

Dated: September 15, 2010.

C.L. Stowe,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0138]

RIN 1625-AA00

Safety Zone; New York Air Show at Jones Beach State Park, Wantagh, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the annual New York Air Show at Jones Beach State Park in Wantagh, New York. This safety zone is necessary to provide for the safety of navigation and protection of the maritime public from the hazards inherent with an air show which consists of aircraft performing aerobatic maneuvers over the Atlantic Ocean off of Jones Beach State Park.

DATES: This rule is effective October 29, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-0138 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0138 in the "Keyword" box, and then clicking "Search." This material is 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 rule, call or e-mail: Petty Officer Joseph Graun, Prevention Department, USCG Sector Long Island Sound at 203-468-4459, e-mail: Joseph.L.Graun@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

On April 21, 2010, we published a notice of proposed rulemaking (NPRM)

entitled: Safety Zone; New York Air Show at Jones Beach State Park, Atlantic Ocean off of Jones Beach, Wantagh, NY, in the **Federal Register** (75 FR 20802). We received no comments or requests for a public meeting on the proposed rule.

Basis and Purpose

The Air Show consists of aircraft performing aerobatics in close proximity to other aircraft over a specified area of the Atlantic Ocean off of Jones Beach State Park. The safety zone will provide for the safety of the maritime community and spectators viewing the Air Show from the water should an accident, such as a collision of aircraft, occur during the Show.

Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel. Any violation of the safety zone described herein is punishable by, among other things, civil and criminal penalties, *in rem* liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant mariner credentials.

Background

The New York State Office of Parks, Recreation and Historic Preservation sponsors an annual air show at Jones Beach State Park during the week before Memorial Day. In the past the Coast Guard established temporary regulations for this event every year and was not previously published in the CFR. The Notice of Proposed Rulemaking process provided the opportunity for public comments to be voiced and eliminated the unnecessary burden of establishing temporary rules every year.

Discussion of Comments and Changes

During the Notice of Proposed Rulemaking process, the sponsor of the event informed the Coast Guard that the dates of the enforcement period needed to be changed. The original proposed dates for the safety zone were from May 24, 2010 until May 30, 2010 allowing enforcement of the safety zone during the air show practice sessions. There will no longer be a practice session; therefore, the safety zone will only be needed during the main event on the Thursday through Sunday before Memorial Day in May.

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.

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 transit or anchor in those portions of the Atlantic Ocean off of Jones Beach State Park, Jones Beach, New York covered by the safety zone.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: The zone would only be enforced for a temporary period each day over a four day period; and vessels may transit in all areas around the zone at all times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause 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 safety zones and therefore falls within the categorical

exclusion noted above. 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 and 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. Add § 165.159 to read as follows:

§ 165.159 Safety Zone: New York Air Show at Jones Beach State Park, Wantagh, NY.

(a) *Location.* The following waters of the Atlantic Ocean off of Jones Beach State Park, Wantagh, NY are designated a safety zone: Beginning at a point on land located in Jones Beach State Park at approximate position 40°35'06" N, 073°32'37" W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35'49" N, 073°28'47" W; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°35'05" N, 073°28'34" W; then running west to approximate position 40°34'23" N, 073°32'23" W; then running north to the point of origin. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definition applies to this section: *Designated On-scene Patrol Personnel*, means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Long Island Sound or designated on-scene patrol personnel.

(2) All persons and vessels must comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel. On-scene Coast Guard patrol personnel include commissioned,

warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels.

(3) Upon being hailed by siren, radio, flashing light or other means from a U.S. Coast Guard vessel or other vessel with on-scene patrol personnel aboard, the operator of the vessel shall proceed as directed.

(4) Persons and vessels desiring to enter the regulated area may request permission to enter from the designated on scene patrol personnel by contacting them on VHF-16 or by a request to the Captain of the Port Long Island Sound via phone at (203) 468-4401.

(d) *Enforcement Period.* This rule will be enforced annually on the Thursday through Sunday before Memorial Day in May. Notification of the enforcement of the safety zone will be made via marine broadcasts and local notice to mariners.

Dated: May 24, 2010.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AN24

Presumptions of Service Connection for Persian Gulf Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations concerning presumptive service connection for certain diseases. This amendment implements a decision of the Secretary of Veterans Affairs that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of certain infectious diseases in response to an October 16, 2006, report of the National Academy of Sciences (NAS), titled "Gulf War and Health Volume 5: Infectious Diseases." The intended effect of this amendment is to establish presumptive service connection for these diseases and to provide guidance regarding long-term health effects associated with these diseases.

DATES: *Effective Date:* This amendment is effective September 29, 2010.

Applicability Date: The provisions of this regulatory amendment apply to all applications for benefits pending before

VA on or received by VA on or after September 29, 2010.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Hernandez, 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 March 18, 2010, VA published a proposal in the **Federal Register** (75 FR 13051) to implement a decision of the Secretary of Veterans Affairs that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of certain infectious diseases. We proposed to revise the title of the regulation to better reflect the content of the regulation and better reflect the authorizing statute (38 U.S.C. 1117); to establish presumptions of service connection for nine infectious diseases becoming manifest within a specified time after service in the Southwest Asia theater of operations or Afghanistan during certain time periods; and to reorganize the regulation to make clear the criteria applicable to each of the presumptions in the regulation.

VA provided a 60-day comment period that expired on May 17, 2010. VA received 18 comments in response to the proposed rule. Of these, five comments expressed general agreement with and support for this amendment. We also received a number of comments from veterans regarding their individual claims for veterans benefits. We do not respond to these comments in this notice as they are beyond the scope of this rulemaking. For the reasons explained in this notice, this final rule contains no changes from the proposed rule.

One commenter suggested that presumptive service-connection be granted for service in Turkey during the Persian Gulf War. The areas considered in the NAS review on which this rule is based were those areas of south-central and southwest Asia generally corresponding to the theaters of operations for the 1991 Gulf war, Operation Enduring Freedom (OEF), and Operation Iraqi Freedom (OIF) as designated by Executive Order. Executive Order 12744 (Jan. 12, 1991); 60 FR 6665 (Feb. 3, 1995); Executive Order 13239 (Dec. 12, 2001). Turkey was not included in that review. We therefore make no change based on this comment. Although the NAS report did not include Turkey in the list of geographic areas where the nine infectious diseases are endemic, we note

that no veteran is prevented from attempting to establish service connection on a direct basis by presenting evidence linking the veteran's post-service disability to an infection contracted during service or any other circumstance in service.

One commenter suggested that VA recognize myalgic encephalomyelitis, neurasthenia, multiple chemical sensitivities, and chronic mononucleosis as "medically unexplained chronic multisymptom illnesses" under 38 CFR 3.317(a)(2)(i)(B). The purpose of this rulemaking is to add presumptions for infectious diseases based on findings by NAS in "Gulf War and Health Volume 5: Infectious Diseases." That report did not address the issue of "medically unexplained chronic multisymptom illnesses." The comment, therefore, is outside of the scope of this rulemaking.

One commenter recommended that the rule authorize specific treatment for certain diseases. The purpose of this rule is to amend adjudication regulations. Treatment protocols for diseases and disabilities are outside the scope of this regulation, and, outside the scope of 38 CFR part 3. For this reason, we make no change based on this comment.

This same commenter suggested that infections with *Mycoplasma* species be added to the list of presumptive infectious diseases. The NAS did not include *Mycoplasma* species among the nine infectious diseases they selected. The recent NAS report specifically focused on scientific and medical literature addressing the incidence of long-term health effects in individuals who had been diagnosed with the primary infectious disease and stated findings with respect to only the strength of the evidence for associations between the primary infectious diseases and the secondary health effects. The NAS evaluated the published, peer-reviewed scientific and medical literature on long-term health effects associated with infectious diseases pertinent to service in Southwest Asia and those known to have been of special concern to veterans deployed to that area. The NAS identified over 20,000 potentially relevant scientific reports, and focused on 1,200 that had the necessary scientific quality.

The NAS initially identified approximately 100 diseases that are known to be endemic to Southwest Asia. Because those diseases would in most instances become manifest within a relatively short time after infection, NAS eliminated from consideration any disease that had never been reported in any U.S. troops within a reasonable