



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

B-336163

April 4, 2024

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

The Honorable Mike Bost
Chairman
The Honorable Mark Takano
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Schedule for Rating Disabilities: The Digestive System*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Veterans Affairs (VA) entitled "Schedule for Rating Disabilities: The Digestive System" (RIN: 2900-AQ90). We received the rule on March 20, 2024. It was published in the *Federal Register* as a final rule on March 20, 2024. 89 Fed. Reg. 19735. The effective date is May 19, 2024.

According to VA, this final rule amends the VA Schedule for Rating Disabilities (VASRD) by revising the portion of the schedule that addresses the digestive system. VA stated that the effect of this rule is to ensure that the rating schedule uses current medical terminology and provides detailed and updated criteria for evaluation of digestive conditions for disability rating purposes.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on March 20, 2024. 89 Fed. Reg. 19735. The *Congressional Record* shows that the House of Representatives received the rule on March 27, 2024. 170 Cong. Rec. EC3649 (daily ed. Apr. 2, 2024). The *Congressional Record* does not yet reflect the date of receipt by the Senate. VA provided documentation reflecting that the House of Representatives and the Senate received the rule on March 25, 2024. Email from Office of Regulation Policy and Management, Office of the Secretary, VA, to Staff Attorney, GAO, Subject: *RE: Regulatory Compliance w/CRA - AQ90(F) Schedule for Rating Disabilities: The Digestive System* (Mar. 27, 2024). The rule has a stated effective date of May 19, 2024. Therefore, based on the date of congressional receipt, the final rule does not have the required 60-day delay in its effective date.

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

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

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Luvenia Potts
Reg. Dev. Coord., Ofc. of Reg. Pol. & Mgmt.
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
“SCHEDULE FOR RATING DISABILITIES: THE DIGESTIVE SYSTEM”
(RIN: 2900-AQ90)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) examined the costs and benefits of this final rule. According to VA, the rule allows for more accurate levels of disability compensation for functional impairment affecting earnings capacity. Additionally, VA explained that updating the criteria in this body system to reflect current medical and scientific standards allows for more efficient claims processing because terminology and procedures described in current medical records will more easily match the terminology and procedures described in the rating criteria. VA stated that this supports the VA Secretary’s goal of providing benefits in a timely manner, modernizing systems, and ensuring veterans can make informed decisions about the benefits they seek by basing them on current and familiar medical standards and practices.

In terms of the estimated impact of the rule, VA determined that both transfers and costs are associated with the rule. VA estimated the total budgetary impact of the rule to be \$87.4 million in 2024, \$1.8 billion over five years, and \$5.0 billion over 10 years. VA estimated transfers under the rule to be \$74.2 million in 2024, \$1.7 billion over five years, and \$4.8 billion over 10 years. VA estimated the rule’s costs to be \$13.1 million in 2024, \$125.6 million over five years, and \$146.6 million over 10 years. Additionally, VA estimated the total budget impact of the rule to the Cost of War Toxic Exposures Fund (TEF) to be \$5.9 million in 2024, \$71.6 million over five years, and \$162.7 million over 10 years.

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

The Secretary of VA certified that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined by RFA.

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

VA stated that this final rule will not 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.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and

Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

VA did not discuss the Administrative Pay-As-You-Go Act of 2023 in the rule or in its submission to us.

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

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

On January 11, 2022, VA published a proposed rule. 87 Fed. Reg. 1522. VA stated that it received 22 comments in response to the proposed rule, including from two veterans service organizations and two veterans advocacy groups. VA responded to comments in this final rule.

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

VA stated that this final rule contains no provisions constituting a collection of information under PRA.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

VA stated that the Office of Information and Regulatory Affairs has determined that this final rule is a significant regulatory action under the Order, as amended by Executive Order 14094.

Executive Order No. 13132 (Federalism)

In its submission to us, VA indicated that it did not discuss the Order in the final rule.