

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.1502–21 also issued under 26 U.S.C. 1502. \* \* \*

**Par. 2.** Section 1.1502–21 is revised to read as follows:

**§ 1.1502–21 Net operating losses.**

[The text of proposed § 1.1502–21 is the same as the text for § 1.1502–21T(a) through (h)(9)(i) published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2010–15086 Filed 6–22–10; 8:45 am]

**BILLING CODE 4830–01–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:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its Schedule for Rating Disabilities by revising the evaluation criterion for amyotrophic lateral sclerosis (ALS) to provide a 100-percent evaluation 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:** Comments must be received on or before July 23, 2010.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to “RIN 2900–AN60–Schedule for Rating Disabilities; Evaluation of Amyotrophic Lateral Sclerosis.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m.,

Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** VA proposes to amend its Schedule for Rating Disabilities (38 CFR part 4) by revising the evaluation criterion for ALS under diagnostic code 8017 in § 4.124a, the schedule of ratings for neurological conditions and convulsive disorders. Currently, the schedule provides only a single criterion for ALS, a minimum disability evaluation of 30 percent. We propose to remove this criterion and replace it with a minimum disability evaluation of 100 percent. The Secretary has authority to make this amendment pursuant to 38 U.S.C. 1155.

ALS, also known as Lou Gehrig’s disease, is a motor neuron disease that results in muscle weakness leading to a wide range of serious disabilities, including problems with mobility. It often affects the muscles that control swallowing, leading to the possibility of aspiration (the inspiratory sucking of fluid into the airways) and pneumonia. It eventually paralyzes the respiratory muscles, and the most common cause of death in ALS is respiratory failure. ALS is a terminal illness; the life expectancy of a person with ALS ordinarily ranges from about 3 to 5 years after diagnosis. Fifty percent of patients die within 3 years of diagnosis, about 20 percent live 5 years, and 10 percent survive for 10 or more years. *See* <http://www.neurologychannel.com/als/treatment.shtml>; <http://www.mayoclinic.com/health/amyotrophic-lateral-sclerosis/DS00359/DSECTION=complications>; and [http://www.ninds.nih.gov/disorders/amyotrophiclateralsclerosis/detail\\_amyotrophiclateralsclerosis.htm](http://www.ninds.nih.gov/disorders/amyotrophiclateralsclerosis/detail_amyotrophiclateralsclerosis.htm).

ALS is rated under 38 CFR 4.124a, diagnostic code 8017, which currently provides a minimum disability evaluation of 30 percent. However, the guidelines in 38 CFR 4.120 (Evaluations by comparison) direct that disability from neurologic conditions be rated in proportion to the impairment of motor, sensory, or mental function. Therefore, any level of evaluation, including 100

percent, can currently be assigned for ALS under diagnostic code 8017. However, individuals with ALS have a rapidly deteriorating course of illness and quickly reach a level of total disability. 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. Therefore, we propose to change the minimum evaluation for ALS from 30 to 100 percent. Although ALS may not be totally disabling at the time of diagnosis or when VA compensation is claimed for the condition, ALS is a seriously disabling, rapidly progressive, untreatable, and fatal condition.

VA’s schedule of ratings for neurological conditions and convulsive disorders provides a 100-percent disability evaluation for certain other motor neuron diseases that progressively lead to disability or death. *See* 38 CFR 4.124a, Diagnostic Codes 8005 (Bulbar palsy), 8105 (Sydenham’s chorea of the “progressive grave type”), and 8106 (Huntington’s chorea). Given that ALS is a rapidly progressing neurodegenerative disease and that many of its disabling effects are similar to other neurological disorders that VA rates at 100 percent, we propose to compensate veterans with ALS similarly. The 100-percent rating would ensure that veterans with ALS are evaluated adequately and would eliminate any delay in reaching an appropriate level of compensation as their disease rapidly progresses.

In addition, we propose to add a note to consider the need for special monthly compensation, which will be quite a common need in these veterans.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not significantly impact any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Order 12866—Regulatory Planning and Review**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866 because it is unlikely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or principles set forth in the Executive Order.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance Numbers and Titles**

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.104, Pension for Non-Service-Connected Disability for

Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs approved this document on June 17, 2010 for publication.

**List of Subjects in 38 CFR Part 4**

Disability benefits, Pensions, Veterans.

Dated: June 18, 2010.

**William F. Russo,**

*Director of Regulations Management, Office of the General Counsel.*

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

**PART 4—SCHEDULE FOR RATING DISABILITIES**

1. The authority citation for part 4 continues to read as follows:

**Authority:** 38 U.S.C. 1155, unless otherwise noted.

**Subpart B—Disability Ratings**

2. In § 4.124a, revise diagnostic code 8017 to read as follows:

**§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.**

	Rating
* * * * *	
8017 Amyotrophic lateral sclerosis .....	100

**Note:** Consider the need for special monthly compensation.

\* \* \* \* \*

[FR Doc. 2010-15169 Filed 6-22-10; 8:45 am]

**BILLING CODE 8320-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 122 and 136**

[EPA-HQ-OW-2009-1019; FRL-9166-7]

**RIN 2040-AC84**

**National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing minor amendments to its Clean Water Act (CWA) regulations to codify that under the National Pollutant Discharge Elimination System (NPDES) program, only “sufficiently sensitive” analytical test methods can be used when completing an NPDES permit application and when performing sampling and analysis pursuant to monitoring requirements in an NPDES permit.

This proposal is based on requirements in the CWA and existing EPA regulations. It also would codify existing EPA guidance on the use of “sufficiently sensitive” analytical methods with respect to measurement of mercury and extend the approach outlined in that guidance to the NPDES program more generally. Specifically, EPA is proposing to clarify the existing NPDES application, compliance monitoring, and analytical methods regulations. The amendments in this proposed rulemaking affect only chemical-specific methods; they do not apply to the Whole Effluent Toxicity (WET) methods or their use.

**DATES:** Comments on this action must be received or postmarked on or before midnight August 9, 2010.

**ADDRESSES:** You may submit comments, identified by EPA-HQ-OW-2009-1019, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [ow-docket@epa.gov](mailto:ow-docket@epa.gov). Include EPA-HQ-OW-2009-1019 in the subject line of the message.
- *Mail:* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2009-1019.
- *Hand Delivery/Courier:* Deliver your comments to EPA Docket Center,