145–30–0028, Revision 09, dated March 1, 2004; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that the fully automated digital electronic control (FADEC) unit failed to compensate for ice accretion on the engine fan blades, which was caused by a false temperature signal from the total air temperature (TAT) sensor to the FADEC. We are issuing this AD to prevent failure of the TAT sensor, which could result in insufficient thrust either to take off or (if coupled with the loss of an engine during takeoff) the inability to abort the takeoff in a safe manner, and consequent reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 180 days after the effective date of this AD: Modify the TAT sensor heating system in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–30–0028, Revision 09, dated March 1, 2004.

Modifications Done According to Previous Revisions of the Service Bulletin

(g) Modifications done before the effective date of this AD in accordance with the revisions of the service bulletin in Table 1 of this AD are acceptable for compliance with the corresponding action in this AD, provided that the additional actions specified in PART III of the Accomplishment Instructions of EMBRAER Service Bulletin 145–30–0028, Revision 09, dated March 1, 2004, are accomplished within the compliance time required by paragraph (f) of this AD.

TABLE 1.—PREVIOUS REVISIONS OF THE SERVICE BULLETIN

EMBRAER service bulletin	Revision	Date
145–30–0028	04	March 13, 2001.
145–30–0028	05	May 24, 2001.
145–30–0028	06	September 26, 2001.
145–30–0028	07	April 10, 2003.
145–30–0028	08	August 20, 2003.

Credit for Replacement of FADEC Assemblies

(h) Replacing the existing FADEC assemblies with new or modified FADEC assemblies that include software version 7.6, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 2 of this AD, is acceptable for compliance with paragraph (f) of this AD. If the FADEC assemblies are replaced with new or modified assemblies as specified in this paragraph, all applicable engine indication and crew alerting system (EICAS) and central maintenance computer (CMC) upgrades, as well as any other applicable actions associated with upgrading the EICAS and CMC, must also be done, as specified in paragraph 1.C., ''Description—Time for Accomplishment'' of the applicable EMBRAER service bulletin.

TABLE 2.—SERVICE BULLETINS FOR UPGRADING FADEC ASSEMBLIES

For EMBRAER model—	EMBRAER service bulletin	Revision	Date
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP.	145–73–0021	Original	July 23, 2004.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, -145XR, –145MP, and –145EP.	145–73–0022	01	July 15, 2004.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP.	145–73–0023	Original	June 28, 2004.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP.	145–73–0024	01	July 15, 2004.
EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP.	145–73–0025	Original	July 23, 2004.
EMB–145XR	145–73–0026	Original	June 28, 2004.
EMB–135BJ	145LEG–73–0003.	01	July 15, 2004.
EMB–135BJ	145LEG–73–0004.	02	October 6, 2004.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) Brazilian airworthiness directive 2004–01–02R2, dated November 29, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on August 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16262 Filed 8–16–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF34

Revised Medical Criteria for Evaluating Visual Disorders

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate

claims involving visual disorders. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect our program experience and advances in medical knowledge, treatment, and methods of evaluating visual disorders.

DATES: To be sure your comments are considered, we must receive them by October 17, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Disability and Income Security Programs, Social Security Administration, 100 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability and blindness determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability or blindness benefits under title II or title XVI, these proposed regulations also would affect the Medicare and Medicaid programs.

Who Can Get Disability or Blindness Benefits?

Under title II of the Act, we provide for the payment of disability benefits, including disability benefits based on blindness, if you are disabled and belong to one of the following three groups:

- Workers insured under the Act;
- Children of insured workers; and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability or blindness if you are disabled or blind and have limited income and resources.

How Do We Define Blindness?

For both the title II and title XVI programs, the Act defines blindness as ''central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered * * * as having a central visual acuity of 20/200 or less.'' (Sections 216(i)(1) and 1614(a)(2) of the Act.)

If you are seeking benefits under title II, your blindness generally must meet the 12-month statutory duration requirement. However, if you are seeking payments under title XVI of the Act, your blindness need not meet the 12-month statutory duration requirement. Also, if you are seeking payments under title XVI of the Act, there is no requirement that you be unable to do any substantial gainful activity (SGA). However, if you are working, we will consider your earnings to determine if you are eligible for SSI payments.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) as described above and that results in * * *
title II	an adult or a child	the inability to do any SGA.
title XVI	a person age 18 or older	the inability to do any SGA.
title XVI	a person under age 18	marked and severe functional limitations.

There is also an additional definition of disability if you are seeking benefits under title II of the Act, have attained age 55, and have blindness as defined in section 216(i)(1) of the Act: Disability means that the blindness has resulted in the inability to engage in SGA requiring skills or abilities comparable to those of any gainful activity in which you previously engaged with some regularity and over a substantial period of time.

What are the Listings?

The listings are examples of impairments that we consider severe enough to prevent an individual from doing any gainful activity without considering vocational factors, or that result in ''marked and severe functional limitations'' in children seeking SSI payments based on disability under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

We generally use the medical criteria in the listings only to make determinations or decisions of disability. The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet the criteria in any listing, we will also

consider whether it medically equals any listing; that is, whether it is as medically severe as the criteria in the listed impairment. (See §§ 404.1526 and 416.926.)

We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process'' that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.)

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended based only on any changes in the listings. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled the listings. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. (See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A)). If you are a child who is eligible for SSI payments, we follow a similar rule after we decide that you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

Why Are We Proposing To Revise the Listings for Visual Disorders?

We are proposing these revisions to update the medical criteria in the listings for visual disorders and to provide more information about how we evaluate visual disorders. We are not proposing any changes here to the listings for disturbances of labyrinthine-vestibular function (listing 2.07), hearing impairments (listings 2.08 and 102.08), and loss of speech (listing 2.09). However, we intend to publish separately proposed rules that would update the criteria for those disorders.

On April 24, 2002, we published final rules in the **Federal Register** (67 FR 20018) that included technical revisions to the listings for special senses and speech disorders. Prior to this, we published final rules that included revisions to the special senses and speech listings in the **Federal Register** on December 6, 1985 (50 FR 50068). We last published final rules making comprehensive revisions to the part A special senses and speech listings in the **Federal Register** on March 27, 1979 (44 FR 18170), and final rules making comprehensive revisions to the part B special senses and speech listings on March 16, 1977 (42 FR 14705). The current special senses and speech listings will no longer be effective on July 2, 2005, unless we extend them, or revise and issue them again.

When Will We Start To Use These Proposed Rules?

We will not use these proposed rules until we evaluate the public comments we receive on them, determine whether to issue them as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and we will summarize and respond to the major public comments. Until the effective date of any final rules, we will continue to use our current rules.

How Long Would These Proposed Rules Be Effective?

If we publish these proposed rules as final rules, they will remain in effect for 8 years after the date they become effective, unless we extend them, or revise and issue them again.

How Are We Proposing To Change the Introductory Text to the Special Senses and Speech Listings for Adults?

2.00 Special Senses and Speech

We propose to remove the following sections of current 2.00:

- The last paragraph of 2.00A3, ''Field of vision.''
- Paragraph 2.00A4, ''Muscle function.''
- The first paragraph of 2.00A6, ''Special situations.''

The last paragraph of current 2.00A3, ''Field of vision,'' explains that when the visual field loss is predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields as described by B. Esterman in 1968 may be used for determining whether the visual field loss is comparable to that described in table 2 in section 2.00 of the listings. As this kind of scale is rarely used, we believe that we no longer need this guidance in the introductory text.

Current 2.00A4, ''Muscle function,'' describes the type of impairment evaluated under current listing 2.06, ''Total bilateral ophthalmoplegia.'' (Ophthalmoplegia is paralysis of the eye muscles.) As the causes of this disorder are now more readily detectable and treatable, this disorder has become extremely rare. Therefore, we propose to remove both the current listing and the guidance in the introductory text that addresses this disorder. Instead, we would evaluate total bilateral ophthalmoplegia and other eye muscle disorders by assessing the impact of such disorders on your visual efficiency under proposed listing 2.04, or based on your actual visual functioning.

The first paragraph of current 2.00A6, ''Special situations,'' explains how we calculate visual acuity efficiency for individuals with aphakia (the absence of the anatomical lens of the eye). Advances in technology have led to the development of effective synthetic intraocular lenses. Also, contact lenses have been technically refined and may be used in those instances in which the anatomical lens is not replaced with a synthetic lens. Because the synthetic intraocular lens or the contact lens corrects both the visual acuity and the visual field, we would compute the visual acuity efficiency or visual field efficiency as though the eye had an anatomical lens. Therefore, we no longer need this guidance.

We propose to reorganize and expand the rest of the current introductory text for visual disorders to provide additional guidance. The following is a detailed explanation of the proposed introductory text.

Proposed 2.00A—How Do We Evaluate Visual Disorders?

This section corresponds to current 2.00A, ''Disorders of Vision.'' We propose to clarify the information in the current section by reorganizing the material into eight subsections and by providing additional guidance as explained below.

Proposed 2.00A1—What Are Visual Disorders?

This proposed section corresponds to current 2.00A1, ''Causes of impairment.'' We propose to make nonsubstantive editorial changes for clarity.

Proposed 2.00A2—What Is Statutory Blindness?

This proposed section would revise current 2.00A7, ''Statutory blindness,'' to include the statutory definition. We also propose to update the references to the listings that show statutory blindness to reflect the revised listing criteria.

Proposed 2.00A3—What Evidence Do We Need To Establish Statutory Blindness Under Title XVI?

In this new section, we propose to explain that when we make a determination or decision that you have statutory blindness under title XVI, we require evidence showing only that the statutory criteria are satisfied; we do not need evidence to document the visual disorder that causes the blindness. We also propose to explain that there is no duration requirement for statutory blindness under title XVI.

We propose to add this section because blindness is treated differently under title II and title XVI of the Act. Under title II, blindness is generally evaluated in the same way as other medical impairments. Under title XVI, blindness and disability are separate categories, and the requirements for eligibility based on blindness are different from the requirements for eligibility based on disability.

Proposed 2.00A4—What Evidence Do We Need to Evaluate Visual Disorders, Including Those That Result in Statutory Blindness Under Title II?

We propose to revise the last sentence of current 2.00A1 to explain what evidence we need to evaluate a visual disorder.

Proposed 2.00A5—How Do We Measure Best-Corrected Visual Acuity?

We propose to revise the guidance in the second sentence of current 2.00A2, ''Visual acuity,'' by providing that, in addition to testing that uses Snellen methodology, we may also use visual acuity measurements obtained using another testing methodology that is comparable to Snellen methodology. We also propose to clarify what constitutes best-corrected visual acuity and to add guidance indicating that we will not use the results of visual evoked response testing or pinhole testing to determine best-corrected visual acuity.

Visual evoked response testing evaluates the function of the visual pathways from the retina, along the optic nerve and optic tract, to the vision cortex in the occipital lobe of the brain. While this testing can provide an estimate of visual acuity, it is not a direct measure of visual acuity.

Pinhole testing is used to determine whether your visual acuity can be improved with a corrective lens. However, you may not have the same degree of correction with corrective lenses that you have with pinholes. Additionally, even though pinhole testing fails to show an improvement in your acuity, your acuity may improve with corrective lenses. Because pinhole testing may underestimate or overestimate your visual acuity, we will not use it to determine your best-corrected visual acuity.

Proposed 2.00A6—How Do We Measure Visual Fields?

This section would replace current 2.00A3, ''Field of vision.'' Current 2.00A3 indicates that we will use ''usual perimetric methods'' or other ''comparable perimetric devices'' to measure the size of the visual field. The Goldmann perimeter is specifically cited as a comparable perimetric device.

In its 2002 report, *Visual Impairments: Determining Eligibility for Social Security Benefits,* the National Research Council's (NRC's) Committee on Disability Determination for Individuals with Visual Impairments stated, as part of its recommendations for improvements to assessing visual field loss, ''the current SSA standard should be revised so that disability determinations are based on the results of automated static projection perimetry rather than Goldmann (kinetic, nonautomated) visual fields.'' (See the full citation at the end of this preamble.) These proposed rules would partially adopt this recommendation and provide that we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter that meets our requirements. However, we will also continue to use comparable visual field measurements obtained with Goldmann or other kinetic perimetry.

In proposed 2.00A6a(i), we explain when we need visual field testing.

In proposed 2.00A6a(ii), we explain that when we need to measure the extent of your visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter that meets our requirements. We adopted as our requirements the criteria recommended in the NRC report referred to above. We propose to cite the Humphrey Field Analyzer as an example of an acceptable perimeter because the NRC report cited it, and the Humphrey Field Analyzer is the most widely used automated perimeter in the United States that is used to perform this type of test.

The NRC report also cited the Octopus perimeter as another example of an automated perimeter that meets the criteria set out in its recommendations. We have not included the Octopus perimeter as an example of an acceptable perimeter in proposed 2.00A6a(ii), because it is not our intention to list in these rules every acceptable automated perimeter and the Octopus perimeter is not widely used in the United States.

In proposed 2.00A6a(iii), we describe the requirements of an acceptable automated static threshold perimetry test.

In proposed 2.00A6a(iv), we explain that to determine statutory blindness, we need a test that measures the central 24 to 30 degrees of the visual field. We also provide examples of acceptable tests.

In proposed 2.00A6a(v), we explain that to determine if the criterion in 2.03B is met, we need a test, performed on a Humphrey field analyzer, that measures the central 30 degrees of the visual field. We explain that we can use comparable results from other acceptable perimeters, and we provide an example of a comparable result. We also explain that we cannot use tests that do not measure the central 30 degrees of the visual field, such as the Humphrey 24–2 test, to determine if your impairment meets or medically equals listing 2.03B. This criterion, which we are proposing in listing 2.03B, adopts the NRC's recommendation in its 2002 report that we require a test measuring the central 30 degrees of the visual field.

In proposed 2.00A6a(vi), we explain that we measure the extent of visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. This stimulus specification is the same as the specification in the second paragraph of current 2.00A3.

In proposed 2.00A6a(vii), we explain that we need to determine the decibel (dB) level that corresponds to a 4e intensity for the particular perimeter being used. We further explain that we will then use the dB printout to determine which points would be seen at the 4e intensity level. We also give an example which explains that, for tests performed on Humphrey perimeters, any point seen at 10 dB or higher is a point that would be seen with a 4e stimulus.

In proposed 2.00A6a(viii), we explain that we can also use visual field measurements obtained using kinetic perimetry, such as the Humphrey ''SSA Test Kinetic'' or Goldmann perimetry. We contracted with West Virginia University to conduct research to determine whether the Humphrey ''SSA Test Kinetic'' is comparable to Goldmann perimetry. This research, which was completed in April 2000, showed that the Humphrey ''SSA Test Kinetic'' is comparable to Goldmann perimetry, except that the Humphrey ''SSA Test Kinetic'' does not identify

scotomata, that is, non-seeing areas in the visual field surrounded by seeing areas. Therefore, we propose to provide that if we need additional information because your visual disorder has progressed to the point where it is likely to result in a significant limitation in the central visual field, such as a scotoma, we will supplement the automated kinetic perimetry with the results of a Humphrey 30–2 or comparable test.

In proposed 2.00A6a(ix), we explain that we will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing or to evaluate your residual functional capacity. We also explain that we can use normal results from visual field screening tests to determine whether the impact of your visual disorder on your visual field is severe when these results are consistent with the other evidence in your case record. We would also list some circumstances under which we will not consider normal test results to be consistent with the other evidence in the file.

Consistent with our proposed removal of the guidance on aphakia, we propose to remove the stimulus specifications used to test individuals with aphakia contained in the first two paragraphs of current 2.00A3.

In proposed 2.00A6b, we would revise the guidance in the first paragraph of current 2.00A3 on the use of corrective lenses during visual field testing. We propose to explain that eyeglasses must not be worn during the visual field examination because they limit your field of vision, but contact lenses or perimetric lenses may be used in order to obtain the most accurate visual field measurements. We also provide that, for this single purpose, you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

Proposed 2.00A7—How Do We Calculate Visual Efficiency?

In this proposed section, we would expand the guidance in current 2.00A5, ''Visual efficiency,'' by explaining how we calculate visual acuity efficiency, visual field efficiency, and visual efficiency. The provisions in proposed 2.00A7b are based on the first sentence of paragraph 2 of the explanatory text following Table 2 in the current rules. As we explain below, we are proposing to delete that sentence because we are moving it here. The provisions in proposed 2.00A7c are based on the current language of 2.00A5 as well as the parenthetical statement at the end of current listing 2.04, which we are proposing to delete because it is redundant.

Proposed 2.00A8—How Do We Evaluate Specific Visual Problems?

This section would replace current 2.00A6, ''Special situations.'' In this section, we propose to add guidance for evaluating specific visual problems. The following is a discussion of the proposed section.

Proposed 2.00A8a—Statutory Blindness

In this proposed section, we would codify in our regulations a longstanding procedure. The most commonly used visual acuity test charts are charts based on Snellen methodology. These charts usually do not measure visual acuity between 20/100 and 20/200. Therefore, if you are unable to read any of the letters on the 20/100 line on a test chart based on Snellen methodology, your visual acuity will be assessed as 20/200 or less.

There are newer test charts (not yet widely used, but comparable to charts based on Snellen methodology) that provide measurements of visual acuity between 20/100 and 20/200. Based on medical literature, we know that if your visual acuity is between 20/100 and 20/200 as measured on those newer test charts, it would be 20/200 if it were measured using the more common chart based on Snellen methodology. We explain in the proposed section that if your visual acuity is measured using one of these newer charts, and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. We also provide that, regardless of the type of test chart used, you do not have statutory blindness if you can read at least one letter on the 20/100 line.

Proposed 2.00A8b—Blepharospasm

We propose to describe the disorder and explain that we must consider how the involuntary blinking that characterizes it can affect your ability to maintain the measured visual acuities and visual fields over time.

Proposed 2.00A8c—Scotoma

We propose to define the term scotoma as a non-seeing area in the visual field surrounded by a seeing area. We also explain that when we measure your visual field, we will subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

Proposed 2.00C—How Do We Evaluate Impairments That Do Not Meet One of the Special Senses and Speech Listings?

We propose to revise the guidance in the second paragraph of current 2.00A6 by stating our basic adjudicative principle that if the impairment(s) does not meet or medically equal the criteria of a listing in this body system, we must consider whether it meets or medically equals the criteria of a listing in another body system. If not, we must continue the sequential evaluation process (see §§ 404.1520 and 416.920) to determine whether you are disabled or continue to be disabled (see §§ 404.1594, 416.994 and 416.994a). This new section would apply to all the impairments in this body system, not just visual disorders.

How Are We Proposing To Change the Criteria in the Special Senses and Speech Listings for Adults?

2.01 Category of Impairments, Special Senses and Speech

We propose to remove the reservation for listing 2.05 because it is no longer needed. We also propose to remove current listing 2.06, ''Total bilateral ophthalmoplegia,'' for the reasons cited above in the explanation of the proposed removal of current 2.00A4, ''Muscle function.''

Proposed Listing 2.02—Loss of Visual Acuity

This proposed listing corresponds to current listing 2.02, ''Impairment of visual acuity.'' We propose to change the heading to be consistent with other language in these proposed rules.

Proposed Listing 2.03—Contraction of the Visual Field in the Better Eye

This proposed listing corresponds to current listing 2.03, ''Contraction of peripheral visual fields in the better eye.'' We propose to remove current listing 2.03A, which provides that an individual's visual field loss is of listing-level severity when the field is contracted to 10 degrees or less from the point of fixation. Current listing 2.03B provides that an individual's visual field loss is of listing-level severity if that loss results in the widest diameter of the field subtending an angle no greater than 20 degrees. Any visual field loss that satisfies the criterion in current listing 2.03A will also satisfy the criterion in current listing 2.03B. Therefore, current listing 2.03A is unnecessary. We also propose to redesignate current listing 2.03B as listing 2.03A, and to make nonsubstantive editorial changes.

In its 2002 report, the NRC suggested that a mean deviation (MD) of −22 or

worse on an automated static threshold perimetry test measuring the central 30 degrees of the visual field ''would serve as a reasonable criterion for disability determination.'' (See the full citation at the end of this preamble.) We agree with the NRC and would add this criterion as proposed listing 2.03B.

Proposed listing 2.03C corresponds to current listing 2.03C. We propose to clarify the criterion by indicating that a determination of visual field efficiency must be based on kinetic visual field testing.

Proposed Listing 2.04—Loss of Visual Efficiency

This proposed listing corresponds to current listing 2.04, ''Loss of visual efficiency.'' As already explained, we propose to remove the parenthetical statement at the end of the current listing because it is redundant. However, we propose to add a reference to that section of the proposed preface as a reminder of where this guidance is contained.

Proposed Table 1—Percentage of Visual Acuity Efficiency Corresponding to the Best-Corrected Visual Acuity Measurement for Distance in the Better Eye

To be consistent with our proposed removal of the introductory text on aphakia, we propose to remove the columns and guidance addressing aphakia from current Table 1. We also propose to remove the entries for visual acuities worse than 20/100 for the reasons we gave under the explanation of proposed 2.00A8a.

Proposed Table 2—Charts of Visual Fields

We propose to remove the first sentence of current paragraph 2 in the explanation of how to use Table 2, which provides instructions for calculating the percent of visual field efficiency, since this provision has been moved to proposed 2.00A7b. We also propose to make nonsubstantive editorial changes for clarity.

How Are We Proposing To Change the Introductory Text to the Special Senses Listings for Children?

102.00 Special Senses and Speech

Except for minor editorial changes, we have repeated much of the introductory text of proposed 2.00A in the introductory text to proposed 102.00A. This is because the same basic rules for establishing and evaluating the existence and severity of visual disorders in adults also apply to children. Because we have already described these provisions under the explanation of proposed 2.00A, the following discussions describe only those provisions that are unique to the childhood rules or that require further explanation specific to evaluating disability in children.

We propose to remove the second paragraph of current 102.00A, ''Visual impairments in children.'' This paragraph indicates that the accommodative reflex is generally not present in children under 6 months of age (or, for a premature child, until 6 months of age plus the number of months the child is premature). It also provides that the absence of this reflex should be considered indicative of a visual impairment only in children above this age. We include this guidance in the current rules to explain that it is not appropriate to use the criterion in current listing 102.02B1 until the child has reached the required age. However, in these proposed listings, current listing 102.02B1 would be incorporated into the more general category of abnormal anatomical findings evaluated under proposed listing 102.02B2. As the lack of the accommodative reflex would not be considered an abnormal anatomical finding in very young children, its absence would not satisfy the proposed listing criterion. Therefore, we no longer need this explanation.

Proposed 102.00A1—What Are Visual Disorders?

In this section, we would expand the guidance in proposed 2.00A1 to indicate that a loss of visual acuity may affect other age-appropriate activities. We added this example to reflect the way we evaluate disability claims of children who are filing for or are receiving SSI payments.

Proposed 102.00A2—What Is Statutory Blindness?

In this section, we repeat the guidance in proposed 2.00A2, but refer to the childhood listings that show statutory blindness.

Proposed 102.00A4—What Evidence Do We Need To Evaluate Visual Disorders, Including Those That Result in Statutory Blindness Under Title II?

In this section, we propose to include more detailed guidance than we now have in the third paragraph of current 102.00A. In proposed 102.00A4a, we repeat the guidance in proposed section 2.00A4a. Proposed 102.00A4b is also the same as proposed 2.00A4b, except that we include ''near drowning'' rather than ''stroke'' as an example of a catastrophic event that could result in cortical blindness in children. We have included a different example because stroke is not likely to occur in children. Proposed 102.00A4c is the same as proposed 2.00A4c.

Proposed 102.00A5—How Do We Measure Best-Corrected Visual Acuity?

In this section, we propose to revise the guidance in the first paragraph of current 102.00A. In proposed 102.00A5, we would repeat the guidance in proposed 2.00A5. We also discuss, in proposed 102.00A5a, comparable visual acuity testing for children who are unable to participate in testing using Snellen methodology, for example, because they are too young, and add guidance for how we propose to evaluate children who are unable to participate in testing using Snellen methodology or other comparable testing.

Proposed 102.00A6—How Do We Measure Visual Fields?

In this section, we propose to repeat the guidance in 2.00A6 with the following exceptions:

- We would not include macular edema as an example of a visual disorder that could result in visual field loss because this disorder is not likely to occur in children.
- We would revise the guidance in the first paragraph of proposed 2.00A6a(ix) to include an additional way we evaluate disability claims of children who are filing for or are receiving SSI payments.

Proposed 102.00C—How Do We Evaluate Impairments That Do Not Meet One of the Special Senses and Speech Listings?

In this section, we repeat the guidance in proposed 2.00C, but include the definition of disability for children who are filing for or are receiving SSI payments.

How Are We Proposing To Change the Criteria in the Special Senses and Speech Listings for Children?

102.01 Category of Impairments, Special Sense Organs

We propose to add new listings 102.03, ''Contraction of the visual field in the better eye,'' and 102.04, ''Loss of visual efficiency,'' because they apply to children as well as adults. Due to the addition of these listings, we also propose to add Table 1, ''Percentage of Visual Acuity Efficiency Corresponding to the Best-Corrected Visual Acuity Measurements for Distance in the Better Eye,'' and Table 2, ''Charts of Visual Fields.''

These proposed new listings and tables are identical to the corresponding

adult listings and tables. Currently, we use listings 2.03 and 2.04 (and their corresponding tables) to evaluate children with visual field and visual efficiency impairments. With proposed listings 102.03 and 102.04 we would no longer need to refer to the listings in part A when we evaluate these impairments in children.

Proposed Listing 102.02—Loss of Visual Acuity

This proposed listing corresponds to current listing 102.02, ''Impairments of visual acuity.'' We are not proposing any changes to current listing 102.02A.

We use current listing 102.02B to evaluate visual acuity impairments in children below 3 years of age at the time of adjudication. We propose to remove the age criterion and instead to provide that the listing will be used to evaluate a visual acuity disorder in any child who is unable to participate in testing using Snellen methodology or other comparable visual acuity testing, and who has specified abnormal anatomical findings.

The criteria in current listing 102.02B are all examples of abnormal anatomical findings observable during a clinical eye examination. When present in the better eye, these abnormal anatomical findings would be expected to result in the absence of fixation and visual following behavior, and would indicate a visual acuity of 20/200 or worse. Rather than list each type of abnormal anatomical finding, we propose to combine the current criteria into a general category of abnormal physical findings in proposed listing 102.02B1. Proposed listings 102.02B2 and 102.02B3 would add criteria for impairments that generally are not observable during a clinical eye examination, but are diagnosed based on abnormal neuroimaging or an abnormal electroretinogram.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements at 2.00A and 102.00A. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because they were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted or faxed to the Office of Management and Budget and to the Social Security Administration at the following addresses/numbers: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974. Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

References

We consulted the following sources when developing these proposed rules:

Judie Charlton, MD, *et al.* ''A Comparison of Manual and Automated Kinetic Perimetry.'' Final Report: SSA–RFP–98–3537, n.d.

National Research Council, Committee on Vision, Commission on Behavioral and Social Sciences and Education. *Measurement of Visual Field and Visual Acuity for Disability Determination*. Washington, DC: National Academy Press, 1994.

National Research Council, Committee on Disability Determination for Individuals With Visual Impairments. *Visual Impairments: Determining Eligibility for Social Security Benefits*. Washington, DC: National Academy Press, 2002 (available at *http://www.nap.edu/catalog/10320.html?se_side*).

American Medical Association. *Guides to the Evaluation of Permanent Impairment*. Fifth edition, AMA Press, 2001:252, 287–295.

These references are included in the rulemaking record for these proposed rules and are available for inspection by interested individuals by making arrangements with the contact person shown in this preamble.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: May 11, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)-(h), 216(i), 221(a) and (i), 222(c), 223, 225,

and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

2. Appendix 1 to subpart P of part 404 is amended as follows:

a. Item 3 of the introductory text before part A of appendix 1 is amended by revising the expiration date.

b. Section 2.00A of part A of appendix 1 is revised.

c. Section 2.00C is added to part A of appendix 1.

d. Listing 2.02 of part A of appendix 1 is amended by revising the heading.

e. Listing 2.03 of part A of appendix 1 is revised.

f. Listing 2.04 of part A of appendix 1 is revised.

g. The reservation for listing 2.05 is removed.

h. Listing 2.06 of part A of appendix 1 is removed

i. Tables 1 and 2 of section 2.01 of part A of appendix 1 are revised.

j. Section 102.00A of part B of appendix 1 is revised.

k. Section 102.00C is added to part B of appendix.

l. Listing 102.02 of part B of appendix 1 is revised.

m. Listing 102.03 is added to part B of appendix 1.

n. Listing 102.04 is added to part B of appendix 1.

o. Tables 1 and 2 are added to section 102.01 of part B of appendix 1.

The revised text is set forth as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

3. Special Senses and Speech (2.00 and 102.00): (*Insert date 8 years from the effective date of the final rules*).

* * * * *

Part A

* * * * *

2.00 SPECIAL SENSES AND SPEECH

A. How do we evaluate visual disorders?

1. *What are visual disorders?* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. A loss of visual acuity limits your ability to distinguish detail, read, or do fine work. A loss of visual fields limits your ability to perceive visual stimuli in the peripheral extent of vision.

2. *What is statutory blindness?* Statutory blindness is blindness as defined in the Social Security Act (the Act). The Act defines blindness as visual acuity of 20/200 or less in the better eye with the use of a correcting lens. The Act also provides that an eye that has a visual field limitation such that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered as having visual acuity of 20/200 or less. You have statutory blindness if your visual disorder meets the criteria of 2.02 or 2.03A.

3. What Evidence Do We Need To Establish Statutory Blindness Under Title XVI?

For title XVI, the only evidence we need to establish statutory blindness is evidence showing that your visual acuity or visual field, in the better eye, meets the criteria in A2 above, provided that those measurements are consistent with the other evidence in your case record. We do not need to document the cause of your blindness. Also, there is no duration requirement for statutory blindness under title XVI (see §§ 416.981 and 416.983).

4. What Evidence Do We Need To Evaluate Visual Disorders, Including Those That Result in Statutory Blindness Under Title II?

a. To evaluate your visual disorder, we usually need a report of an eye examination that includes measurements of the best-corrected visual acuity or the extent of the visual fields, as appropriate. If there is a loss of visual acuity or visual fields, the cause of the loss must be documented. A standard eye examination will usually reveal the cause of any visual acuity loss. An eye examination can also reveal the cause of some types of visual field deficits. If the eye examination does not reveal the cause of the visual loss, we will request the information that was used to establish the presence of the visual disorder.

b. A diagnosis of cortical blindness (blindness due to a brain lesion) must be confirmed by documentation of the catastrophic event, such as a cardiac arrest or stroke, that caused the brain lesion. If neuroimaging was performed, we will request a copy of the report or other medical evidence that describes the findings in the report.

c. If your visual disorder does not satisfy the criteria in 2.02, 2.03, or 2.04, we will also request a description of how your visual disorder impacts your ability to function.

5. How Do We Measure Best-Corrected Visual Acuity?

a. *Testing for visual acuity.* When we need to measure your best-corrected visual acuity, we will use visual acuity testing that was carried out using Snellen methodology or any other testing methodology that is comparable to Snellen methodology.

b. *Determining best-corrected visual acuity.*

i. Best-corrected visual acuity is the optimal visual acuity attainable with the use of a corrective lens. In some instances, this assessment may be performed using a specialized lens; for example, a contact lens. We will use the visual acuity measurements obtained with a specialized lens only if you have demonstrated the ability to use the specialized lens on a sustained basis. However, we will not use visual acuity measurements obtained with telescopic lenses because they significantly reduce the visual field. Additionally, we will not use the results of visual evoked response testing or pinhole testing to determine best-corrected visual acuity.

ii. We will use the best-corrected visual acuity for distance in the better eye when we determine whether your loss of visual acuity satisfies the criteria in 2.02.

6. How Do We Measure Visual Fields?

a. *Testing for visual fields.*

i. We generally need visual field testing when you have a visual disorder that could result in visual field loss, such as glaucoma, retinitis pigmentosa, macular edema, or optic neuropathy, or when you display behaviors that suggest a visual field loss.

ii. When we need to measure the extent of your visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter, like the Humphrey Field Analyzer, that satisfies all of the following requirements:

A. The perimeter must use optical projection to generate the test stimuli.

B. The perimeter must have an internal normative database for automatically comparing your performance with that of the general population.

C. The perimeter must have a statistical analysis package that is able to calculate visual field indices, particularly mean deviation.

D. The perimeter must demonstrate the ability to correctly detect visual field loss and correctly identify normal visual fields.

E. The perimeter must demonstrate good test-retest reliability.

F. The perimeter must have undergone clinical validation studies by three or more independent laboratories with results published in peer-reviewed ophthalmic journals.

iii. The test must use a white size III Goldmann stimulus and a 31.5 apostilb (10 cd/m^2) white background. The stimuli locations must be no more than 6 degrees apart horizontally or vertically. Measurements must be reported on standard charts and include a description of the size and intensity of the test stimulus.

iv. To determine statutory blindness, we need a test that measures the central 24 to 30 degrees of the visual field; that is, the area measuring 24 to 30 degrees from the point of fixation. Acceptable tests include the Humphrey 30–2 or 24–2 tests.

v. To determine if the criterion in 2.03B is met, we need a test performed on a Humphrey field analyzer that measures the central 30 degrees of the visual field. (We can also use comparable results from other acceptable perimeters, for example, a mean defect of 22 on an acceptable Octopus test, to determine that the criterion in 2.03B is met.) We cannot use tests that do not measure the central 30 degrees of the visual field, such as the Humphrey 24–2 test, to determine if your impairment meets or medically equals 2.03B.

vi. We measure the extent of visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. As indicated above, the ''III'' refers to the standard Goldmann test stimulus size III. The ''4e'' refers to the standard Goldmann intensity filters used to determine the intensity of the stimulus.

vii. In automated static threshold perimetry, the intensity of the stimulus

varies. The intensity of the stimulus is expressed in decibels (dB). We need to determine the dB level that corresponds to a 4e intensity for the particular perimeter being used. We will then use the dB printout to determine which points would be seen at a 4e intensity level. For example, in Humphrey perimeters, a 10 dB stimulus is equivalent to a 4e stimulus. A dB level that is higher than 10 represents a dimmer stimulus, while a dB level that is lower than 10 represents a brighter stimulus. Therefore, for tests performed on Humphrey perimeters, any point seen at 10 dB or higher is a point that would be seen with a 4e stimulus.

viii. We can also use visual field measurements obtained using kinetic perimetry, such as the Humphrey ''SSA Test Kinetic'' or Goldmann perimetry. The test must use a white III4e stimulus projected on a white 31.5 apostilb (10 cd/m²) background. In automated kinetic tests, such as the Humphrey ''SSA Test Kinetic,'' testing along a meridian stops when you see the stimulus. If we need additional information because your visual disorder has progressed to the point where it is likely to result in a significant limitation in the central visual field, such as a scotoma, we will supplement the automated kinetic perimetry with the results of a Humphrey 30–2 or comparable test.

ix. We will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing or to evaluate your residual functional capacity. We will use normal results from visual field screening tests to determine whether the impact of your visual disorder on your visual field is severe when these test results are consistent with the other evidence in your case record. We will not consider normal test results to be consistent with the other evidence if either of the following applies:

A. The clinical findings indicate that your visual disorder has progressed to the point that it is likely to cause visual field loss.

B. You have a history of an operative procedure for retinal detachment.

b. *Use of corrective lenses.* You must not wear eyeglasses during the visual field examination because they limit your field of vision. Contact lenses or perimetric lenses may be used to correct visual acuity during the visual field examination in order to obtain the most accurate visual field measurements. For this single purpose, you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

7. How Do We Calculate Visual Efficiency?

a. *Visual acuity efficiency.* We use the percentage shown in Table 1 that corresponds to the best-corrected visual acuity for distance in the better eye.

b. *Visual field efficiency.* We use kinetic perimetry to calculate visual field efficiency by adding the number of degrees seen along the eight principal meridians in the better eye and dividing by 500. (See Table 2.)

c. *Visual efficiency.* We calculate the percent of visual efficiency by multiplying the visual acuity efficiency by the visual field efficiency.

8. How Do We Evaluate Specific Visual Problems?

a. *Statutory blindness.* Most test charts that use Snellen methodology do not measure visual acuity between 20/100 and 20/200. Newer test charts, such as the Bailey-Lovie or the Early Treatment Diabetic Retinopathy Study (ETDRS), do measure visual acuity between 20/100 and 20/200. If your visual acuity is measured with one of these newer charts, and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. Regardless of the type of test chart used, you do not have statutory blindness if you can read at least one letter on the 20/100 line.

b. *Blepharospasm.* This movement disorder is characterized by repetitive, involuntary, bilateral eye blinking. It generally responds to therapy. When therapy is not effective, we will evaluate this disorder on the basis of clinical observations or visual behaviors. If you have this disorder, you may have measurable visual acuities and visual fields that do not satisfy the criteria of 2.02 or 2.03. However, we must consider how the involuntary blinking affects your ability to maintain the measured visual acuities and visual fields over time.

c. *Scotoma.* A scotoma is a non-seeing area in the visual field surrounded by a seeing area. When we measure the visual field, we subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

* * * * *

C. How Do We Evaluate Impairments That Do Not Meet One of the Special Senses and Speech Listings?

1. These listings are only examples of common special senses and speech disorders that we consider severe enough to prevent an individual from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a medically determinable impairment(s) that does not meet a listing, we will determine whether the impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926.) If you have an impairment(s) that does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. Therefore, we proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. When we decide whether you continue to be disabled, we use the rules in §§ 404.1594, 416.994, or 416.994a as appropriate.

2.01 Category of Impairments, Special Senses and Speech

2.02 *Loss of visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of the visual field in the better eye,* with:

A. The widest diameter subtending an angle no greater than 20 degrees;

OR

B. A mean deviation of −22 or worse, determined by automated static threshold perimetry as described in 2.00A6a(v);

OR

C. A visual field efficiency of 20 percent or less as determined by kinetic perimetry (see 2.00A7b).

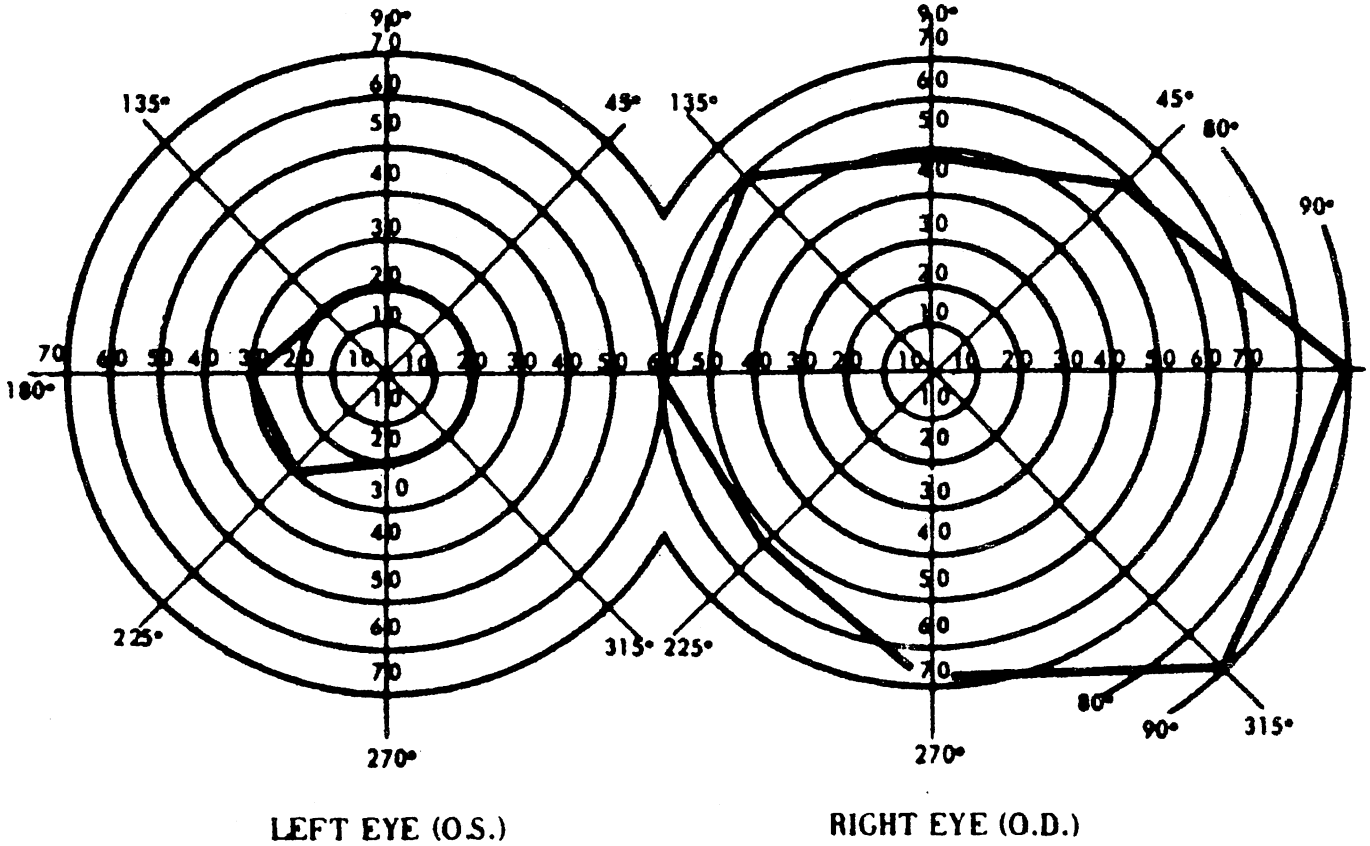
2.04 *Loss of visual efficiency.* Visual efficiency of the better eye of 20 percent or less after best correction (see 2.00A7c).

* * * * *

TABLE 1.—PERCENTAGE OF VISUAL ACUITY EFFICIENCY CORRESPONDING TO THE BEST-CORRECTED VISUAL ACUITY MEASUREMENT FOR DISTANCE IN THE BETTER EYE

Snellen		Percent visual acuity efficiency
English	Metric	Phakic or Pseudophakic
20/16	6/5	100
20/20	6/6	100
20/25	6/7.5	95
20/32	6/10	90
20/40	6/12	85
20/50	6/15	75
20/64	6/20	65
20/80	6/24	60
20/100	6/30	50

Table 2.—Chart of Visual Fields



1. The diagram of the right eye illustrates the extent of a normal visual field as measured with a III4e stimulus. The sum of the eight principal meridians of this field is 500 degrees.

2. The diagram of the left eye illustrates a visual field contracted to 30 degrees in two meridians and to 20 degrees in the remaining six meridians. The percent of visual field efficiency of this field is: $(2 \times 30) + (6 \times 20) = 180 \div 500 = 0.36$ or 36 percent visual field efficiency.

* * * * *

Part B

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102.00 SPECIAL SENSES AND SPEECH

A. How Do We Evaluate Visual Disorders?

1. What Are Visual Disorders?

Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or perform other age-appropriate activities. A loss of visual fields limits your ability to perceive visual stimuli in the peripheral extent of vision.

2. What Is Statutory Blindness?

Statutory blindness is blindness as defined in the Social Security Act (the Act). The Act defines blindness as visual acuity of 20/200 or less in the better eye with the use of a correcting lens. The Act also provides that an eye that has a visual field limitation such that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered as having visual acuity of 20/200 or less. You have statutory blindness if your visual disorder meets the criteria of 102.02A, 102.02B, or 102.03A.

3. What Evidence Do We Need To Establish Statutory Blindness Under Title XVI?

For title XVI, the only evidence we need to establish statutory blindness is evidence showing that your visual acuity or visual field, in the better eye, meets the criteria in A2 above, provided that those measurements are consistent with the other evidence in your case record. We do not need to document the cause of your blindness. Also, there is no duration requirement for statutory blindness under title XVI (see §§ 416.981 and 416.983).

4. What Evidence Do We Need To Evaluate Visual Disorders, Including Those That Result in Statutory Blindness Under Title II?

a. To evaluate your visual disorder, we usually need a report of an eye examination that includes measurements of the best-corrected visual acuity or the extent of the visual fields, as appropriate. If there is a loss of visual acuity or visual fields, the cause of the loss must be documented. A standard eye examination will usually reveal the cause of any visual acuity loss. An eye examination can also reveal the cause of some types of visual field deficits. If the eye examination does not reveal the cause of the visual loss, we will request the information that was used to establish the presence of the visual disorder.

b. A diagnosis of cortical blindness (blindness due to a brain lesion) must be confirmed by documentation of the catastrophic event, such as a cardiac arrest or near drowning, that caused the brain lesion. If neuroimaging was performed, we will request a copy of the report or other medical evidence that describes the findings in the report.

c. If your visual disorder does not satisfy the criteria in 102.02, 102.03, or 102.04, we will also request a description of how your visual disorder impacts your ability to function.

5. How Do We Measure Best-Corrected Visual Acuity?

a. *Testing for visual acuity.*

i. When we need to measure your best-corrected visual acuity, we will use visual acuity testing that was carried out using Snellen methodology or any other testing methodology that is comparable to Snellen methodology.

ii. We consider tests such as the Landolt C test or the tumbling-E test, which are used to evaluate young children who are unable to participate in testing using Snellen methodology, to be comparable to testing using Snellen methodology. These alternate methods for measuring visual acuity should

be performed by specialists with expertise in assessment of childhood vision.

iii. If you are unable to participate in testing using Snellen methodology or other comparable testing, we will consider your fixation and visual following behavior. If both these behaviors are absent, we will consider the anatomical findings or the results of neuroimaging when this testing has been performed.

b. *Determining best-corrected visual acuity.*

i. Best-corrected visual acuity is the optimal visual acuity attainable with the use of a corrective lens. In some instances, this assessment may be performed using a specialized lens; for example, a contact lens. We will use the visual acuity measurements obtained with a specialized lens only if you have demonstrated the ability to use the specialized lens on a sustained basis. However, we will not use visual acuity measurements obtained with telescopic lenses because they significantly reduce the visual field. Additionally, we will not use the results of visual evoked response testing or pinhole testing to determine best-corrected visual acuity.

ii. We will use the best-corrected visual acuity for distance in the better eye when we determine whether your loss of visual acuity satisfies the criteria in 102.02A.

6. How Do We Measure Visual Fields?

a. *Testing for visual fields.*

i. We generally need visual field testing when you have a visual disorder that could result in visual field loss, such as glaucoma, retinitis pigmentosa, or optic neuropathy, or when you display behaviors that suggest a visual field loss.

ii. When we need to measure the extent of your visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter, like the Humphrey Field Analyzer, that satisfies all of the following requirements:

A. The perimeter must use optical projection to generate the test stimuli.

B. The perimeter must have an internal normative database for automatically comparing your performance with that of the general population.

C. The perimeter must have a statistical analysis package that is able to calculate visual field indices, particularly mean deviation.

D. The perimeter must demonstrate the ability to correctly detect visual field loss and correctly identify normal visual fields.

E. The perimeter must demonstrate good test-retest reliability.

F. The perimeter must have undergone clinical validation studies by three or more independent laboratories with results published in peer-reviewed ophthalmic journals.

iii. The test must use a white size III Goldmann stimulus and a 31.5 apostilb (10 cd/m2) white background. The stimuli locations must be no more than 6 degrees apart horizontally or vertically. Measurements must be reported on standard charts and include a description of the size and intensity of the test stimulus.

iv. To determine statutory blindness, we need a test that measures the central 24 to 30 degrees of the visual field; that is, the area measuring 24 to 30 degrees from the point of fixation. Acceptable tests include the Humphrey 30–2 or 24–2 tests.

v. To determine if the criterion in 102.03B is met, we need a test performed on a Humphrey field analyzer that measures the central 30 degrees of the visual field. (We can also use comparable results from other acceptable perimeters, for example, a mean defect of 22 on an acceptable Octopus test, to determine that the criterion in 102.03B is met.) We cannot use tests that do not measure the central 30 degrees of the visual field, such as the Humphrey 24–2 test, to determine if your impairment meets or medically equals 102.03B.

vi. We measure the extent of visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. As indicated above, the ''III'' refers to the standard Goldmann test stimulus size III. The ''4e'' refers to the standard Goldmann intensity filters used to determine the intensity of the stimulus.

vii. In automated static threshold perimetry, the intensity of the stimulus varies. The intensity of the stimulus is expressed in decibels (dB). We need to determine the dB level that corresponds to a 4e intensity for the particular perimeter being used. We will then use the dB printout to determine which points would be seen at a 4e intensity level. For example, in Humphrey perimeters, a 10 dB stimulus is equivalent to a 4e stimulus. A dB level that is higher than 10 represents a dimmer stimulus, while a dB level that is lower than 10 represents a brighter stimulus. Therefore, for tests performed on Humphrey perimeters, any point seen at 10 dB or higher is a point that would be seen with a 4e stimulus.

viii. We can also use visual field measurements obtained using kinetic perimetry, such as the Humphrey ''SSA Test Kinetic'' or Goldmann perimetry. The test must use a white III4e stimulus projected on a white 31.5 apostilb (10 cd/m2) background. In automated kinetic tests, such as the Humphrey ''SSA Test Kinetic,'' testing along a meridian stops when you see the stimulus. If we need additional information because your visual disorder has progressed to the point where it is likely to result in a significant limitation in the central visual field, such as a scotoma, we will supplement the automated kinetic perimetry with the results of a Humphrey 30–2 or comparable test.

ix. We will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing, or functionally equals the listings. We will use normal results from visual field screening tests to determine whether the impact of your visual disorder on your visual field is severe when these test results are consistent with the other evidence in your case record. We will not consider normal test results to be consistent with the other evidence if either of the following applies:

A. The clinical findings indicate that your visual disorder has progressed to the point that it is likely to cause visual field loss.

B. You have a history of an operative procedure for retinal detachment.

b. *Use of corrective lenses.* You must not wear eyeglasses during the visual field examination because they limit your field of vision. Contact lenses or perimetric lenses may be used to correct visual acuity during the visual field examination in order to obtain the most accurate visual field measurements. For this single purpose, you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

7. How Do We Calculate Visual Efficiency?

a. *Visual acuity efficiency.* We use the percentage shown in Table 1 that corresponds to the best-corrected visual acuity for distance in the better eye.

b. *Visual field efficiency.* We use kinetic perimetry to calculate visual field efficiency by adding the number of degrees seen along the eight principal meridians in the better eye and dividing by 500. (See Table 2.)

c. *Visual efficiency.* We calculate the percent of visual efficiency by multiplying the visual acuity efficiency by the visual field efficiency.

8. How Do We Evaluate Specific Visual Problems?

a. *Statutory blindness.* Most test charts that use Snellen methodology do not measure visual acuity between 20/100 and 20/200. Newer test charts, such as the Bailey-Lovie or the Early Treatment Diabetic Retinopathy Study (ETDRS), do measure visual acuity between 20/100 and 20/200. If your visual acuity is measured with one of these newer charts, and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. Regardless of the type of test used, you do not have statutory blindness if you can read at least one letter on the 20/100 line.

b. *Blepharospasm.* This movement disorder is characterized by repetitive, involuntary, bilateral eye blinking. It generally responds to therapy. When therapy is not effective, we will evaluate this disorder on the basis of clinical observations or visual behaviors. If you have this disorder, you may have measurable visual acuities and visual fields that do not satisfy the criteria of 102.02 or 102.03. However, we must consider how the involuntary blinking affects your ability to maintain the measured visual acuities and visual fields over time.

c. *Scotoma.* A scotoma is a non-seeing area in the visual field surrounded by a seeing area. When we measure the visual field, we subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

* * * * *

C. How Do We Evaluate Impairments That Do Not Meet One of the Special Senses and Speech Listings?

1. These listings are only examples of common special senses and speech disorders that we consider severe enough to result in marked and severe functional limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also

consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a medically determinable impairment(s) that does not meet a listing, we will determine whether the impairment(s) medically equals a listing or functionally equals the listings. (See §§ 404.1526, 416.926, and 416.926a.) If you are receiving title XVI payments, we use the rules in § 416.994a when we decide whether you continue to be disabled.

* * * * *

102.02 *Loss of visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less;

OR

B. An inability to participate in testing using Snellen methodology or other comparable visual acuity testing and clinical findings that fixation and visual following behavior are absent in the better eye, and:

1. Abnormal anatomical findings indicating a visual acuity of 20/200 or worse in the better eye; or

2. Abnormal neuroimaging documenting damage to the cerebral cortex which would be expected to prevent the development, in the better eye, of a visual acuity better than 20/200; or

3. Abnormal electroretinogram documenting the presence of Leber's congenital amaurosis or achromatopsia.

102.03 *Contraction of the visual field in the better eye,* with:

A. The widest diameter subtending an angle no greater than 20 degrees;

OR

B. A mean deviation of -22 or worse, determined by automated static threshold perimetry as described in 102.00A6a(v);

OR

C. A visual field efficiency of 20 percent or less as determined by kinetic perimetry (see 102.00A7b).

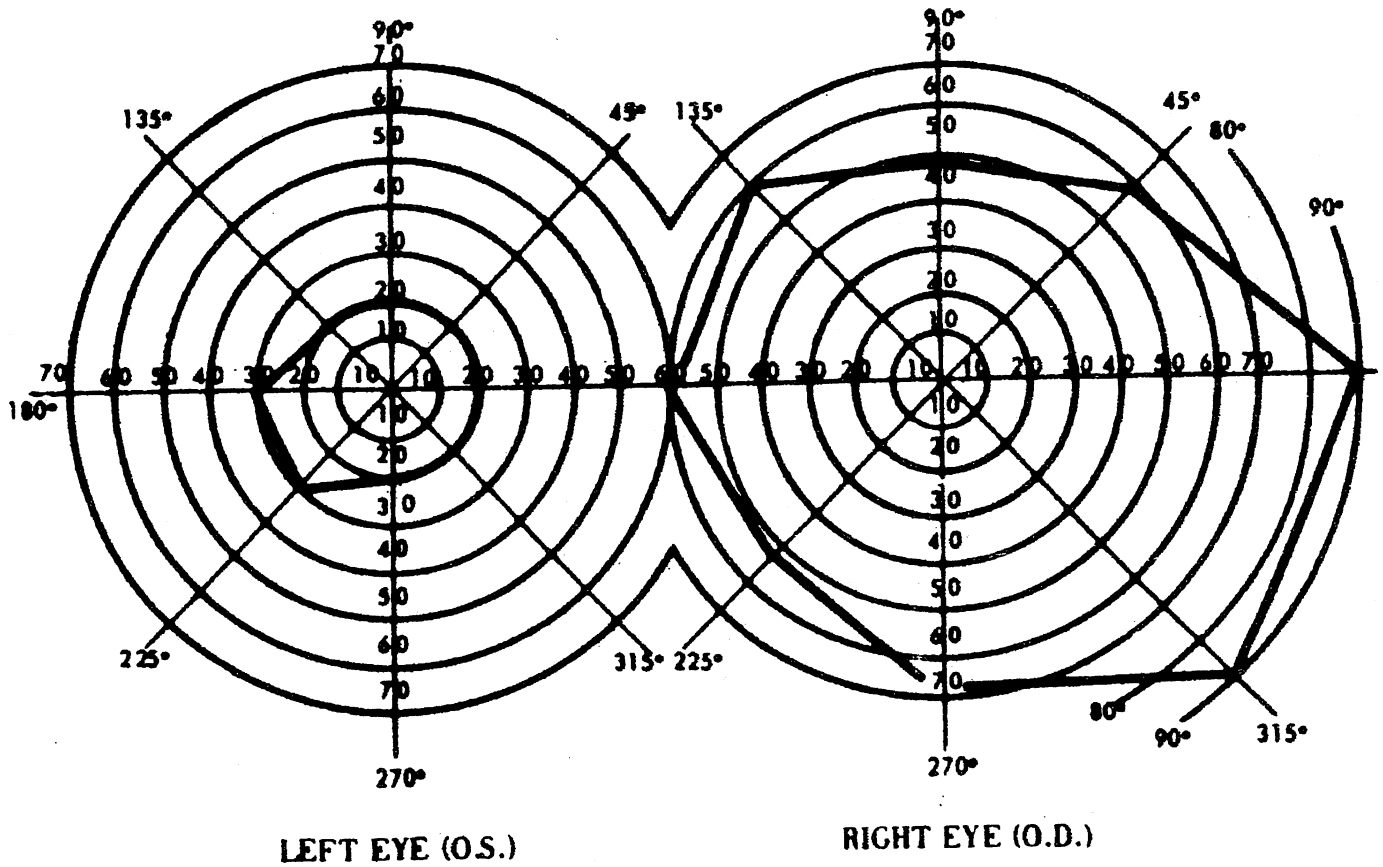
102.04 *Loss of visual efficiency.* Visual efficiency of the better eye of 20 percent or less after best correction (see 102.00A7c).

* * * * *

TABLE 1.—PERCENTAGE OF VISUAL ACUITY EFFICIENCY CORRESPONDING TO THE BEST-CORRECTED VISUAL ACUITY MEASUREMENT FOR DISTANCE IN THE BETTER EYE.

Snellen		Percent visual acuity efficiency
English	Metric	Phakic or Pseudophakic
20/16	6/5	100
20/20	6/6	100
20/25	6/7.5	95
20/32	6/10	90
20/40	6/12	85
20/50	6/15	75
20/64	6/20	65
20/80	6/24	60
20/100	6/30	50

Table 2.—Chart of Visual Fields



1. The diagram of the right eye illustrates the extent of a normal visual field as measured with a III4e stimulus. The sum of the eight principal meridians of this field is 500 degrees.

2. The diagram of the left eye illustrates a visual field contracted to 30 degrees in two meridians and to 20 degrees in the remaining six meridians. The percent of visual field efficiency of this field is: (2x30) + (6x20) = 180 ÷ 500 = 0.36 or 36 percent visual field efficiency.

* * * * *

[FR Doc. 05–16218 Filed 8–16–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09–05–080]

RIN 1625–AA09

Drawbridge Operation Regulations; Sturgeon Bay Ship Canal, Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the operating regulations for the Michigan Street Bridge and establish permanent winter operating hours for the Bayview Bridge, both in Sturgeon Bay, WI. The proposed rule is expected to reflect the need for bridge openings during winter months and still provide for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before October 3, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Ninth Coast Guard District, 1240 E. 9th Street, Room 2025, Cleveland, OH 44199–2060. The Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Ninth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scot M. Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902–6087.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–05–080), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Ninth Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Michigan Street Bridge at mile 4.3 over Sturgeon Bay Ship Canal is a single-leaf bascule bridge that provides a vertical clearance of 14 feet in the lowered position. On July 11, 1996, the bridge owner, the Wisconsin Department of Transportation (W–DOT), requested that the bridge be required to open for recreational vessels only on the hour, 24 hours a day, 7 days a week, between March 15 and December 31 of each year in order to reduce wear on the bridge. At that time, the operating regulation governing the bridge provided: From March 15 to December 31 of each year, the bridge was required to open on the hour between 8 a.m. and 6 p.m. for recreational vessels. Between 6 p.m. and 10 p.m., the draw was required to open for recreational vessels no more than on the hour and half-hour, and the bridge opened on signal from 10 p.m. to 8 a.m. From January 1 to March 14 of each year, the bridge was required to open on signal if notice was given at least 12 hours in advance of a vessel's intended time of passage through the draw. Throughout the year, the draw was required to open on signal for commercial vessels and all vessels seeking shelter from severe weather.

To test the requested schedule change, the Coast Guard authorized a temporary deviation from the existing regulation during the summer of 1996. The Coast Guard did not receive any comments, and W-DOT did not report any adverse comments, concerning the temporary deviation.

In February 1997, the Coast Guard published in the **Federal Register** an *Interim rule with request for comments* (62 FR 6875, February 14, 1997), which revised the operating regulation to require the bridge to open for recreational vessels only on the hour, 24 hours a day, 7 days a week, between March 15 and December 31 of each year. The requirement for notice at least 12 hours in advance during the winter months remained unchanged. It was intended that the operating requirements applicable between 6 p.m. and 8 a.m., and the provisions related to commercial vessels and vessels seeking shelter from severe weather, located at 33 CFR 117.1101(a)(2), (a)(3), and (b), were to be removed.

Although the removal of those sub-paragraphs was not codified, the bridge has operated according to the provisions of the Interim Rule since the rule's effective date on March 17, 1997. No negative comments concerning this operating schedule have been received.

W–DOT has now requested that the 12-hour advance notice requirement for winter operations be changed from January 1 through March 14 of each year to December 1 through March 14 of each year. The bridge opening logs provided by W–DOT showed a large number of openings during the month of December in 2002, 2003, and 2004, requiring the bridge to maintain full-time bridge tenders throughout the month of December. Based on these records, the Coast Guard concluded that W–DOT's requested change provides for the reasonable needs of navigation.

This proposed rule would make final the provisions of the Interim Rule, which require the Michigan Street Bridge to open between March 15 and December 31 of each year for recreational vessels on the hour, 24 hours a day, and on signal if more than 20 vessels have accumulated at the bridge, or if vessels are seeking shelter from severe weather. From January 1 through March 14 of each year, the bridge would continue to open for vessels if notice is provided at least 12 hours in advance.

There is no current specific drawbridge regulation for the Bayview (State Route 42/57) Bridge, mile 3.0 over Sturgeon Bay Ship Canal. The Bayview Bridge is a twin-leaf bascule drawbridge that provides a vertical clearance of 42 feet when in the lowered position. The