

electronic format, for inclusion with the filed tax return or claim for refund.

(ii) The tax return preparer's completion of Form 8867 (or successor form) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

(2) *Computation of credit*—(i) The tax return preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's EIC computation, including the method and information used to make the computation.

(ii) The tax return preparer's completion of the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

\* \* \* \* \*

(4) *Retention of records*—(i) The tax return preparer must retain—

(A) A copy of the completed Form 8867 (or successor form);

(B) A copy of the completed Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 (or successor form) and the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 (or successor form) or the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section).

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years from the latest of the following dates, as applicable:

(A) The due date of the tax return (determined without regard to any extension of time for filing);

(B) In the case of a signing tax return preparer electronically filing the tax

return or claim for refund, the date the tax return or claim for refund was filed;

(C) In the case of a signing tax return preparer not electronically filing the tax return or claim for refund, the date the tax return or claim for refund was presented to the taxpayer for signature; or

(D) In the case of a nonsigning tax return preparer, the date the nonsigning tax return preparer submitted to the signing tax return preparer that portion of the tax return or claim for refund for which the nonsigning tax return preparer was responsible.

(iii) The items in paragraph (b)(4)(i) of this section may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Special rule for firms*. A firm that employs a tax return preparer subject to a penalty under section 6695(g) is also subject to penalty if, and only if—

(1) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or, prior to the time the return was filed, knew of the failure to comply with the due diligence requirements of this section;

(2) The firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements of this section; or

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

(d) *Exception to penalty*. The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular tax return or claim for refund was isolated and inadvertent. The preceding sentence does not apply to a firm that is subject to the penalty as a result of paragraph (c) of this section.

(e) *Effective/applicability date*. This section applies to tax returns and claims for refund for tax years ending on or after December 31, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 14, 2011.

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 2011-32487 Filed 12-19-11; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-1112]

RIN 1625-AA00

#### **Safety Zone; City of Beaufort's Tricentennial New Year's Eve Fireworks Display, Beaufort River, Beaufort, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Beaufort River, in Beaufort, South Carolina, during the City of Beaufort's Tricentennial New Year's Eve Fireworks Display. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** This rule is effective from 5:30 p.m. until 6:50 p.m. on December 31, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1112 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1112 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Ensign John

Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, email [John.R.Santorum@uscg.mil](mailto:John.R.Santorum@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the fireworks display until December 1, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks display. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks display.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

##### Basis and Purpose

The legal basis for the rule is the Coast Guard’s authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with launching fireworks over navigable waters of the United States.

##### Discussion of Rule

On New Year’s Eve, a fireworks display will be held in Beaufort, South Carolina. The fireworks will be launched from a barge, which will be located on the Beaufort River. The fireworks will explode over the Beaufort River. The fireworks display is

scheduled to commence at 6 p.m. and conclude at 6:20 p.m.

The temporary safety zone encompasses certain waters of the Beaufort River in Beaufort, South Carolina. The safety zone will be enforced from 5:30 p.m. on December 31, 2011, 30 minutes prior to the scheduled commencement of the fireworks display at approximately 6 p.m., to ensure the safety zone is clear of persons and vessels. Enforcement of the safety zone will cease at 6:50 p.m. on December 31, 2011, 30 minutes after the scheduled conclusion of the fireworks display, to account for possible delays. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port 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 safety zone 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. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of

Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for only one hour and twenty minutes; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises 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.

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. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Beaufort River encompassed within the safety zone from 5:30 p.m. until 6:50 p.m. on December 31, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-(888) 734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of one hour and twenty minutes. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07-1112 to read as follows:

#### § 165.T07-1112 Safety Zone; City of Beaufort's Tricentennial New Year's Eve Fireworks Display, Beaufort River, Beaufort, SC.

(a) *Regulated Area.* The following regulated area is a safety zone: all waters of the Beaufort River within a 500 yard radius of position 32°25'40" N, 80°40'23" W. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port

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]

**BILLING CODE 9110-04-P**

## 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