardless of the format in which those results are presented, as long as the information conforms to all other regulatory requirements. It is important to note that VA will continue to accept Goldmann charts as part of a claim for visual disability. Therefore, VA will not change the proposal to eliminate the Goldmann chart requirement in visual field and/or muscle function testing.

G. Specific Changes to DC 6035, Keratoconus

One commenter stated that VA should automatically consider headaches and/or migraines as secondary to keratoconus and automatically grant service connection for them. Section 3.310 states when VA may grant service connection for a disability that is proximately due, or secondary, to a service-connected disease or injury. When the evidence of record establishes such a secondary relationship between keratoconus and headaches and/or migraines, VA may service connect them. However, the numerous potential causes of headaches and migraines, including co-morbid conditions that are often unrelated to military service, preclude VA from automatically granting service connection on a secondary basis without sufficient evidence showing a proximate cause. Therefore, VA will not make any changes based upon this comment.

The same commenter recommended that VA assign a minimum 30 percent evaluation for veterans with keratoconus who receive a corneal transplant. The commenter noted that a corneal transplant limits participation in recreational activities unrelated to occupational performance. VA currently provides under DC 6036 a minimum 10 percent evaluation for veterans with corneal transplants, with pain, photophobia, and glare sensitivity, regardless of the underlying disability (including keratoconus). A 10 percent minimum evaluation recognizes that, in some cases, residual symptoms may present occupational impairment. Additionally, where further visual impairment is present, a higher evaluation may be warranted, to include a 30 percent evaluation. As noted above, VA disability evaluations must be based on average impairment in earnings capacity and cannot consider the effects of a disability upon lifestyle. 38 U.S.C. 1155, 38 CFR 4.1. Furthermore, VA believes that the current evaluation criteria for corneal transplant, including those performed to treat keratoconus, accurately compensate for residual disability which may interfere with occupational performance. Therefore, VA will not make any changes based on this comment.

H. Specific Changes to Proposed DC 6042, Retinal Dystrophy

One commenter proposed additional evaluation criteria for DC 6042, Retinal dystrophy, to include night blindness, glare sensitivity, loss of contrast sensitivity, loss of depth perception, and loss of color vision. VA disagrees

with this proposal, as the symptoms noted are almost always accompanied by measurable changes in visual acuity, visual field defects, or muscle function, all of which form the current definition of visual impairment under 38 CFR 4.75. Additionally, as previously noted, VA may assign an extraschedular evaluation under 38 CFR 3.321 when evidence of marked interference with employment renders application of the regular rating schedule impractical. Therefore, VA will not make any changes based on this comment.

I. Miscellaneous Comments

One commenter stated that VA should broaden the requirements for rating visual acuity. This comment did not propose any specific requirements or alternative rating criteria to explain the suggested expansion. Without proposing an alternative rating criteria or clarifying how the requirements should be broadened, VA cannot consider revisions to the rating criteria based on this comment.

The same commenter stated that VA should provide a minimum evaluation to ensure that issues that are not being taken into account by the rating system are otherwise addressed. As previously noted, VA is required by 38 U.S.C. 1155 to base disability ratings, as far as practicable, on the average impairments of earnings capacity in civil occupations from such injuries. Current law does not allow VA to provide evaluations based on factors outside of earnings impairment. Therefore, VA is unable to make any changes based upon this comment.

One commenter suggested listing more disabilities to this portion of the rating schedule. The commenter specifically requested inclusion of wet macular degeneration, dry macular degeneration, early-onset macular degeneration, optic atrophy, and various classifications of dystrophy. VA notes that the criteria in DC 6042, Retinal dystrophy, sufficiently address the types of retinal dystrophy and other conditions noted by the commenter. However, in light of the comment, VA will amend the title of the DC to indicate additional types of dystrophy to which DC 6042 may apply.

The same commenter also suggested adding diagnostic codes for histoplasmosis, Stargardt's disease, and optic neuritis. Histoplasmosis is an infectious disease caused by inhalation of spores often found in bird and bat droppings. The symptoms include fever, chills, headache, muscle aches, dry cough, and chest discomfort. Histoplasmosis is caused by an infectious agent and produces no visual

impairment and is therefore not appropriate for inclusion in the portion of the rating schedule pertaining to the eyes and visual impairment. Stargardt's disease, or Stargardt macular degeneration, is a genetic form of juvenile macular degeneration. By definition, the signs and symptoms of Stargardt's disease begin in childhood. When appropriate, VA can consider this condition as related to active military service when it is first diagnosed during active service or, if it existed prior to military service, the evidence establishes that military service aggravated the condition beyond its natural progression. 38 CFR 3.303(a), 3.306(a). VA notes that DC 6042, Retinal dystrophy, will include the additional clarifying changes noted above, and so adequately covers this category of disability. VA, therefore, makes no additional changes based on this suggestion. Meanwhile, optic neuritis is the inflammation of the optic nerve and is a sub-type of optic neuropathy, the general term for any damage of the optic nerve. VA notes that DC 6026, Optic neuropathy, adequately covers this category and sub-type of visual disability. Therefore, VA makes no additional changes based on this suggestion.

The same commenter suggested adding a minimum 10 percent evaluation under the General Rating Formula for any visual disability resulting in photophobia and glare sensitivity. VA appreciates this suggestion and notes that the rating schedule currently considers pain, photophobia, and glare sensitivity as productive of a minimum 10 percent evaluation when it is directly related to corneal transplant. 38 CFR 4.79, DC 6036. VA disagrees, however, with adding this criterion as the suggested minimum evaluation to the General Rating Formula for Diseases of the Eye. The minimum evaluation would then apply in cases where there is no clear association between the claimed photophobia and glare sensitivity and the specific visual disability subject to evaluation. As noted previously, VA can and will consider these signs/symptoms on a case-by-case basis when conducting an extraschedular review in accordance with § 3.321.

J. Technical Changes

Non-substantive changes to the rulemaking have been made to correct inaccuracies and/or unnecessary language in the final rule. In the proposed rule, several DCs included the instruction to evaluate under the General Rating Formula for Diseases of the Eye, without any alternative rating

criteria. However, this language is redundant in light of the instructions contained at the beginning of § 4.79, which specifically state to use the General Rating Formula for Diseases of the Eye unless otherwise instructed. Therefore, this redundant language has been removed from DCs 6026 and 6046. To further ensure that this general instruction is not missed, VA is moving this sentence outside of the rating table to immediately follow the section heading for § 4.79.

Additionally, the proposed rulemaking used the terms “evaluate” and “rate” interchangeably when indicating a disability should be evaluated in a certain manner. To maintain consistency and avoid any confusion, VA has amended the language to state “evaluate” wherever “rate” was previously used.

The text of the proposed rulemaking inadvertently omitted the portion of § 4.79 which covers evaluations based on impaired central visual acuity (DCs 6061 through 6066). VA has corrected this omission in the final rule and notes that it has not made any changes to this portion of § 4.79.

Finally, VA has made updates to Appendices A, B, and C of part 4 to reflect the above-noted changes.

Effective Date of Final Rule

Veterans Benefits Administration (VBA) personnel utilize the Veterans Benefit Management System for Rating (VBMS-R) to process disability compensation claims that involve disability evaluations made under the VASRD. In order to ensure that there is no delay in processing veterans' claims, VA must coordinate the effective date of this final rule with corresponding VBMS-R system updates. As such, this final rule will apply effective May 13, 2018, the date VBMS-R system updates related to this final rule will be complete.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order

12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.” This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule 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. This final rule will not affect any small entities. Only certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of section 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may 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. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.009, Veterans Medical Care Benefits; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on December 1, 2017, for publication.

Dated: March 27, 2018.

Jeffrey M. Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 4 as follows:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

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

■ 2. Amend § 4.77 by revising paragraph (a) to read as follows:

§ 4.77 Visual fields.

(a) *Examination of visual fields.* Examiners must use either Goldmann kinetic perimetry or automated perimetry using Humphrey Model 750, Octopus Model 101, or later versions of these perimetric devices with simulated kinetic Goldmann testing capability. For

phakic (normal) individuals, as well as for pseudophakic or aphakic individuals who are well adapted to intraocular lens implant or contact lens correction, visual field examinations must be conducted using a standard target size and luminance, which is Goldmann's equivalent III/4e. For aphakic individuals not well adapted to contact lens correction or pseudophakic individuals not well adapted to intraocular lens implant, visual field examinations must be conducted using Goldmann's equivalent IV/4e. The examiner must document the results for at least 16 meridians 22½ degrees apart for each eye and indicate the Goldmann equivalent used. See Table III for the normal extent (in degrees) of the visual fields at the 8 principal meridians (45 degrees apart). When the examiner indicates that additional testing is necessary to evaluate visual fields, the additional testing must be conducted

using either a tangent screen or a 30-degree threshold visual field with the Goldmann III stimulus size. The examination report must document the results of either the tangent screen or of the 30-degree threshold visual field with the Goldmann III stimulus size.

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■ 3. Amend § 4.78 by revising paragraph (a) to read as follows:

§ 4.78 Muscle function.

(a) *Examination of muscle function.* The examiner must use a Goldmann perimeter chart or the Tangent Screen method that identifies the four major quadrants (upward, downward, left, and right lateral) and the central field (20 degrees or less) (see Figure 2). The examiner must document the results of muscle function testing by identifying the quadrant(s) and range(s) of degrees in which diplopia exists.

* * * * *

■ 4. Amend § 4.79 in the table entitled "Diseases of the Eye" by:

■ a. Relocating diagnostic codes 6000, 6001, 6002, 6006, 6007, 6008, and 6009, after the first table "Note" and before diagnostic code 6010;

■ b. Revising the section entitled "General Rating Formula";

■ c. Revising diagnostic codes 6000, 6006, 6009–6015, 6017–6018, 6026–6027, and 6034–6036,;

■ d. Adding diagnostic codes 6040, 6042, and 6046 in numerical order; and

■ e. Revising diagnostic code 6091.

The revisions and additions read as follows:

§ 4.79 Schedule of ratings—eye.

Unless otherwise directed, evaluate diseases of the eye under the General Rating Formula for Diseases of the Eye.

DISEASES OF THE EYE

| | Rating |
|---|--------|
| General Rating Formula for Diseases of the Eye: | |
| Evaluate on the basis of either visual impairment due to the particular condition or on incapacitating episodes, whichever results in a higher evaluation | |
| With documented incapacitating episodes requiring 7 or more treatment visits for an eye condition during the past 12 months | 60 |
| With documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months | 40 |
| With documented incapacitating episodes requiring at least 3 but less than 5 treatment visits for an eye condition during the past 12 months | 20 |
| With documented incapacitating episodes requiring at least 1 but less than 3 treatment visits for an eye condition during the past 12 months | 10 |
| Note (1): For the purposes of evaluation under 38 CFR 4.79, an incapacitating episode is an eye condition severe enough to require a clinic visit to a provider specifically for treatment purposes. | |
| Note (2): Examples of treatment may include but are not limited to: Systemic immunosuppressants or biologic agents; intravitreal or periocular injections; laser treatments; or other surgical interventions. | |
| Note (3): For the purposes of evaluating visual impairment due to the particular condition, refer to 38 CFR 4.75–4.78 and to § 4.79, diagnostic codes 6061–6091. | |
| 6000 Choroidopathy, including uveitis, iritis, cyclitis, or choroiditis | |
| * * * * * | |
| 6006 Retinopathy or maculopathy not otherwise specified | |
| * * * * * | |
| 6009 Unhealed eye injury. | |
| Note: This code includes orbital trauma, as well as penetrating or non-penetrating eye injury | |
| 6010 Tuberculosis of eye: | |
| Active | 100 |
| Inactive: Evaluate under § 4.88c or § 4.89 of this part, whichever is appropriate. | |
| 6011 Retinal scars, atrophy, or irregularities: | |
| Localized scars, atrophy, or irregularities of the retina, unilateral or bilateral, that are centrally located and that result in an irregular, duplicated, enlarged, or diminished image | 10 |
| Alternatively, evaluate based on the General Rating Formula for Diseases of the Eye, if this would result in a higher evaluation | |
| 6012 Angle-closure glaucoma | |
| Evaluate under the General Rating Formula for Diseases of the Eye. Minimum evaluation if continuous medication is required | |
| 6013 Open-angle glaucoma | |
| Evaluate under the General Rating Formula for Diseases of the Eye. Minimum evaluation if continuous medication is required | |
| 6014 Malignant neoplasms of the eye, orbit, and adnexa (excluding skin): | |
| Malignant neoplasms of the eye, orbit, and adnexa (excluding skin) that require therapy that is comparable to those used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the area of the eye, or surgery more extensive than enucleation | 100 |

DISEASES OF THE EYE—Continued

| | Rating |
|--|--------|
| <p>Note: Continue the 100 percent rating beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy, or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating will be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, evaluate based on residuals</p> <p>Malignant neoplasms of the eye, orbit, and adnexa (excluding skin) that do not require therapy comparable to that for systemic malignancies: Separately evaluate visual and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), and combine the evaluations.</p> <p>6015 Benign neoplasms of the eye, orbit, and adnexa (excluding skin): Separately evaluate visual and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), and combine the evaluations</p> | |
| 6017 Trachomatous conjunctivitis: | |
| Active: Evaluate under the General Rating Formula for Diseases of the Eye, minimum rating | 30 |
| Inactive: Evaluate based on residuals, such as visual impairment and disfigurement (diagnostic code 7800) | |
| 6018 Chronic conjunctivitis (nontrachomatous): | |
| Active: Evaluate under the General Rating Formula for Diseases of the Eye, minimum rating | 10 |
| Inactive: Evaluate based on residuals, such as visual impairment and disfigurement (diagnostic code 7800) | |
| 6026 Optic neuropathy | |
| 6027 Cataract: | |
| Preoperative: Evaluate under the General Rating Formula for Diseases of the Eye | |
| Postoperative: If a replacement lens is present (pseudophakia), evaluate under the General Rating Formula for Diseases of the Eye. If there is no replacement lens, evaluate based on aphakia (diagnostic code 6029) | |
| 6034 Pterygium: | |
| Evaluate under the General Rating Formula for Diseases of the Eye, disfigurement (diagnostic code 7800), conjunctivitis (diagnostic code 6018), etc., depending on the particular findings, and combine in accordance with § 4.25 | |
| 6035 Keratoconus | |
| 6036 Status post corneal transplant: | |
| Evaluate under the General Rating Formula for Diseases of the Eye. Minimum, if there is pain, photophobia, and glare sensitivity | 10 |
| 6040 Diabetic retinopathy | |
| 6042 Retinal dystrophy (including retinitis pigmentosa, wet or dry macular degeneration, early-onset macular degeneration, rod and/or cone dystrophy) | |
| 6046 Post-chiasmal disorders | |
| <i>Impairment of Central Visual Acuity</i> | |
| 6091 Symblepharon: | |
| Evaluate under the General Rating Formula for Diseases of the Eye, lagophthalmos (diagnostic code 6022), disfigurement (diagnostic code 7800), etc., depending on the particular findings, and combine in accordance with § 4.25 | |

■ 5. In appendix A to part 4, add entries for §§ 4.77, 4.78, and 4.79 in numerical order to read as follows:

APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

| Sec. | Diagnostic code No. | |
|------|---------------------|--|
| 4.77 | | Revised May 13, 2018. |
| 4.78 | | Revised May 13, 2018. |
| 4.79 | | Introduction criterion May 13, 2018; Revised General Rating Formula for Diseases of the Eye NOTE revised May 13, 2018. |
| | 6000 | Criterion May 13, 2018. |
| | 6001 | Criterion May 13, 2018. |
| | 6002 | Criterion May 13, 2018. |
| | 6006 | Title May 13, 2018. Criterion May 13, 2018. |

APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

| Sec. | Diagnostic code No. | |
|------|---------------------|--------------------------|
| | 6007 | Criterion May 13, 2018. |
| | 6008 | Criterion May 13, 2018. |
| | 6009 | Criterion May 13, 2018. |
| | 6011 | Evaluation May 13, 2018. |
| | 6012 | Evaluation May 13, 2018. |
| | 6013 | Evaluation May 13, 2018. |
| | 6014 | Title May 13, 2018. |
| | 6015 | Title May 13, 2018. |
| | 6017 | Evaluation May 13, 2018. |
| | 6018 | Evaluation May 13, 2018. |
| | 6019 | Evaluation. |
| | 6026 | Evaluation May 13, 2018. |
| | 6027 | Evaluation May 13, 2018. |
| | 6034 | Evaluation May 13, 2018. |
| | 6035 | Evaluation May 13, 2018. |
| | 6036 | Evaluation May 13, 2018. |
| | 6040 | Added May 13, 2018. |
| | 6042 | Added May 13, 2018. |
| | 6046 | Added May 13, 2018. |
| | 6091 | Evaluation May 13, 2018. |
| * | * | * |

■ 6. In appendix B to part 4, revise diagnostic codes 6000–6001, 6006–6015, 6025–6027, 6034, and 6035, and add diagnostic codes 6036, 6040, 6042, and 6046 in numerical order to read as follows:

APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES

| Diagnostic code No. | |
|----------------------------|---|
| * | * |
| THE EYE | |
| Diseases of the Eye | |
| 6000 | Choroidopathy, including uveitis, iritis, cyclitis, or chorioiditis. |
| 6001 | Keratopathy. |
| * | * |
| 6006 | Retinopathy or maculopathy not otherwise specified. |
| 6007 | Intraocular hemorrhage. |
| 6008 | Detachment of retina. |
| 6009 | Unhealed eye injury. |
| 6010 | Tuberculosis of eye. |
| 6011 | Retinal scars, atrophy, or irregularities. |
| 6012 | Angle-closure glaucoma. |
| 6013 | Open-angle glaucoma. |
| 6014 | Malignant neoplasms of the eye, orbit, and adnexa (excluding skin). |
| 6015 | Benign neoplasms of the eye, orbit, and adnexa (excluding skin). |
| * | * |
| 6025 | Disorders of the lacrimal apparatus (epiphora, dacryocystitis, etc.). |

APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES—Continued

| Diagnostic code No. | |
|---------------------|---|
| 6026 | Optic neuropathy. |
| 6027 | Cataract. |
| * | * |
| 6034 | Pterygium. |
| 6035 | Keratoconus. |
| 6036 | Status post corneal transplant. |
| * | * |
| 6040 | Diabetic retinopathy. |
| 6042 | Retinal dystrophy (including retinitis pigmentosa, wet or dry macular degeneration, early-onset macular degeneration, rod and/or cone dystrophy). |
| 6046 | Post-chiasmal disorders. |
| * | * |

■ 7. In appendix C:

■ a. Under the entry for “New growths”:

■ i. Under “Benign”, remove the entry for “Eyeball and adnexa” and add in its place an entry for “Eye, orbit, and adnexa”;

■ ii. Under “Malignant”, remove the entry for “Eyeball” and add in its place an entry for “Eye, orbit, and adnexa”;

■ b. Add in alphabetical order an entry for “Post-chiasmal disorders”;

■ c. Add in alphabetical order entries for:

■ i. “Retinal dystrophy (including retinitis pigmentosa, wet or dry macular degeneration, early-onset macular

degeneration, rod and/or cone dystrophy)”; and

■ ii. “Retinopathy, diabetic”.

■ d. Remove the entry for “Retinitis”; and

■ e. Add in alphabetical order an entry for “Retinopathy or maculopathy not otherwise specified”.

The additions and revisions read as follows:.

APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES

| | Diagnostic code No. |
|--|---------------------|
| * | * |
| New growths: | |
| Benign. | |
| * | * |
| Eye, orbit, and adnexa | 6015 |
| * | * |
| Eye, orbit, and adnexa | 6014 |
| * | * |
| Post-chiasmal disorders | 6046 |
| * | * |
| Retinal dystrophy (including retinitis pigmentosa, wet or dry macular degeneration, early-onset macular degeneration, rod and/or cone dystrophy) ... | 6042 |
| Retinopathy, diabetic | 6040 |
| Retinopathy or maculopathy not otherwise specified | 6006 |
| * | * |

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