

The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone around an offshore deepwater facility. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination, prepared and signed before October 31, 2022, are available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

### PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** 14 U.S.C. 554; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.871 to read as follows:

#### § 147.871 Safety Zone, Constitution Spar, Outer Continental Shelf Facility, Green Canyon 680, Gulf of Mexico

(a) *Description.* The Constitution Spar is in the deepwater area of the Gulf of Mexico at Green Canyon Block 680. The facility is located at 27°17'31.92" N, 90°58'4.8" W, (NAD 83) and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in the safety zone described in paragraph (a) of this section except for the following:

(1) An attending vessel, as defined in 147.20

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

(c) *Requests for Permission.* Persons or vessels requiring authorization to enter the safety zone described in paragraph (a) of this section must request permission from the Commander, Eighth Coast Guard District or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Commander or designated representative.

Dated: April 4, 2023.

**Richard Timme,**

*RADM, U.S. Coast Guard, Commander, Coast Guard District Eight.*

[FR Doc. 2023–07853 Filed 4–13–23; 8:45 am]

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### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 4

**RIN 2900–AR51**

#### Exceptions to Applying the Bilateral Factor in VA Disability Calculations

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this interim final

rule to amend the regulation governing the bilateral factor for diseases and injuries of both arms, both legs, or paired skeletal muscles. More specifically, this interim final rule will allow VA adjudicators to exclude certain disabilities that would be calculated using the bilateral factor to determine the combined evaluation if, by their exclusion, a higher combined evaluation can be achieved.

**DATES:**

*Effective date:* This interim final rule is effective April 16, 2023.

*Comment date:* Comments must be received on or before June 13, 2023.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on [Regulations.gov](http://Regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

**FOR FURTHER INFORMATION CONTACT:**

Olumayowa Famakinwa, Chief, VA Schedule for Rating Disabilities (VASRD) Implementation Staff (218B), Compensation Service (21C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:****I. The Need for Updating Bilateral Factor Policy**

VA conducted claims data analysis and determined that, in very limited circumstances, an unintended negative impact can result based on VA's "bilateral factor" calculation, which is applied when disabilities involving paired extremities are service connected. Specifically, adding an extremity to a veteran's total combined (100 percent) evaluation in some cases

can result in a less favorable 90 percent evaluation. To remedy this unintended negative impact, VA is amending its regulation regarding the bilateral factor to ensure affected veterans receive the appropriate level of compensation that their disabilities warrant.

**A. How Combined Evaluations Are Calculated**

By statute, VA assigns a combined evaluation for all service-connected disabilities using a schedule of 10 grades—10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent and 100 percent (sometimes referred to as "total"). See 38 U.S.C. 1155. This combined evaluation serves as the basis for a veteran's monthly compensation. Id. Instructions for combining evaluations for multiple service-connected disabilities are found in 38 CFR 4.25. Specifically, § 4.25 states that combinations must be done by order of severity (larger numbers first, smaller numbers last) and that, for example, "a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled[.]"

Paragraph (a) of 38 CFR 4.25 further states that "[t]his combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward." Therefore, the individual who is 72 percent disabled in the example would receive a 70 percent combined evaluation. This paragraph also provides instructions for combining more than two disabilities. Using the example of combining disabilities evaluated at 60 percent, 40 percent and 20 percent, the result is 80.8 percent; however, because the combination result is a decimal, it is converted to a whole number, and decimals of .5 or higher are adjusted upward. The result is an 81 percent evaluation that is converted to the nearest degree divisible by 10, or 80 percent.

**B. How the Bilateral Factor Is Applied**

Section 4.26 of title 38, CFR, provides that when a partial disability results from disease or injury of both arms, or of both legs, or of paired skeletal muscles, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (*i.e.*, not combined) before proceeding with

further combinations, or converting to degree of disability. The bilateral factor will be applied to such bilateral disabilities before other combinations are carried out and the rating for such disabilities including the bilateral factor in § 4.26 will be treated as 1 disability for the purpose of arranging in order of severity and for all further combinations.

**C. How the Bilateral Factor Lowers Evaluations in Isolated Cases**

The bilateral factor calculation does two things: (1) it combines bilateral disability evaluations together and (2) adds 10 percent of that total value to those combined bilateral disabilities, with a potential to increase the overall combined evaluation. However, the closer the combined evaluation approaches 100 percent, the smaller the effect of the additional disability on the combined rating, and, in limited cases, the bilateral factor yields a lower evaluation than if it were not applied to some or all of a particular veteran's bilateral disability evaluations.

An example of this is when there are multiple disabilities that combine to 93 percent, plus two other 10-percent evaluations. Applying the bilateral factor, 10 and 10 first combine to 19, and 1.9 (representing 10 percent of 19) is added (not combined) to the 19, resulting in 20.9. This is rounded to 21 (the nearest whole number) and combined with 93 percent. 93 percent and 21 percent combine to 94.47, which is rounded to 94 and then adjusted downward to a final combined rating of 90 percent. However, if the bilateral factor is not applied, 93 and 10 combine to 93.7, which is rounded to 94, then 94 and 10 combine to 94.6, which is rounded to 95. This is then adjusted upward to a final combined rating of 100 percent. Thus, in this example, not applying the bilateral factor results in a greater benefit to the veteran.

This effect can also be observed when combining 92 percent and 31 percent, where 31 percent is the result of two bilateral disabilities at 20 percent and 10 percent, compared to combining 92 percent with 20 percent and 10 percent separately. Applying the bilateral factor, 92 percent and 31 percent combine to 94.48, which is rounded to 94 and then adjusted downward to a final combined rating of 90 percent. If the bilateral factor is not applied, 92 percent and 20 percent combine to 93.6, which is rounded to 94, and 94 percent and 10 percent combine to 94.6, which is rounded to 95. This is then adjusted upward to a final combined rating of 100 percent.

## II. The Solution

VA considered several solutions to arrive at one that resolves this issue without creating new ones. First, it is important to note that the bilateral factor increases combined evaluations in many cases or at least results in the same evaluation that could be obtained without it in almost every case. It is only at the low 90-percent level where it may reduce a combined evaluation; therefore, VA determined that simply eliminating the bilateral factor regulation would not be beneficial to veterans. VA also rejected other potential solutions that would have revised combination results less than 90 percent, as those would have overcorrected for the problem.

Instead, VA determined that the most appropriate solution is simply to allow disabilities that affect extremities but also cause the bilateral factor calculation to lower the combined evaluation to be excluded from the bilateral factor calculation. VA will make the necessary system changes so that when a combined evaluation equals 90 percent and the bilateral factor has been applied, VA's claims processing system will perform calculations to determine if a 100 percent rating can be achieved if a bilateral disability or multiple bilateral disabilities are excluded. If so, the system will assign a 100 percent combined evaluation.

To implement this change, VA is adding an exception to the requirement in 38 CFR 4.26 that all bilateral disabilities must be combined as usual and 10 percent of the combined value added before proceeding with further combinations or converting to degree of disability. The exception will allow VA to avoid applying the bilateral factor calculation for a given bilateral disability or disabilities if excluding that disability or disabilities will allow for a higher combined evaluation when combined separately.

## III. Converting Cases Based on VA's Own Initiative

This rulemaking, to amend § 4.26 to enable a veteran to receive an increased evaluation, is considered a liberalizing VA issue within the meaning of 38 U.S.C. 5110(g) and 38 CFR 3.114 because it would result in higher ratings for impacted veterans than would currently result under § 4.26. Section 3.114 also provides authority for VA to review claims on its own initiative after a liberalizing VA issue has become effective. In this well-defined, limited situation, VA can identify all veterans who would benefit from the application of this bilateral factor exception.

Therefore, VA will adjust all the affected combined evaluations running on the effective date of this rulemaking without requiring a claim from affected veterans or their authorized representatives. VA will also provide notice of this adjustment to affected veterans and their representatives in accordance with 38 U.S.C. 5104. Advance notice is not required because it would have no adverse impact on the affected veterans. Finally, the provisions of 38 U.S.C. 5110(g) and 38 CFR 3.114 will apply if a veteran requests a review based on this liberalizing issue. Under those provisions, the effective date of an increased evaluation based on this liberalizing VA issue may be authorized from the effective date of this issue if the claim is received within one year of that date. If the claim is received more than one year from the effective date of this liberalizing VA issue, then the effective date of the increased evaluation may be authorized for a period of one year prior to the date the claim is received.

## IV. Regulatory Amendments

For the reasons discussed above, VA is amending 38 CFR 4.26 as follows:

VA is amending the introductory paragraph by adding "Except as provided in paragraph (d) of this section," to the first sentence and replacing "10's" with "10 percent evaluations" in the penultimate sentence.

VA is adding new paragraph (d) to provide the exception to the application of the bilateral factor.

### Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause, under the provisions of 5 U.S.C. 553(b)(B), that advance notice and opportunity for public comment is contrary to the public interest, particularly to veterans with bilateral disability evaluations. This interim final rule enables VA to provide higher evaluations for a number of veterans that will entitle them to additional benefits from VA and other Federal and state government agencies.

It would have been contrary to the public interest to provide opportunity for prior notice and comment for this rulemaking because a delay in implementation would have required VA rating officials to continue to apply the bilateral factor even where it results in a lower rating for impacted veterans. Moreover, this rule will not negatively impact any veterans but rather will only serve to provide higher ratings where feasible. Lastly, a delay in implementation would have denied veterans timely access to benefits based

on the appropriate combined rating warranted by their disabilities.

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

For the above reasons, 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**.

## Executive Orders 12866 and 13563

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. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://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

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 interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

## 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. 3501–3521).

## Congressional Review Act

Pursuant to Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

## List of Subjects in 38 CFR Part 4

Disability benefits.

## Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 6, 2022, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 4 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.

■ 2. Amend § 4.26 by:

- a. Revising the introductory text;
- b. Adding headings to paragraphs (a) through (c); and
- c. Adding paragraph (d).

The revision and additions read as follows:

### § 4.26 Bilateral factor.

Except as provided in paragraph (d) of this section, when a partial disability results from disease or injury of both arms, or of both legs, or of paired skeletal muscles, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (*i.e.*, not combined) before proceeding with further combinations, or converting to degree of disability. The bilateral factor will be applied to such bilateral disabilities before other combinations are carried out and the rating for such disabilities including the bilateral factor in this section will be treated as one disability for the purpose of arranging in order of severity and for all further combinations. For example, with disabilities evaluated at 60 percent, 20 percent, 10 percent and 10 percent (with the two 10 percent evaluations being bilateral disabilities), the order of severity would be 60, 21 and 20. The 60 and 21 combine to 68 percent and the

68 and 20 combine to 74 percent, converted to 70 percent as the final degree of disability.

(a) *Definitions.* \* \* \*

(b) *Procedure for four affected extremities.* \* \* \*

(c) *Applicability.* \* \* \*

(d) *Exception.* In cases where the combined evaluation is lower than what could be achieved by not including one or more bilateral disabilities in the bilateral factor calculation, those bilateral disabilities will be removed from the bilateral factor calculation and combined separately, to achieve the combined evaluation most favorable to the veteran.

[FR Doc. 2023–07426 Filed 4–13–23; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 230306–0065]

RTID 0648–XC924

### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; modification of a closure; request for comments.

**SUMMARY:** NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2023 total allowable catch of Pacific cod allocated to catcher vessels using trawl gear in the BSAI.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), April 13, 2023, through 1200 hours, A.l.t., June 10, 2023. Comments must be received at the following address no later than 4:30 p.m., A.l.t., May 1, 2023.

**ADDRESSES:** You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0094, by any of the following methods:

**Electronic Submission:** Submit all electronic public comments via the Federal e- Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2022–0094 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

**Mail:** Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

#### FOR FURTHER INFORMATION CONTACT:

Krista Milani, 907–581–2062.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The B season apportionment of the 2023 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI is 2,949 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023). NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI under § 679.20(d)(1)(iii) on April 2, 2023 (88 FR 20080, April 5, 2023).

NMFS has determined that as of April 10, 2023, approximately 2,000 metric tons of Pacific cod remain in the B season apportionment of the 2023 Pacific cod allocated to catcher vessels using trawl gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2023 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in