

§ 31.6302-1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

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(f) * * *

(4) *De Minimis rule.* For quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999, if the total amount of accumulated employment taxes for the return period is less than \$1,000 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

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§ 31.6302-1T [Removed]

Par. 3. Section 31.6302-1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 9, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 100

[CGD08-99-041]

RIN 2115-AE46

Special Local Regulations; 4th of July Celebration Ohio River Mile 469.2-470.5, Cincinnati, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting a temporary final rule for the 4th of July Celebration. This event will be held on July 4, 1999, from 8 p.m. until 11 p.m. at Cincinnati, Ohio. This rule is necessary to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: This temporary final rule is effective from 8 p.m. until 11 p.m. on July 4, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this document are available for review at Marine Safety Office, Louisville; 600 Martin Luther King Jr. Place; Room 360; Louisville, KY 40202-2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine

Safety Office, Louisville, KY, at (502) 582-5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this document are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, no notice of proposed rulemaking for this temporary final rule has not been published, and good cause exists for making this rule effective less than 30 days after the date of publication. Following normal rulemaking would be impracticable. The details of the event were not finalized in sufficient time for us to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this temporary final rule is a fireworks display. The event is sponsored by JACOR Events. The fireworks will be launched from a deck barge in the Ohio River around mile 469.9, mid-channel. Non-participating vessels will be able to transit the area after the river is reopened.

Regulatory Evaluation

This temporary final 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. The Office of Management and Budget has not reviewed it 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, because of the event's short duration, that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial, because of the event's short duration. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria of Executive Order 161 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under section 2-1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35

2. Add a temporary § 100.35-T08-041 to read as follows:

§ 100.35-T08-041 Ohio River at Cincinnati, Ohio.

(a) *Regulated Area:* Ohio River Mile 469.2-470.5.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are spectators. "Participants" are those persons and vessels identified by the sponsor as taking part in the event. The "official patrol" consists of any Coast Guard, public, State, or local law-enforcement vessel, or any sponsor-provided vessel, assigned to patrol the event. The Coast Guard "Patrol Commander" is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Marine Safety Office, Louisville, to act as a Patrol Commander.

(1) No vessel may anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated

area during effective dates and times, unless cleared to enter by an official patrol vessel.

(2) When hailed or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels must comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time he or she deems it necessary for the protection of life or property, and is available on VHF-FM Channel 16 by using the call sign "PATCOM".

(c) *Effective Date*: This temporary final rule will be effective from 8 p.m. to 11 p.m. July 4, 1999.

Dated: June 4, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AH05

Schedule for Rating Disabilities; Fibromyalgia

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule without change an interim final rule adding a diagnostic code and evaluation criteria for fibromyalgia to the Department of Veterans Affairs' (VA's) Schedule for Rating Disabilities. The intended effect of this rule is to insure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.

DATES: *Effective Date*: This final rule is effective June 17, 1999. The interim rule adopted as final by this document was effective May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Carol McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-7230.

SUPPLEMENTARY INFORMATION: On May 7, 1996, VA published in the **Federal Register** an interim final rule with request for comments (61 FR 20438). The rule added a diagnostic code, 5025, and evaluation criteria for fibromyalgia to the section of the VA Schedule for

Rating Disabilities (38 CFR part 4) that addresses the musculoskeletal system (38 CFR 4.71a). A 60-day comment period ended July 8, 1996, and we received three comments, one from two physicians in the Department of Medicine at The Oregon Health Sciences University, and two from VA employees.

The evaluation criteria for fibromyalgia under diagnostic code 5025 have one requisite that applies to all levels: "[w]ith widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms." The 40-, 20-, and 10-percent evaluation levels are additionally based on whether these findings are constant, or nearly so, and refractory to therapy; are episodic, but present more than one-third of the time; or require continuous medication for control. One commenter felt that the use of the phrase "with or without" as used in diagnostic code 5025 is confusing and might be interpreted as rendering the symptoms that follow the phrase as superfluous and unnecessary in the evaluation of fibromyalgia.

Some individuals with fibromyalgia have only pain and tender points; others have pain and tender points plus stiffness; still others have pain and tender points plus stiffness and sleep disturbance; etc. As a shorter way of stating this, we have used the phrase "with or without," followed by a list of symptoms, to indicate that any or all of these symptoms may be part of fibromyalgia, but none of them is necessarily present in a particular case. When symptoms in addition to pain and tenderness are present, they may be used as part of the assessment of whether fibromyalgia symptoms are episodic or constant. When none of the symptoms on the list is present, the determination of whether the condition is episodic or constant must be based solely on musculoskeletal pain and tender points. The term "with or without" is also used in § 4.116 (Schedule of ratings—gynecological conditions and disorders of the breast) of the rating schedule under diagnostic code 7619, "Ovary, removal of," where the criterion for a zero-percent evaluation is "removal of one with or without partial removal of the other." We believe that in both cases the phrase "with or without," rather than adding confusion, better defines the potential scope of the condition under evaluation. We therefore make no change based on this comment.

The same commenter questioned whether the intent is to place a ceiling of 40 percent on the evaluation of fibromyalgia despite the presence of one or more of the symptoms following the phrase "with or without."

As the evaluation criteria indicate, there may be multi-system complaints in fibromyalgia. If signs and symptoms due to fibromyalgia are present that are not sufficient to warrant the diagnosis of a separate condition, they are evaluated together with the musculoskeletal pain and tender points under the criteria in diagnostic code 5025 to determine the overall evaluation. The maximum schedular evaluation for fibromyalgia in such cases is 40 percent. If, however, a separate disability is diagnosed, e.g., dysthymic disorder, that is determined to be secondary to fibromyalgia, the secondary condition can be separately evaluated (see 38 CFR 3.310(a)), as long as the same signs and symptoms are not used to evaluate both the primary and the secondary condition (see 38 CFR 4.14 (Avoidance of pyramiding)). In such cases, fibromyalgia and its complications may warrant a combined evaluation greater than 40 percent. Since these rules are for general application, they need not be specifically referred to under diagnostic code 5025.

Another commenter referred to a statement in the supplementary information to the interim final rule that indicated that fibromyalgia is a benign disease that does not result in loss of musculoskeletal function. The commenter said that while it is not a malignant disease which leads to anatomic crippling, the result of persistent chronic pain is often musculoskeletal dysfunction.

The statement regarding the lack of loss of musculoskeletal function is supported by medical texts which state, for example, that objective musculoskeletal function is not impaired in fibromyalgia ("The Manual of Rheumatology and Outpatient Orthopedic Disorders" 349 (Stephen Padgett, Paul Pellicci, John F. Beary, III, eds., 3rd ed. 1993)); that the syndrome is not accompanied by abnormalities that are visible, palpable, or measurable in any traditional sense; and that the patient must recognize the physical benignity of the problem ("Clinical Rheumatology" 315 (Gene V. Ball, M.D. and William J. Koopman, M.D., 1986)). These medical texts confirm that fibromyalgia does not result in objective musculoskeletal pathology. The criteria we have established to evaluate disability due to fibromyalgia are therefore based on the symptoms of