

Charleston by telephone at (843) 740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 5:30 p.m. until 6:50 p.m. on December 31, 2011.

Dated: December 9, 2011.

M.F. White,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2011-32485 Filed 12-19-11; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AN60

Schedule for Rating Disabilities; Evaluation of Amyotrophic Lateral Sclerosis

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its Schedule for Rating Disabilities by revising the disability evaluation criterion provided for amyotrophic lateral sclerosis (ALS) to provide an evaluation of 100 percent for any veteran with service-connected ALS. This change is necessary to adequately compensate veterans who suffer from this progressive, untreatable, and fatal disease. This change is intended to provide a total disability rating for any veteran with service-connected ALS.

DATES: *Effective Date:* This final rule is effective January 19, 2012.

Applicability Date: This final rule applies to an application for benefits that:

- Is received by VA on or after January 19, 2012;
- Was received by VA before January 19, 2012 but has not been decided by a VA regional office as of that date;
- Is appealed to the Board of Veterans' Appeals on or after January 19, 2012;

- Was appealed to the Board before January 19, 2012 but has not been decided by the Board as of that date; or
- Is pending before VA on or after January 19, 2012 because the Court of Appeals for Veterans Claims vacated a Board decision on the application and remanded it for readjudication.

FOR FURTHER INFORMATION CONTACT:

Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9428. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 23, 2010, VA published in the **Federal Register** (75 FR 35711) a proposed rule that would revise the evaluation criterion for amyotrophic lateral sclerosis (ALS) in the VA Schedule for Rating Disabilities (diagnostic code 8017 in 38 CFR 4.124a, the schedule of ratings for neurological conditions and convulsive disorders). The schedule previously provided a minimum evaluation of 30 percent for ALS; however, we determined that providing a 100-percent evaluation in all cases would obviate the need to reassess and reevaluate veterans with ALS repeatedly over a short period of time, as the condition worsens and inevitably and relentlessly progresses to total disability, and we proposed to increase the minimum evaluation for ALS to 100 percent.

Comments in Response to Proposed Rule

A 30-day comment period ended July 23, 2010, and we received comments from 17 individual members of the general public and 1 from the Amyotrophic Lateral Sclerosis Association. The comments from the general public included 5 from veterans who have ALS, 3 from family members of veterans who have ALS or who died from ALS, and 1 from an individual raising claim-specific issues. Fifteen of the individual commenters expressed support for the rule. Two of the 15 said they support the rule "wholeheartedly," and others used expressions such as "it is imperative" and "it is absolutely vital." We are not making any changes to the final rule based on these supportive comments.

In addition, the Amyotrophic Lateral Sclerosis (ALS) Association strongly endorsed the proposed rule. It stated that the establishment of an evaluation of 100 percent for ALS in all cases, plus the note under the evaluation criterion that recommends consideration of special monthly compensation (SMC)

(an additional monthly amount of compensation that may be paid to veterans with certain serious disabilities) will help ensure that veterans with ALS are compensated appropriately. The ALS Association recommended that VA adopt special processing procedures to expedite ALS claims; however, VA has already established procedures for handling hardship cases involving seriously disabled veterans. Therefore, we are not making any changes to the final rule based on this comment.

One commenter said that he would like to see the 100-percent rating for this disease given to all veterans, whether or not they are service-connected. However, under current law, 38 U.S.C. 1110 and 1131, VA's authority is limited to providing compensation to veterans with service-connected disabilities. Therefore, as VA is prohibited from taking the action the commenter requests, we are not making any changes to the final rule based on this comment.

One commenter expressed the belief that revision of the VA rating schedule in the proposed rulemaking would be "arbitrary," arguing that ALS was being evaluated differently from other neurological disorders. The comment expressed the belief that the proposed rule would "rate multiple disabilities as a single disability" when a possibility of entitlement to SMC exists, and that the proposed rule would "produce decisions which result in payment at a rate lower than the veteran is entitled to now."

VA appreciates this comment; however, this rule does not change the procedure for evaluating service-connected disabilities. It only prescribes a higher minimum disability rating for ALS. VA remains required to provide an evaluation for all service-connected disabilities, regardless of whether a veteran already has received a 100-percent disability rating for one. Therefore, all veterans will continue to receive thorough evaluations for all service-connected disabilities and disorders. All veterans who would be eligible for SMC or ancillary benefits before the promulgation of this regulation will remain so.

As the proposed rule explained, ALS is a rapidly progressing disease, and establishment of a 100-percent evaluation for ALS will not adversely affect how ALS is evaluated for rating purposes. Although a veteran may receive compensation at the 100-percent rate based either on a 100-percent evaluation specifically for ALS or on a combined evaluation for ALS and other service-connected conditions, on either basis VA may consider the veteran for