

**COMMODITY FUTURES TRADING COMMISSION****17 CFR Part 15****Changes in Reporting Levels for Large Trader Reports**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rulemaking; correction.

**SUMMARY:** The Commodity Futures Trading Commission is correcting an error in reports by large traders previously published in the **Federal Register** on November 17, 1997 (62 FR 61226).

**EFFECTIVE DATE:** December 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418-5310.

**Correction**

In the final rule, FR Doc. No. 97-29995, beginning on page 61226 in the **Federal Register** issue of November 17, 1997, make the following correction:

**§ 15.03 [Corrected]**

On page 61227, in the third column, in § 15.03, in the table, in the column entitled "Quantity," the fourth line reflecting the quantity 500,000 for the commodity of oats (bushels), should be deleted and replaced with the quantity 300,000.

Dated: December 8, 1997.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97-32412 Filed 12-10-97; 8:45 am]

BILLING CODE 6351-01-M

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1910**

[Docket No. ICR-97-2]

**Electrical Power Generation, Transmission and Distribution and Electrical Protective Equipment; Approval of Information Collection Requirements**

**AGENCY:** Occupational Safety and Health Administration.

**ACTION:** Final rule; Announcement of OMB approval number and expiration date.

**SUMMARY:** The Occupational Safety and Health Administration is announcing

that the collections of information regarding § 1910.269, Electrical Power Generation, Transmission and Distribution and § 1910.137, Electrical Protective Equipment have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date. It also amends 29 CFR 1910.8.

**DATES:** Effective December 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Barbara Bielaski, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3627, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219-8076, ext. 142.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 7, 1997 (62 FR 10592), the Agency announced its intent to request renewal of its current OMB approval for 29 CFR 1910.269, Electrical Power Generation, Transmission and Distribution and 29 CFR 1910.137, Electrical Protective Equipment, and provided a 60-day period for the public to comment on OSHA's burden hour estimates. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), OMB has renewed its approval for the information collections and assigned OMB control number 1218-0190 for both collections. The approval expires on July 31, 2000. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 28th day of November 1997.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

Accordingly, OSHA amends 29 CFR part 1910 as set forth below.

**PART 1910—[AMENDED]**

1. The authority citation for Subpart A of part 1910 continues to read as follows:

**Authority:** Secs. 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), or 6-96 (62 FR 111), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911.

**§ 1910.8 [Amended]**

2. Sec. 1910.8 is amended by adding the entry "1910.137—1218-0190" (in numerical order) to the table in the section.

[FR Doc. 97-32408 Filed 12-10-97; 8:45 am]

BILLING CODE 4510-26-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 160**

[CGD] 97-067

RIN 2115-AF54

**Advance Notice of Arrival: Vessels Bound for Ports and Places in the United States**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard amends its rules to require certain vessels to notify us of their International Safety Management (ISM) Code certification status when they enter U.S. waters and ports. The rule requires these vessels to include their ISM Code status in notice of arrival messages that are routinely sent to the Coast Guard Captain of the Port. This rule will allow the Coast Guard to monitor vessel compliance with ISM Code certification requirements.

**DATES:** This interim rule is effective January 26, 1998. Comments must reach the Coast Guard on or before January 12, 1998. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 9, 1998.

**ADDRESSES:** You may mail comments to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 97-067), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-267-1477. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street N.W., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for

inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G-MSO-2), at (202) 267-1053, or fax (202) 267-4570.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 97-067) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

##### **Regulatory Information**

The Coast Guard has not published a Notice of Proposed Rulemaking (NPRM) for this regulatory amendment. Under the Administrative Procedure Act (5 U.S.C. 553), an agency can publish a rule without notice and public procedure if it finds for good cause that notice would be impracticable, unnecessary, or contrary to the public interest. This rule involves international issues and safety and port management concerns. Compliance with the ISM Code is mandated by the Coast Guard Authorization Act of 1996 and by Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS).

The initial implementation date of the ISM Code is July 1, 1998, for the following vessels engaged on a foreign voyage: A vessel transporting more than

12 passengers; or a tanker, a bulk freight vessel, and a high speed freight vessel of 500 gross tons or more. The second implementation date for the ISM Code is July 1, 2002, for other freight vessels and self-propelled mobile offshore drilling units (MODU) of 500 gross tons or more.

The majority of countries that are a party to the SOLAS convention have adopted the ISM Code and are committed to timely and strict enforcement of the Code internationally. In order for the U.S. to demonstrate its support for this international goal, it is crucial that we begin monitoring and documenting ISM Code compliance status of vessels that must comply with the ISM Code by July 1, 1998. Similarly, it will be critical to begin monitoring ISM Code compliance for the remaining classes of vessels covered by the ISM Code well in advance of July 1, 2002.

Once the ISM Code is in effect, vessels entering U.S. waters and bound for U.S. ports which do not have fully certificated or implemented safety management systems under the ISM Code may be detained or denied entry into U.S. ports. Gathering ISM Code certification information about vessels that must comply with the ISM Code by July 1, 1998, well in advance of that date, will permit the Coast Guard to determine resource allocations for the U.S. Port State Control Programs and carry out enforcement actions required by 46 U.S.C. 3204(c) and 3205(d). This will enhance the Coast Guard's ability to carry out the required enforcement of the ISM Code, and promote safe and smooth operations at U.S. ports. For these reasons, the Coast Guard finds good cause under 5 U.S.C. 553(b)(B) that a notice before the effective date of this rule is unnecessary.

Although this rule will not be preceded by a notice of proposed rulemaking, we have provided for a 30-day public comment period. This ensures that the public has an opportunity to comment prior to the effective date of the rule, but also allows us to begin collecting the necessary information as soon as possible prior to implementation of the ISM Code.

##### **Background and Purpose**

The Ports and Waterways Safety Act of 1972 [86 Stat. 424], as amended by the Port and Tanker Safety Act of 1978 [92 Stat. 1271], authorizes the Secretary of the Department in which the Coast Guard is operating to require the receipt of notice from any vessel destined for or departing from a port or place under the jurisdiction of the U.S. This does not include a vessel declaring force majeure or a vessel on innocent passage through

U.S. waters. This notice may include any information necessary for the control of the vessel and for the safety of the port or marine environment. See 33 U.S.C. 1223; 33 CFR Part 160, Subpart C.

In October 1996, the Coast Guard Authorization Act of 1996 [110 Stat. 3901] amended title 46 of the U.S. Code by adding Chapter 32, "Management of Vessels." Under this new law, the Secretary of Transportation was directed to prescribe regulations and enforce compliance with the ISM Code for safety management systems on vessels engaged on a foreign voyage. This authority was delegated to the Commandant of the Coast Guard on April 24, 1997 (62 FR 19935), in 49 CFR, Part 1.46 (fff) and (ggg).

On May 1, 1997, the Coast Guard published a Notice of Proposed Rulemaking on implementation and certification of owners' and vessels' safety management systems consistent with the ISM Code (62 FR 23705). The NPRM's comment period closed on July 30, 1997.

Briefly, compliance with the ISM Code means that these vessels and the companies which own or operate these vessels must have in effect safety management systems that meet the requirements of the ISM Code, and they must hold valid Document of Compliance certificates and Safety Management Certificates.

This rule will require these vessels to provide their ISM certification status prior to entering U.S. ports. It should be noted that passenger vessels carrying 12 passengers or more involved in foreign voyages that are below 500 gross tons are not covered by this rule even though these passenger vessels under 500 gross tons will be required to be certificated to the ISM Code requirements.

There are very few foreign passenger vessels operating within the U.S. that meet these parameters. Those that do operate on liner runs to the same port daily with their schedules well known to the Coast Guard's Captain of the Port. An example of this would be small passenger ferries operating between the British Virgin Islands and U.S. Virgin Islands, which enter U.S. waters three or more times daily. Once the Captain of the Port's personnel verify that these vessels meet the ISM Code requirements during routine foreign vessel boardings, the need to report ISM Code status is unnecessary due to their limited, one U.S. port operation. For these reasons, we are excluding these vessels from the requirements of this rule.

The purpose of this rule is to permit the Coast Guard to enforce the requirements of 46 U.S.C. 3204(c),

which prohibits a vessel from operating in U.S. waters without having on board a valid Document of Compliance certificate and Safety Management Certificate. Collecting a vessel's certification status before arrival in port is vital to determining appropriate enforcement actions by Coast Guard officials at U.S. ports. An effected vessel that does not have the ISM Code certificates on board will be denied entry into a U.S. port after the effective date of the ISM Code. A vessel that has the proper ISM Code certificates will be boarded annually under the existing standards of the U.S. Port State Control program. During these boardings, if the vessel is found to have valid certificates but has not properly implemented or maintained its safety management system, the vessel will be detained in port. The vessel's flag state or organization acting on behalf of its flag, will be requested by the Coast Guard to attend to the vessel to ensure corrections, or take actions to manage the corrections of non-conformities to the vessel's safety management system prior to the vessel departing the port.

#### Discussion of the Proposed Rule

Notification of a vessel's ISM Code certification status will be added to 33 CFR 160.207 as new paragraphs (d) and (e). Paragraph (d) requires an owner, agent, master, operator, or person in charge of a vessel of 500 gross tons or more and engaged on a foreign voyage to the United States to provide the ISM Code notice described in paragraph (e).

Vessels that are required to comply with the ISM Code by July 1, 1998 must comply with this rule on its effective date. These are listed in paragraph (d)(1) and include a passenger vessel carrying 12 or more passengers, a tank vessel, a bulk freight vessel, or a high-speed freight vessel.

Vessels that must comply with the ISM Code by July 1, 2002, must comply with this rule beginning January 1, 2000. These vessels are listed in paragraph (d)(2) and include a freight vessel not listed in paragraph (d)(1) or a self-propelled MODU. We are not collecting ISM Code compliance information from these other freight vessels and self-propelled MODU's until January 1, 2000, because they are not required to comply with the ISM Code until July 1, 2002. This delayed compliance date reduces the collection of information burden for these vessels, but will allow the Coast Guard to collect this information well in advance of the second ISM Code effective date.

Paragraph (e) describes the content and manner of the notice. These vessels will be required to include in their

advance notice of arrival message the issuance dates of their Document of Compliance certificate and Safety Management Certificate, and the name of the Flag Administration or recognized organization(s) representing the vessel's flag which issued the certificates. The notice must be given to the appropriate Captain of the Port at least 24 hours prior to entry, and can be combined with the existing notification given under 33 CFR 160.207(a).

We recognize that this rule will take effect prior to the initial ISM Code implementation date of July 1, 1998, and will take effect for other freight vessels and self-propelled MODUs on July 1, 2002. Vessels that are not in compliance with the ISM Code will not be detained or denied entry into U.S. ports prior to the implementation date for that particular vessel. However, compiling ISM certification status prior to the ISM implementation dates will enable us to enforce the ISM Code compliance in a timely and efficient manner.

#### Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of 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 interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule will amend established reporting regimes which are now customary procedures. The information to be reported is readily available aboard the vessel by international convention. Modern electronic communication systems make it easier to report this information, and will only add seconds to the delivery of currently required reports.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, the Coast Guard has reviewed it for potential economic impact on small entities.

This rulemaking will affect U.S. oceangoing shipping companies and their vessels of specific categories of more than 500 gross tons, or passenger vessels of 500 gross tons or more carrying more than 12 passengers engaged on a foreign voyage. These companies and their vessels are not considered small businesses or small entities. Small passenger vessels are the only small entities required to comply with the ISM Code. A small passenger vessel is generally one carrying more than six passengers and is less than 100 gross tons (See 46 U.S.C. 2101 (35)). Since the new reporting requirements are for passenger vessels of 500 gross tons or over, there is no impact or reporting requirement for a small passenger vessel engaged on a foreign voyage.

Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

#### Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Act of 1996 (Pub.L. 104-121), the Coast Guard wants to help small entities understand this proposed rule so they can better evaluate its effects on them and participate in the rulemaking process. If your small business is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. Robert Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G-MSO-2), at (202) 267-1053, or fax (202) 267-4570.

#### Collection of Information

This rule provides for a collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.3(c), "collection of information" includes reporting,

recordkeeping, monitoring, posting, labeling, and other, similar actions.

The Coast Guard submitted the requirements for the collection request to the Office of Management and Budget, requesting emergency processing of the collection. The title and description of the collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

**Title:** Advance Notice of Arrivals: Vessels bound for ports and places in the U.S.

**Summary of the Collection of Information:** This interim rule contains collection of information requirements in § 160.207, and the corresponding approval number is OMB Control Number 2115-0557.

**Need for Information:** 46 U.S.C. 3204(c) prohibits vessels from operating in U.S. waters without having on board a copy of their company's Document of Compliance certificate and the vessel's Safety Management Certificate. This advance notice of arrival report will ensure that the vessel and its company have been issued these certificates and are in compliance. This report will ensure uninterrupted trading of the vessel in the U.S. when meeting the requirements of the ISM Code. Once the ISM Code implementation dates come into effect, this will allow the Coast Guard Captain of the Port to deny vessels from entry into U.S. waters and ports if the vessel does not verify the issuance of the required certificates in the advance notice of arrival. This will enhance safety in U.S. ports and waterways, and prevent costs for the U.S. port to detain a non-complying vessel, if found in port.

**Proposed Use of Information:** This information will be used by the cognizant Captain of the Port to ensure compliance with the ISM Code and U.S. law to enhance waterway safety management.

**Description of the Respondents:** Respondents include the vessel's owner, master, operator, agent or person in charge of a passenger vessel carrying more than 12 passengers, tank vessels, bulk freight vessels, freight vessels, high-speed freight vessels or self-propelled mobile offshore drilling units of at least 500 gross tons or more, engaged on a foreign voyage to the U.S.

**Number of Respondents:** The ISM Code compliance reporting requirement will effect the above-described vessels of 500 gross tons or more on a foreign

voyage to the U.S. There are approximately 9,507 vessels operating on a foreign voyage to the U.S. annually. During 1998 and 1999, 60 percent of the total population will need to meet this requirement (5,704 vessels). In the year 2000, 100 percent compliance will be expected.

**Frequency of Response:** It is expected that each vessel will be required to make this report eight times per year at every port call. This will require a total of 45,632 responses per year during 1998 and 1999, and a total of 76,056 responses during the year 2000. Each vessel responds to local Coast Guard Captain of the Port units.

**Burden of Response:** It is expected that the additional requirement will add one minute of time per report for recording the additional information needed to verify the vessel's ISM Code certification compliance.

**Estimated Total Annual Burden:** The estimated total additional burden in each year, for 1998 and 1999 will equal: 1 minute  $\times$  45,632 responses = 45,632 minutes or 761 hours per year. At \$20.00 an hour for clerical time, the cost to the public is \$15,220 per year (\$20.00  $\times$  761 hours = \$15,220).

The estimated total annual burden for the year 2000 will equal: 1 minute  $\times$  76,056 responses = 76,056 minutes or 1,268 hours per year. At \$20.00 an hour for clerical time, the cost to the public is \$25,360 per year (\$20.00  $\times$  1,268 hours = \$25,360).

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this rule to OMB for its review of the collection of information.

Even though the Coast Guard has received emergency authorization to collect this information, it solicits public comment on the collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information will have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES**.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

## Federalism

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

## Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that, under paragraph 2.B.2e(34(d)) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 160 as follows:

1. Revise the authority citation for part 160 to read as follows:

## PART 160—[AMENDED]

**Authority:** 33 U.S.C. 1223, 1231; 49 CFR 1.46.

2. Revise § 160.207 by adding paragraphs (d) and (e) to read as follows:

### § 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

\* \* \* \* \*

(d) *International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice.* If you are the owner, agent, master, operator, or person in charge of a vessel that is 500 gross tons or more and engaged on a foreign voyage to the United States, you must provide the ISM Code notice described in paragraph (e) as follows:

(1) *Immediate ISM Code notice if your vessel is*—a passenger vessel carrying 12 or more passengers, a tank vessel, a bulk freight vessel, or a high-speed freight vessel.

(2) *ISM Code notice beginning January 1, 2000, if your vessel is*—a freight vessel not listed in paragraph (d)(1) or a self-propelled mobile offshore drilling unit (MODU).

(e) *Content and Manner of ISM Code Notice.* (1) ISM Code notice includes the following:

- (i) the date of issuance for the company's Document of Compliance certificate that covers the vessel,
- (ii) the date of issuance for the vessel's Safety Management Certificate, and,
- (iii) the name of the Flag Administration, or the recognized organization(s) representing the vessel flag administration, that issued those certificates.

(2) If you meet the criteria in paragraph (d) of this section, you must give the ISM Code notice to the Coast Guard Captain of the Port of the port or place of your destination in the U.S. at least 24 hours before you enter the port or place of destination. The ISM Code notice may be combined and provided with the report required by paragraph (a) of this section.

Dated: December 5, 1997.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 97-32447 Filed 12-10-97; 8:45 am]

BILLING CODE 4910-14-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 4

RIN 2900-AE40

### Schedule for Rating Disabilities; The Cardiovascular System

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities addressing the cardiovascular system. The effect of this action is to update the cardiovascular system 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.

**EFFECTIVE DATE:** This amendment is effective January 12, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Caroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 273-7230.

**SUPPLEMENTARY INFORMATION:** As part of a comprehensive review of the rating schedule, VA published, in the **Federal**

**Register** of January 19, 1993 (58 FR 4954-60), a proposal to amend 38 CFR 4.100, 4.101, 4.102, and 4.104.

Interested persons were invited to submit written comments, suggestions, or objections on or before March 22, 1993. We received comments from the Disabled American Veterans, the Veterans of Foreign Wars, the Paralyzed Veterans of America, the American Legion, and several VA employees.

One commenter, stating that the primary objective of the review is to update the medical terminology and criteria used to evaluate disabilities rather than to amend the percentage evaluations, contended, without being specific, that a substantial number of the proposed changes go beyond the stated purpose and expressed general opposition to any changes that are inconsistent with the stated objective. The commenter also stated that the proposed criteria retain, and in some cases expand upon, the vague, indefinite, and arbitrary elements previously found in the schedule and felt that substantial revision of the proposed rules is required.

The purpose of the review was to update the cardiovascular system 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. The proposed revisions published January 19, 1993, were intended to update the medical terminology; revise the criteria, including the length of convalescence evaluations, based on medical advances; and make criteria more objective, i.e., less ambiguous and, thereby, assure more consistent ratings. These proposed changes were consistent with the stated purposes of the revision. However, since establishing less ambiguous criteria to assure consistent evaluations is one of the purposes of this revision, and a number of commenters stated that the proposed criteria contained language that is too subjective to provide effective guidance in evaluating cardiovascular disabilities, we have further revised the proposed evaluation criteria to eliminate indefinite terminology and establish more objective and quantifiable criteria wherever possible. These changes will be discussed in detail under the individual codes affected.

One commenter suggested that the proposed criteria will discriminate against veterans of Desert Storm and future veterans because their conditions will be evaluated under criteria that he perceived as less generous than those in the prior rating schedule.

Significant medical advances, including new surgical and anesthetic techniques, new medications, and earlier diagnoses, have occurred, which we must take into account in revising the rating schedule. Doing so is, in fact, one of the primary reasons for conducting this review. Since recently discharged veterans clearly benefit from the application of these new techniques, in our judgment they are not discriminated against by having their disabilities evaluated under criteria which reflect the effects of these same medical advances.

One commenter objected that the rating schedule fails to take into consideration the disabling effects of the veteran's shortened life expectancy.

To consider a factor so far removed from "the average impairments of earning capacity" as the effect of various conditions on life expectancy would clearly exceed the parameters established by Congress in 38 U.S.C. 1155.

One commenter, citing a statistical economic validation study from the 1960s, implied that statistical studies may justify increased disability evaluations.

The statute (38 U.S.C. 1155) authorizing establishment of the rating schedule directs that "[t]he Secretary shall from time to time readjust the schedule of ratings *in accordance with experience*" (emphasis supplied). Rather than requiring statistical studies or any other specific type of data, the statute clearly leaves the nature of the experience which warrants an adjustment, and by extension the manner in which any review is conducted, to the discretion of the Secretary. Although during the 1970s VA considered adjusting the rating schedule based on the same statistical studies cited by the commenter, that approach proved to be unsatisfactory, and the proposed changes based on that study were not adopted.

One commenter agreed that ambiguous words such as "severe" should be deleted, but cautioned against making the evaluation criteria too objective.

Providing clear and objective criteria is the best way to assure that disabilities will be evaluated fairly and consistently. Judgment and flexibility cannot be eliminated from the evaluation process, however, because patients do not commonly present as textbook models of disease, and rating agencies have the task of assessing which evaluation level best represents the overall disability picture. (See § 4.7.)

The previous schedule provided convalescence evaluations for six