

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.

[FR Doc. E9-26574 Filed 11-3-09; 8:45 am]

BILLING CODE 4910-15-P

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,

2008. We received comments from 12 members of the general public and 1 each from the ALS Association and the American Speech-Language-Hearing Association (ASHA). Most of the comments from the general public came from family members of veterans affected by this disease, expressing gratitude and the belief that this decision was long overdue. Based on the rationale set forth in the interim final rule and this final rule, we adopt the provisions of the interim final rule as a final rule without change.

Administrative Procedure Act

This document affirms the amendment made by the interim final rule that is already in effect. The Secretary of Veterans Affairs concluded that, under 5 U.S.C. 553(b)(3)(B) and (d)(3), there was good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish the interim final rule with an immediate effective date. The interim final rule was necessary to implement immediately the Secretary's decision to establish a presumption of service connection for ALS for veterans with that diagnosis. Delay in the implementation of this presumption would have been contrary to the public interest.

Because the survival period for persons suffering from ALS is generally 5 years or less from the onset of symptoms, any delay would have been extremely detrimental to veterans who are currently afflicted with ALS. Veterans with ALS may not be taking alleviating medications, participating in muscle and speech therapy, or receiving proper assistance for daily functions due to financial hardship or their lack of having service-connected status for their disability. Moreover, in all likelihood, some veterans would have died from this rapidly progressive disease during a period for prior public comment. These veterans obviously would not have received any benefit from a presumption that is implemented after a public-comment period.

In order to benefit veterans currently suffering from ALS as quickly as possible, it was critical that VA established this presumption immediately.

Conditions for Presumptive Service Connection

The ALS Association expressed support for this regulation and stated its belief that 90 continuous days of service in the military and a diagnosis of ALS are sufficient to establish presumptive service connection for that disease. New § 3.318 generally establishes

presumptive service connection for ALS if a veteran had at least 90 continuous days of active military, naval, or air service and developed ALS at any time after separation from such service. We made no changes based on this comment.

Exceptions to the Presumption of Service Connection

The ALS Association was concerned that the presumption of service connection for ALS would not apply "when there is affirmative evidence that ALS was not caused by military service or was caused by a veteran's own willful misconduct." However, it conceded that there is "very little likelihood that either of those standards will be met with regard to any particular claim," as we stated in the supplementary information of the interim final rule. We made no changes based on this comment.

Outreach Services

We received several comments about VA contacting family survivors of affected veterans concerning new § 3.318, increasing awareness of ALS, and performing research regarding the disease. VA is taking steps to inform both veterans with ALS and family survivors of veterans with ALS about this regulation and realizes the importance of all of these issues. These issues, however, are beyond the scope of this rulemaking. We made no changes based on these comments.

Eligibility for Survivor Benefits

We received comments concerning the availability of survivor benefits to survivors of veterans who died from ALS before the effective date of the interim final rule. A veteran's survivor who establishes that the veteran died from ALS before September 23, 2008, may be eligible for dependency and indemnity compensation pursuant to new § 3.318, but would not be entitled to any retroactive benefits before September 23, 2008 (see discussion below). The laws concerning survivor benefits, however, are not specifically addressed by this rulemaking. For information about such benefits, those who are interested may call VA for assistance at 1-888-GIBILL1 (442-4551) for education benefits, or at 1-800-827-1000 for all other VA benefits. They may also contact VA on the Internet at <http://www.gibill.va.gov> for education claims or at <https://iris.va.gov> for other information. We made no changes based on these comments.

Expedited Claims

The ALS Association recommended that VA consider adopting formal

processes for expediting claims for veterans with ALS because of the rapidly progressive and terminal nature of the disease. VA is aware of the need for expediting claims for ALS and has taken steps to assure that this happens. However, this issue is beyond the scope of this rulemaking. We made no changes based on this comment.

Use of Assistive Technology

ASHA commented that it "strongly supports this presumption" and that this presumption would help veterans with ALS receive necessary treatment, such as the use of a speech-generating device. We note that VA already provides assistive technological devices to veterans to help them overcome challenges they face in coping with various diseases. Issues relating to treatment, however, are not part of this rulemaking. We made no changes based on this comment.

Effective Date of Benefits

Several commenters urged VA to provide benefits for awards based on new § 3.318 retroactive to the date of claim, even if the claim was originally filed and/or denied before September 23, 2008, the effective date of the interim final rule. New § 3.318 is applicable prospectively to claims filed on or after September 23, 2008, 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. Under 38 U.S.C. 5110(g), the effective date of any award of disability compensation or dependency and indemnity compensation made pursuant to new § 3.318 will be assigned in accordance with the facts found but cannot be earlier than the effective date of the interim final rule or the date one year prior to the date of application, whichever is later. VA therefore cannot assign an effective date prior to September 23, 2008, for an award of benefits made pursuant to new § 3.318. We made no changes based on this comment.

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 an 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 given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

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, 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 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 entitlement recipients; 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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

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 final rule will not have a significant economic impact on a substantial

number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule could affect only VA beneficiaries and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: October 9, 2009.
John R. Gingrich,
Chief of Staff, Department of Veterans Affairs.

PART 3—ADJUDICATION

■ Accordingly, the interim rule amending 38 CFR part 3 which was published at 73 FR 54691 on September 23, 2008, is adopted as a final rule without change.

[FR Doc. E9–26580 Filed 11–3–09; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0353; FRL–8979–9]

Revisions to the California State Implementation Plan, California Air Resources Board Consumer Products Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the California Air Resources Board portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on June 26, 2009 and concern volatile organic compound (VOC) emissions from consumer products. We are approving State rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on December 4, 2009.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0353 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, tong.stanley@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

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I. Proposed Action

On June 26, 2009 (74 FR 30481), EPA proposed to approve the following regulations into the California SIP.

TABLE 1—SUBMITTED REGULATIONS

Regulation	Regulation title	Adopted/ amended	Submitted
California Code of Regulations Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 1—Antiperspirants and Deodorants	05/06/2005	03/27/2008
California Code of Regulations Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 2—Consumer Products	09/26/2007	03/27/2008
California Code of Regulations Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 3—Aerosol Coating Products	09/26/2007	03/27/2008
California Air Resources Board—Test Method 310	Method 310—Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products.	05/06/2005	03/27/2008