Public Comment

In response to our invitation in the proposed waiver and extension of the project period with funding, one party submitted comments. Although the commenter expressed strong support for the proposed waiver and the extension of the project period with funding, the discussion the commenter provided relates to the Innovation Rehabilitation Training grants, which fund projects that develop training products and programs in providing rehabilitation services to individuals with disabilities, rather than the Rehabilitation Long-Term Training grants, which are the subject of this notice, under which projects are funded to provide stipend support to scholars pursuing a degree or certificate in the field of rehabilitation counseling.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raise concerns not directly related to the proposed waiver and extension with funding.

Final Waiver and Extension of the Project Period With Funding

The Department believes aligning the projects' period of performance for ALNs 84.129B, 84.129H, 84.129P, and 84.129Q is in the best interest of the public, as the extension reduces financial and administrative burden by allowing the Department to conduct a single competition for ALNs 84.129B, 84.129H, 84.129P and 84.129Q grants in FY 2025, with a five-year performance period that would run from October 1, 2025, through September 30, 2030.

Consequently, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, as well as the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds. This waiver allows the Department to issue a one-year FY 2024 continuation award to each of the 51 currently funded FY 2019 84.129B, 84.129H, 84.129P, and 84.129Q projects. Any activities carried out during the year of this continuation award must be consistent with the scope, goals, and objectives of the grantees' applications as approved in the FY 2019 competition. The requirements for continuation awards are set forth in 34 CFR 75.253.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of the project period with funding would not have a significant economic impact on a substantial number of small entities. The only entities that would be affected by the proposed waiver and extension of the project period are the 51 grants that were awarded in FY 2019 under ALNs 84.129B, 84.129H, 84.129P, and 84.129Q.

The Secretary certifies that the proposed waiver and extension of the project period with funding would not have a significant economic impact on these entities because the extension of an existing project period imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This final waiver and extension of the project period with funding does not contain any information collection requirements.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides final notification of our specific plans and actions for these programs.

Accessible Format: On request to the program contact person listed under FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Danté Allen,

Commissioner, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services.

[FR Doc. 2023–28490 Filed 12–26–23; 8:45 am]

BILLING CODE 4000–01–P

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: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, without changes, an interim final rule that amended the regulation governing the bilateral factor for diseases and injuries of both arms, both legs, or paired skeletal muscles.

DATES: *Effective Date:* This rule is effective December 27, 2023.

FOR FURTHER INFORMATION CONTACT: Howard McCuien, Jr., Regulations Analyst, VA Schedule for Rating Disabilities (VASRD) Regulations Staff (218A), Compensation Service, Veteran 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 April 14, 2023, VA published the interim final rule in the **Federal Register** to 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. See 88 FR 22914. VA received one comment during the 60-day public comment period. The commenter agreed with VA's amendment but offered two considerations for how VA implements it.

I. Limiting Application of Regulation

The commenter expressed concern that application of the bilateral factor rule may fail to maximize benefits at the 80 percent combined evaluation level (in addition to the 90 percent level) and, in support of this assessment, cited the decision of the United States Court of Appeals for Veterans Claims (CAVC) in *Wilburn* v. *McDonough,* No. 22–5577, 2023 WL 5217853 (Ct. Vet. App. Aug. 15, 2023). This commenter suggested that since VA cannot guarantee that the anomaly described in the interim final rule is limited to the 90 percent to 100 percent range, VA should apply this systemic fix to all cases where the bilateral factor has been or will be considered to ensure it has complied with the duty to maximize benefits as described in Wilburn.

VA agrees that the application of the bilateral factor rule should not be limited to 90 percent combined evaluations. While the interim final rule stated that ''it is only at the low 90-percent level where it may reduce a combined evaluation,'' VA has since determined that there are limited scenarios where a combined 80-percent evaluation could be increased to 90 percent. Nevertheless, the regulatory text of the bilateral factor rule does not limit its application to only 90 percent combined evaluations but will apply whenever ''the combined evaluation is lower than what could be achieved by not including one or more bilateral disabilities in the bilateral factor calculation.'' See 38 CFR 4.26(d). Therefore, no changes to the regulatory text are necessary, and the regulatory impact analysis of this final rule reflects the additional Veterans who are eligible for increased combined evaluations based on its application to Veterans at all possible combination levels.

II. Liberalizing Law

The commenter also suggested that VA should retroactively apply this regulatory amendment back to the original applicable effective date for each Veteran rather than the effective date of the rulemaking amending 38 CFR 4.26, which is April 16, 2023. Specifically, the commenter contended that this regulatory amendment is not a ''liberalizing law'' because it does not bring about a substantive change that creates a new or different entitlement as defined by Spencer v. Brown, 17 F.3d 368, 372 (Fed. Cir. 1994). Instead, the commenter asserted that this amendment merely clarifies the proper application of the bilateral factor to both more accurately account for the full disability picture and to comply with VA's duty to maximize benefits. The commenter further asserted that any instance in the past in which VA did not properly apply the bilateral factor (based on its now clarified application) and did not maximize benefits was a clear and unmistakable error; therefore, VA should correct this error back to the date it originally occurred.

VA disagrees that this regulatory amendment merely clarified the proper application of the bilateral factor rule and that previous decisions were in error. The instructions for applying ''old'' 38 CFR 4.26 (hereinafter referred to as the ''prior bilateral factor rule'') were unambiguously clear, and no clarification was necessary for applying them. The prior bilateral factor rule stated that whenever there was a partial disability or disabilities that affected both arms, both legs, or paired skeletal muscles, those partial disabilities ''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 prior bilateral factor rule had no exceptions or other caveats that would have allowed claims processers to forego combining all partial disabilities, and it used the term ''will,'' indicating an obligation to perform. Additionally, the prior bilateral factor rule did not include any provisions to disregard its instructions if a higher evaluation could be assigned. Conversely, there are many examples in 38 CFR part 4 of provisions that allow claims processors to apply or disregard an instruction if doing so results in a higher evaluation. One such example is note 2 of 38 CFR 4.118, DC 7801, Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are associated with underlying soft tissue damage. The note directs the claims processor to separately evaluate each affected zone of the body and then combine each evaluation. However, it also states that the claims processor may combine all of the zones into a single evaluation if that would result in a higher evaluation.

As such, this regulatory amendment was necessary to create an exception to the application of the prior bilateral factor rule. Because a regulatory amendment was necessary, retroactive application of its provisions is limited by 38 U.S.C. 5110(g), which states, in part, that ''the effective date of such award or increase (pursuant to any Act or administrative issue) shall be fixed in accordance with the facts found but shall not be earlier than the effective date of the Act or administrative issue.''

In addition to the public comment, a different organization identified the problem of certain Veterans receiving lower combined evaluations due to the application of the prior bilateral factor rule and brought it to VA's attention before VA published the interim final rule on April 14, 2023. VA informed the organization that it was aware of this problem and was drafting a regulation to address it. During that discussion, the organization also inquired about whether VA could employ equitable relief as a basis for retroactive application of this regulatory amendment. VA has determined that it cannot apply equitable relief based on the application of the prior bilateral factor rule. Equitable relief provisions under 38 U.S.C. 503 only apply in cases where VA has made an administrative error or an erroneous determination. Since VA has always interpreted the use of the prior bilateral factor rule as mandatory without exception, previous evaluations using the prior bilateral factor rule were not in error. Therefore, 38 U.S.C. 503 is not applicable. Furthermore, a clear and unmistakable error finding likewise would not be authorized with regard to claims already finally decided under the prior bilateral factor rule because VA's decision would have been in accordance with the law as it existed at the time the claim was decided.

While VA is committed to ensuring benefits are maximized to the full extent of the law, retroactive application is not authorized in this instance, as it is limited by statute and regulation. Accordingly, VA makes no changes based on this comment.

Since VA makes no changes based on the comment received, this document adopts as a final rule the interim final rule published in the **Federal Register** on April 14, 2023, 88 FR 22914.

Administrative Procedure Act

VA has considered all relevant input and information contained in the comment submitted in response to the interim final rule (88 FR 22914) and, for the reasons set forth above, has concluded that no changes to the interim final rule are warranted. Accordingly, based upon the authorities and reasons set forth in the interim final rule, as supplemented by the additional reasons provided in this document in response to the comment received, VA is adopting the provisions of the interim final rule at 88 FR 22914 as a final rule without changes.

Executive Orders 12866, 13563 and 14094

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs 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). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 of September 30, 1993 (Regulatory Planning and Review), and E.O. 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under E.O. 12866, as amended by E.O. 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act (RFA)

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

Paperwork Reduction Act (PRA)

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

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 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.

Congressional Review Act

Pursuant to the 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, signed and approved this document on December 18, 2023, 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.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

■ For the reasons stated in the preamble, VA adopts as final the interim final rule published on April 14, 2023, at 88 FR 22914.

[FR Doc. 2023–28241 Filed 12–26–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL–5906.8–01–OECA]

Civil Monetary Penalty Inflation Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of the maximum (and minimum) statutory civil monetary penalty amounts under the statutes the EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (''the 2015 Act''). The 2015 Act prescribes a formula for annually adjusting the statutory maximum (and minimum) amount of civil monetary penalties to reflect inflation, maintain the deterrent effect of statutory civil monetary penalties, and promote compliance with the law. The rule does not establish specific civil monetary penalty amounts the EPA may seek in particular cases. The EPA calculates those amounts, as appropriate, based on the facts of particular cases and applicable agency penalty policies. The EPA's civil penalty policies, which guide enforcement personnel on how to exercise the EPA's discretion within statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.,* the seriousness of the violation, the violator's good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and the violator's ability to pay.

DATES: This final rule is effective December 27, 2023.

FOR FURTHER INFORMATION CONTACT: David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564–4083; *smith-watts.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The 2015 Act [1] requires each Federal agency to adjust the statutory civil monetary penalties under the laws implemented by that agency annually, to account for inflation. Section 4 of the 2015 Act requires each Federal agency to publish these adjustments by January 15 of each year. The purpose of the 2015 Act is to maintain the deterrent effect of civil monetary penalties by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar.

Since January 15, 2017, the EPA has made seven annual adjustments: (1) on January 12, 2017, effective on January 15, 2017 (82 FR 3633); (2) on January 10, 2018, effective on January 15, 2018 (83 FR 1190); (3) on February 6, 2019, effective the same day (84 FR 2056), with a subsequent correction on February 25, 2019 (84 FR 5955); (4) on January 13, 2020, effective the same day (85 FR 1751); (5) on December 23, 2020, effective the same day (85 FR 83818); (6) on January 12, 2022, effective the same day (87 FR 1676); and (7) on January 6, 2023, effective the same day (88 FR 986). This rule implements the eighth annual adjustment mandated by the 2015 Act.

[1] The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L.114–74) was signed into law on November 2, 2015, and amended the Federal Civil Penalties Inflation Adjustment Act of 1990.