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Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: August 29, 1995.
Cynthia G. Beerbower,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 95–23263 Filed 9–15–95; 4:00 pm]
BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 94–105]

RIN 2115–AE99

Coast Guard Rulemaking Procedures

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard revises the regulations describing its rulemaking procedures to provide for a ''direct final rule'' process for use with noncontroversial rules. Under the direct final rule procedure, a rule will become effective 90 days after publication in the Federal Register unless the Coast Guard receives written adverse comment within sixty days. This new procedure should expedite the promulgation of routine, noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington D.C. 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267–6004.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 14, 1995, the Coast Guard published a notice of proposed rulemaking entitled ''Coast Guard Rulemaking Procedures'' in the Federal Register (60 FR 31267) with a thirty day comment period which ended July 14. In response to a request for additional time, the Coast Guard published a notice in the August 1, 1995 Federal Register (60 FR 39130) reopening the comment period on the proposal for an additional thirty days, until August 31, 1995. Over both comment periods, the Coast Guard received fourteen letters commenting on the proposal. No public meeting was requested, and none was held.

Discussion of Comments and Changes

The Coast Guard received fourteen comments in response to its proposal to implement a direct final rule procedure from a variety of parties including an insurance broker, a shipping company, a commercial fisherman, a corporation interested in offshore operations, maritime consultants, industry associations and the Administrative Conference of the United States. One comment, from a national manufacturers association representing over 1,600 manufacturers association representing over 1,600 manufacturers of recreational boats and equipment, fully supported the proposal for an expedited rulemaking process. The comment from the Administrative Conference of the United States (Administrative Conference) expressed pleasure at the Coast Guard's proposal to use direct final rulemaking and took the opportunity to compare the Coast Guard's proposed procedure to the Administrative Conference's recently adopted Recommendation 95–4, ''Procedures for Noncontroversial and Expedited Rulemaking.'' the other comments were generally supportive of the idea of a streamlined rulemaking process, but expressed concerns with the shortness of the proposed comment period, the list of subjects suggested by the Coast Guard for the direct final rule process, the possibility that there may not be 30 days notice before the effective date of the rule as required by the Administrative Procedure Act (APA) and with the lack of an adequate definition of an ''adverse comment''. Additionally, one comment contended that all rulemakings are ''controversial'' and therefore the direct final rule process is not appropriate for any rulemaking.

Eight comments directly objected to the proposed thirty day comment period. The comment from the Administrative Conference supported this provision as providing the required comment under the APA, but took no specific position on the actual length of the period. The comments which objected to the length of the comment period argued that it often took much longer than thirty days for a proposal to be disseminated to, and analyzed by, potentially interested parties. According to the comments, this additional time is required because of a number of factors. One factor cited by three comments was the fact that many mariners who may be interested in a proposal are often out to sea for periods of time greater than thirty days. Other comments also noted the time delay caused by the postal system in receiving copies of the Federal Register and the fact that many people learn of new proposed rules through industry and trade publications which need time to publish and mail the information. Additionally, one comment raised the question of whether the short comment period satisfies § 553(c) of the APA which requires an agency to give interested parties an adequate opportunity to participate in the rulemaking. The comments suggested increased comment periods ranging from 60 to 160 days so that a rule published as a direct final rule would become effective in the range of 90 to 180 days after publication.

The Coast Guard understands that it takes time for information regarding proposed rules to reach interested parties. Public participation in the rulemaking process is important to, and highly encouraged by, the Coast Guard. The Coast Guard is planning to use the direct final rule procedure only for rules it considers to be noncontroversial and for which no adverse comment is anticipated. Consequently, the Coast Guard believes that the direct final rulemaking procedure provides the public an adequate opportunity to comment on a rule subject to this procedure before the rule becomes effective. If an adverse comment or a notice of intent to submit an adverse comment is received within the comment period, the direct final rule will be withdrawn without ever having taken effect. If the Coast Guard later decides to proceed with the rulemaking, a new notice of proposed rulemaking will be published. This process will give the pubic an adequate opportunity to participate in the rulemaking procedure before a rule goes into effect. The Coast Guard believes that a lengthy comment period would defeat the purpose of having an expedited rulemaking process. Nevertheless, to ensure that the

public has a meaningful opportunity to participate, the Coast Guard is increasing the minimum comment period stated in § 1.05–55(c) under the direct final rule process from 30 to 60 days, and preserving an option for any particular rulemaking to have a longer comment period.

Three of the comments, including one from a national trade association representing 23 U.S.-flag carriers and one from a shipping company which operates for U.S.-flag ships, expressed concern over the list of subjects suggested as appropriate for the direct final rule process by the Coast Guard. Two of the comments expressed the opinion that the proposed procedure would be appropriate for some of the types of rulemakings suggested but not for all. In particular, both of these comments objected to the use of the direct final rule process for the waiver of navigation and vessel inspection laws and regulations, the regulation or description of anchorage areas, the regulation or description of shipping safety fairways and the regulation or description of offshore traffic separation schemes. The trade association also objected to the use of the proposed procedure to adopt technical standards set by outside organizations and to regulate the compatibility of cargoes. The shipping company comment also objected to using the procedure to establish safety and security zones.

A comment from a national association of maritime educators commented that in the past, the association has offered comments on many subjects of the type included on the list of possible subjects and therefore viewed none of the proposed subjects as ''noncontroversial'' and objected to the entire list of subjects. That comment also stated that there is no such thing as a ''noncontroversial'' rule and stated that the decision whether a rule is deemed ''noncontroversial'' or not is a subjective rather than objective standard.

The Coast Guard realizes that the direct final rule process is not the proper procedure for use with all rulemakings. On the other hand, there are numerous rulemakings which the Coast Guard does believe to be ''noncontroversial'' in nature and for which the Coast Guard does not anticipate adverse comments. The suggested list of subjects stated in the NPRM was not meant to be a comprehensive or ironclad list of subjects for use with the direct final rule process. Every rulemaking will be evaluated independently to determine: (1) Whether it is likely to be noncontroversial in nature; and (2) whether the direct final rule process is appropriate. If during the comment period any adverse comment or notice of intent to submit an adverse comment is received, the rule will be withdrawn. If a rule is withdrawn and the Coast Guard decides to proceed with the rulemaking, a separate notice of proposed rulemaking will be published unless an exception to the APA requirement for notice and comment applies. The Coast Guard believes that this procedure will guarantee the public an adequate opportunity to participate in the rulemaking procedure and inform the Coast Guard of opposition to a rulemaking which the Coast Guard viewed as noncontroversial. Both by requiring that a rulemaking be deemed to be noncontroversial before being published as a direct final rule and by requiring that if an adverse comment is received a rulemaking published under this process be withdrawn and a separate NPRM published to proceed, the Coast Guard believes that sufficient safeguards exist to ensure no rule is implemented without adequate opportunity for public participation.

The comment from the Administrative Conference in addition to two other comments, expressed concern that the procedure proposed may not always satisfy § 553(d) of the APA which requires thirty days notice prior to the effective date of a rule. The specific concern stated by the Administrative Conference is that the notice stating that the Coast Guard has received no adverse comment and therefore, the rule will go into effect as originally scheduled, may not be published thirty days before the effective date of the rule. The conference recommended either making the rule effective thirty days after the date of the described notice or specifying a date after the close of the comment period by which the Coast Guard will notify the public whether the direct final rule will become effective, with the rule's effective date at least 30 days after such specified date. The Coast Guard has decided to go forward with the second alternative and therefore will publish a specific date in the direct final rule by which the public will be notified of whether the rule will go into effect.

One comment from a maritime safety specialist objected to the lack of adequate guidelines concerning what the Coast Guard would consider to be an ''adverse comment.'' In addition, the Administrative Conference in Recommendation 95–4, ''Procedures for Noncontroversial and Expedited Rulemaking'' (Recommendation) proposed a definition of adverse comment that differed from that proposed by the Coast Guard. The Administrative Conference acknowledged the difference between its own definition and the Coast Guard's, but viewed the Coast Guard's proposed definition as reasonable.

Section 1.05–55(c) of the NPRM stated that an adverse comment would be any comment received by the Coast Guard which objects to a proposed rule as written. The preamble of the NPRM further explained that neither a comment submitted in support of a rule nor one suggesting that the policy or requirements of a rule should or should not be extended to a Coast Guard program outside the scope of the rule will be considered as adverse. On the other hand, the Administrative Conference in its Recommendation suggested that the definition of significant adverse comment be ''one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.'' The Administrative Conference went on to state in its Recommendation that agencies ''should consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process.'' Because the Coast Guard believes that the Administrative Conference's recommended definition of adverse comment provides better guidance and a clearer definition of what types of comments will be considered adverse, the Coast Guard has decided to adopt the Administrative Conference's recommended definition of adverse comment. An adverse comment is now defined in § 1.05–55(f).

The Administrative Conference comment also suggested that in addition to publishing the initial notice in the final rule section of the Federal Register, that a cross reference be inserted in the proposed rule section. The Coast Guard agrees with this idea and will do so.

In addition to the changes discussed above, a few minor editorial changes were made to the language of the rule to promote the public's understanding of the direct final rule process.

Explanation of Procedure

The Coast Guard is establishing a new direct final rulemaking procedure for noncontroversial rules. This process is consistent with the goals of the National Performance Review, a recent Presidential initiative to reorganize and streamline the Federal government. The process is also consistent with recommendations of the Administrative Conference of the United States and

meets the requirements for providing an opportunity for public notice and comment under the Administrative Procedure Act (APA) (5 U.S.C. 553).

Under this procedure, the Coast Guard will publish direct final rules in the final rule and proposed rule sections of the Federal Register. The preamble to a direct final rule will indicate that no adverse comment is anticipated and that the rule will become effective not less than 90 days after publication unless written adverse comment or written intent to submit adverse comment is received within a specified time, usually not less than 60 days. The direct final rule will also state a date by which the Coast Guard will provide notice of whether the rule will be effective. This procedure will ensure that, as required by the APA, the public will be given notice of Coast Guard rulemaking actions and will have an opportunity to participate in the rulemaking by submitting comments.

If no written adverse comment or written notice of intent to submit an adverse comment is received in response to the publication of a direct final rule, the Coast Guard will then publish a notice in the Federal Register, stating that no adverse comment was received and confirming that the rule will become effective as scheduled. However, if the Coast Guard receives any written adverse comment or any written notice of intent to submit an adverse comment, then the Coast Guard will publish a notice in the final rule and proposed rule sections of the Federal Register to announce withdrawal of the direct final rule. If adverse comments clearly apply to only part of a rule, and that part is severable from the remaining portions, such as a rule that deletes several unrelated regulations, the Coast Guard may adopt as final those parts of the rule on which no adverse comments were received. The part of the rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published, unless an exception to the APA requirement for notice and comment applies.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The change in procedure will not impose any costs on the public. In cases where the rule would result in cost savings, the cost savings would occur sooner with the use of direct final rule procedure.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard has evaluated this rule under the Regulatory Flexibility Act. This rule will not have substantive impact on the public. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation as a regulation of a procedural nature. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 1

Administrative practice and procedures, Authority delegations (Government agencies), Coast Guard, Freedom of information, Penalties.

For the reasons set out in the preamble, the Coast Guard is amending Subpart 1.05 of Part 1 of Title 33, Code of Federal Regulations as follows:

PART 1—GENERAL PROVISIONS

Subpart 1.05—[Amended]

1. The authority citation for Subpart 1.05 continues to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; 49 CFR 1.4(b), 1.45(b), and 1.46.

2. Section 1.05–55 is added to read as follows:

§ 1.05–55 Direct final rule.

(a) A direct final rule may be issued to allow noncontroversial rules that are unlikely to result in adverse public comment to become effective more quickly.

(b) A direct final rule will be published in the Federal Register with an effective date that is generally at least 90 days after the date of publication.

(c) The public will usually be given at least 60 days from the date of publication in which to submit comments or notice of intent to submit comments.

(d) If no adverse comment or notice of intent to submit an adverse comment is received within the specified period, the Coast Guard will publish a notice in the Federal Register to confirm that the rule will go into effect as scheduled.

(e) If the Coast Guard receives a written adverse comment or a written notice of intent to submit an adverse comment, the Coast Guard will publish a notice in the final rule section of the Federal Register to announce withdrawal of the direct final rule. If an adverse comment clearly applies to only part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comment was received. Any part of a rule that is the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, a separate Notice of Proposed Rulemaking (NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

(f) A comment is considered adverse if the comment explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be

ineffective or unacceptable without a change.

Dated: September 15, 1995.

J.E. Shkor,

U.S. Coast Guard Chief Counsel.

FR Doc. 95–23518 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF02

Schedule for Rating Disabilities; Hemic and Lymphatic Systems

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Schedule for Rating Disabilities of the Hemic and Lymphatic Systems. The effect of this action is to update the hemic and lymphatic portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: This amendment is effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 1800 G Street, Washington, DC, 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 30, 1993, (58 FR 26080–83) VA published a proposal to amend the Schedule for Rating Disabilities of the hemic and lymphatic systems. Interested persons were invited to submit written comments, suggestions or objections on or before June 1, 1993. We received comments from the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America and one comment from a concerned individual.

We proposed to reduce the evaluation for splenectomy, diagnostic code 7706, from 30 percent to 10 percent. Several commenters felt, for various reasons, that the evaluation for splenectomy should be more than 10 percent.

One commenter agreed that antibiotics may compensate for any increased susceptibility to infection, but was not persuaded that medical treatment is so effective that disabling consequences of splenectomy are nearly eliminated. He maintained that asplenic patients require vigilant medical intervention to ward off infections. Another commenter suggested that after splenectomy, patients must carefully avoid activities that may result in trauma and avoid exposure to infection, and that these environmental restrictions substantially limit the range of vocational possibilities, resulting in industrial impairment greater than the 10 percent proposed for this disability. A third commenter stated that since he has undergone a splenectomy, employers have turned him down due to high risk and that his life insurance is more expensive.

On reconsideration, we have determined that an evaluation of 20 percent is warranted instead of 10 percent because of the many functions that the spleen performs in the areas of immune response, filtration of the blood, iron reutilization, blood volume regulation and others, and that splenectomy increases susceptibility to certain infections, such as those caused by encapsulated pneumococcus bacteria. This increased susceptibility requires that splenectomy patients restrict their activities, resulting in moderate industrial impairment, which we feel is consistent with the 20 percent level of disability. This level of disability is assigned throughout the rating schedule for ''moderate'' disability, for example, under the diagnostic codes for liver abscess (7313), pellagra (6315), resection of large intestine (7329) and erythromelalgia (7119).

One commenter stated that asplenia should be included in the evaluation criteria for sickle cell anemia. We do not agree. If removal of the spleen is necessary in the treatment of sickle cell anemia, the splenectomy will be evaluated separately under diagnostic code 7706, and combined.

One commenter assumed that complications of splenectomy such as anemia would be rated on the symptomatology demonstrated. He is correct and, for the sake of clarity, we have added a note instructing the rater to separately evaluate complications if they become manifest to a compensable degree.

One commenter felt that the 30 percent evaluation for splenectomy should be ''grandfathered'', and in fact it is. In section 103(a) of the Veterans' Benefits Programs Improvement Act of 1991 (Pub. L. 102–86) Congress modified 38 U.S.C. 1155 to provide that a readjustment to the rating schedule will not result in a reduction of any disability evaluation in effect on the date of the readjustment unless that disability has actually improved. Given the permanent nature of a splenectomy, a 30 percent evaluation assigned under the prior rating schedule will be protected. The effect of this change is, therefore, prospective only.

One commenter felt that VA should contact all veterans who would be affected by the change in the evaluation of splenectomy, rather than requiring them to read the Federal Register.

Publication in the Federal Register is the legal means for any federal agency to notify the public of changes to regulations. Furthermore, since this change is prospective, taking the additional step of contacting asplenic veterans who are currently receiving benefits would serve no purpose since they will not be affected by this change in the regulation.

One commenter believed that there should be a note following the evaluation formula for anemia, diagnostic code 7700, instructing the rater to evaluate chronic residuals of the disease separately.

We agree and have added a note following the rating criteria for diagnostic code 7700, anemias, to instruct the rater to evaluate the complications of pernicious anemia, such as dementia or peripheral neuropathy, separately. These complications occur often enough that this instruction is warranted to ensure consistent evaluations. Furthermore, the note is consistent with instructions for other conditions throughout the schedule, such as lupus erythematosus, (diagnostic code 6350), leprosy (Hansen's Disease), (6302), and rheumatoid arthritis, (5002), which instruct the rater to evaluate residuals separately.

The proposed levels of evaluations for anemia, diagnostic code 7700, were based solely on hemoglobin levels. One commenter noted that the key determination in evaluating the degree of disability is not the laboratory value, but the primary diagnosis and compensatory level of the cardiovascular system. He felt, therefore, that the purely objective criteria of hemoglobin levels are inadequate for rating anemia unless clinical findings are also considered.

The normal level of hemoglobin differs by sex, with men having a higher level, on the average, than women. Individuals also vary in the possible compensatory mechanisms, such as tachycardia, brought to bear when anemia develops. Along with the level of hemoglobin, the speed of onset of the anemia helps determine the symptoms. We agree, therefore, that levels of hemoglobin in combination with clinical findings will allow a better