

nature of the trust's operations due to revisions in the tax laws or other factors, the staff's interpretation would be reexamined.

A note to the financial statements should disclose the method used in determining distributable income and should also describe how distributable income as reported differs from income determined on the basis of GAAP.

#### *F. Gross Revenue Method of Amortizing Capitalized Costs*

**Facts:** Rule 4–10(c)(3)(iii) of Regulation S–X states in part: “Amortization shall be computed on the basis of physical units, with oil and gas converted to a common unit of measure on the basis of their approximate relative energy content, unless economic circumstances (related to the effects of regulated prices) indicate that use of units of revenue is a more appropriate basis of computing amortization. In the latter case, amortization shall be computed on the basis of current gross revenues (excluding royalty payments and net profits disbursements) from production in relation to future gross revenues based on current prices (including consideration of changes in existing prices provided only by contractual arrangements), from estimated production of proved oil and gas reserves.”<sup>4</sup>

**Question:** May entities using the full cost method of accounting for oil and gas producing activities compute amortization based on the gross revenue method described in the above rule when substantial production is not subject to pricing regulation?

**Interpretive Response:** Yes. Under the existing rules for cost amortization adopted in ASR 258, the use of the gross revenue method of amortization was permitted in those circumstances where, because of the effect of existing pricing regulations, the use of the units of production method would result in an amortization provision that would be inconsistent with the current sales prices being received. While the effect of regulation on gas prices has lessened, factors other than price regulation (such as changes in typical contract lengths and methods of marketing natural gas) have caused oil and gas prices to be disproportionate to their relative energy content. The staff therefore believes that

it may be more appropriate for registrants to compute amortization based on the gross revenue method whenever oil and gas sales prices are disproportionate to their relative energy content to the extent that the use of the units of production method would result in an improper matching of the costs of oil and gas production against the related revenue received. The method should be consistently applied and appropriately disclosed within the financial statements.

#### *G. Removed by SAB 113*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2009–0907]

RIN 1625–AA00

#### **Safety Zone; Corporate Party on Hornblower Yacht, Fireworks Display, San Francisco, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters in San Francisco Bay proximate to Pier 30–32 in San Francisco, CA in support of a Corporate Party on Hornblower Yacht. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 12:45 p.m. through 9:30 p.m. on November 9, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0907 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0907 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 rule, call or e-mail Ensign Liezl Nicholas, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442, e-mail [Liezl.A.Nicholas@uscg.mil](mailto:Liezl.A.Nicholas@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 delaying the implementation of the safety zone would subject the public to the hazards associated with fireworks displays. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for a short duration and vessels can still transit in the majority of the San Francisco Bay during the event. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

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

Hornblower Cruises & Events will sponsor a Corporate Party fireworks display on November 9, 2009, on the navigable waters located proximate to Pier 30–32 in San Francisco Bay, San Francisco Bay, CA. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the

<sup>4</sup> Rule 4–10(c)(8) of Regulation S–X defines current price as the average price during the 12-month period prior to the ending date of the period covered by the report, determined as an unweighted arithmetic average of the first-day-of-the-month price for each month within such period, unless prices are defined by contractual arrangements, excluding escalations based upon future conditions.

pyrotechnics, and during the fireworks displays. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks displays.

### Discussion of Rule

From at 12:45 p.m. until 9 p.m., during the set up of the fireworks and until the start of the fireworks displays, the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet centering on the pyrotechnics barge located proximate to Pier 30–32 in San Francisco Bay at 37°46'39.90" N, 122°23'06.78" W (NAD 83). From 9 p.m. until 9:30 p.m., the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks launch site within a radius of 1,000 feet.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the fireworks sites while the fireworks are set up, and until the conclusion of the scheduled displays. Except for persons or vessels authorized by the Captain of the Port or his designated representative, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barges to ensure the safety of participants, spectators, and transiting vessels.

### 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

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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.

Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because: (i) The safety zone is in effect for a limited time; (ii) vessels will be able to transit in the majority of San Francisco Bay; and (iii) the Coast Guard will make notifications via

maritime advisories so mariners can adjust plans accordingly.

### 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 will affect the following entities, some of which may be small entities: Owners and operators of pleasure craft engaged in recreational activities and sightseeing intending to transit or anchor in a portion of the San Francisco Bay from 12:45 p.m. to 9:30 p.m. on November 9, 2009. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas of San Francisco, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

### 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 M16475.1D, 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 which 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 a regulation establishing a safety zone. 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. 1226, 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, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T11-249 is added to read as follows:

#### § 165.T11-249 Safety Zone; Corporate Party on Hornblower Yacht, Fireworks Display, San Francisco, CA

(a) *Location.* The following area is a safety zone: All waters of the San Francisco Bay from the surface to the bottom, within a 100 foot radius of the fireworks launch site located at 37°46'39.90" N, 122°23'06.78" W (NAD 83) proximate to Pier 30-32 from 12:45 p.m. until 9 p.m. on November 9, 2009; and within 1,000 feet of the same launch site from 9 p.m. until 9:30 p.m. on November 9, 2009.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's Representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zones on VHF-16 or through the 24-hour Command Center at telephone (415) 399-3547.

(d) Effective period. This section is effective from 12:45 p.m. through 9:30 p.m. on November 9, 2009.

Dated: October 10, 2009.

P.M. Gugg,

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

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### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

RIN 2900-AN05

#### Presumption of Service Connection for Amyotrophic Lateral Sclerosis

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule the interim final rule amending the Department of Veterans Affairs (VA) adjudication regulations to establish a presumption of service connection for amyotrophic lateral sclerosis (ALS) for any veteran who develops the disease at any time after separation from service. This amendment implements the decision by the Secretary of Veterans Affairs to establish such a presumption based on a November 2006 report by the National Academy of Sciences Institute of Medicine on the association between active service and ALS.

**DATES:** *Effective Date:* November 4, 2009.

*Applicability Date:* This final rule shall apply to all applications for benefits that are received by VA on or after September 23, 2008, the effective date of the interim final rule, and to all applications for benefits that were pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on that date.

**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) 461-9366.

**SUPPLEMENTARY INFORMATION:** On September 23, 2008, VA published in the **Federal Register** (73 FR 54691) an interim final rule that established at new § 3.318 a presumption of service connection for ALS for any veteran who develops the disease at any time after separation from service.

We provided a 60-day comment period that ended on November 24,