Dated: April 14, 2009.

T.H. Farris,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0263]

RIN 1625–AA00

Safety Zone; Mill Creek, Fort Monroe, VA, USNORTHCOM Civic Leader Tour and Aviation Demonstration

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on Mill Creek in the vicinity of the Fort Monroe Military Reservation, VA during the USNORTHCOM Civic Leader Tour Event and Aviation Demonstration. This action is intended to restrict vessel traffic movement in the vicinity of Mill Creek to protect mariners and the public from the hazards associated with aviation events.

DATES: This rule is effective from 9 a.m. until 11:30 a.m. and from 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0263 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0263 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: 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 Lieutenant Tiffany Duffy, Chief, Waterways Management, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@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 effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the public and mariners during the aviation demonstration.

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**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the public and mariners during the aviation demonstration.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that the Fort Monroe Military Reservation will host an aviation event in the vicinity of Fort Monroe Military Reservation immediately adjacent to Mill Creek, VA. The event is scheduled to occur on April 29, 2009, with a rehearsal day on April 28, 2009. In recent years, there have been unfortunate instances of crashes during aviation demonstrations. Accompanying a plane crash, there is typically a wide area of scattered debris that may also damage property and cause significant injury or death to those observing the demonstration. Due to the need to protect the public and mariners transiting on Mill Creek in the vicinity of the demonstration from the hazards associated with a potential crash, the Coast Guard is establishing a safety zone bound by a 1,320 foot radius around approximate position 37°04′04″ N/076°18′04″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Rule

The Coast Guard is establishing a 1,320 foot radius safety zone on specified waters of Mill Creek around approximate position 37°04′04″ N/076°18′04″ W (NAD 1983) in the vicinity of the Fort Monroe Military Reservation, Virginia. This safety zone is proposed in the interest of public safety during the USNORTHCOM Civic Leader Tour Aviation Demonstration and will be enforced from 9 a.m. to 11:30 a.m. and 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

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 regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the safety zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly so as to avoid any potential delays in transit. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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: The owners or operators of

vessels intending to transit or anchor in a portion of Mill Creek from 9 a.m. to 11:30 a.m. and from 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in place for a limited duration and is of a limited size. Before the effective period, the Coast Guard will issue maritime orders allowing mariners to adjust their plans accordingly so as to avoid any potential delays in transit.

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.lD, 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 temporary safety zone that will be in effect for less than one week and is intended to keep the public and mariners safe from the hazards associated with aviation displays. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects 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. 3306, 3703 and Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0263 to read as follows:

§ 165.T05–0263 Safety Zone: Mill Creek, Fort Monroe, VA, USNORTHCOM Civic Leader Tour and Aviation Demonstration.

(a) *Regulated Area.* The following area is a safety zone: All waters in the vicinity of the Fort Monroe Military Reservation on Mill Creek within a 1,320 foot radius of position 037°04′04″ N/076°18′04″ W (NAD 1983).

(b) *Definition:* For the purposes of this part, *Captain of the Port Representative:* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be contacted on VHF–FM marine band radio channel 16 (156.8 Mhz) or at telephone number 757–668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz). (d) Enforcement Period: This regulation will be enforced from 9 a.m. to 11:30 a.m. and from 1:30 p.m. to 4 p.m. on April 28, 2009, and from 2:30 p.m. to 4:30 p.m. on April 29, 2009.

Dated: April 10, 2009.

J.P. Novotny,

Commander, U.S. Coast Guard, Captain of the Port, Hampton Roads, Acting.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 51 and 58

RIN 2900–AM97

Per Diem for Nursing Home Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations which set forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. More specifically, we are updating the basic per diem rate, implementing provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, and making several other changes to better ensure that veterans receive quality care in State homes.

DATES: Effective date: May 29, 2009. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Theresa Hayes at (202) 461–6771 (for issues concerning per diem payments), and Christa Hojlo, PhD at (202) 461–6779 (for all other issues raised by this document), Office of Geriatrics and Extended Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (The telephone numbers set forth above are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document amends the regulations at 38 CFR part 51 (referred to below as the regulations), which set forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. Under the regulations, VA pays per diem to a State for providing nursing home care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a determination that the facility meets the standards set forth in subpart D of the regulations. The standards set forth minimum requirements that are intended to ensure that VA pays per diem for eligible veterans only if the State homes provide quality care. This document also makes corresponding changes concerning VA forms set forth at 38 CFR part 58.

This final rule is based on a proposed rule published in the **Federal Register** on November 28, 2008 (73 FR 72399). The proposed rule called for a 30 day comment period that ended on December 29, 2008. We received a number of comments from eight commenters (one commenter provided two submissions). One commenter merely agreed with the proposed changes. The other comments are discussed below. Based on the rationale set forth in the proposed rule and this document, we have adopted the provisions of the proposed rule as a final rule with changes discussed below.

Nurse Practitioners

Proposed § 51.2 defined the term ''nurse practitioner'' as ''a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by a nationally recognized body that provides such certification for nurse practitioners, such as the American Nurses Credentialing Center or the American Academy of Nurse Practitioners.''

Three commenters argued directly or implicitly that certification is not essential for the provision of high quality care and that licensure is a sufficient measure of competence. One of the commenters argued that national certification would create an undue burden for nurse practitioners (''enroll in an exam course, pay for course work, travel, lodging and registration fees, and sit for the exam'') and indicated that some may fail the exam or fail to meet renewal requirements. The commenter further asserted that nurse practitioners who are currently employed should be subject to a grandfather clause that allows them to work as nurse practitioners without national certification. We made no changes based on these comments. The proposed rule did not create a new certification requirement but merely broadened the list of certifying organizations to any nationally recognized certifying body because the previously listed organization does not provide such certification.

Recognition and Certification

Proposed § 51.30(a)(1) provided that VA would not conduct the recognition survey until the new facility has at least 21 residents or the number of residents consists of at least 50 percent of the new bed capacity of the facility.

One commenter seemed to read the provisions at proposed § 51.30(a)(1) by associating the portion of the formula regarding 21 residents with new facilities and associating the portion of the formula regarding 50 percent of the new bed capacity to renovations. This is not what was intended. Both portions of the formula were intended to apply to recognition surveys. Accordingly, we clarified the regulation to state that the recognition survey will be conducted only after the new facility either has at least 21 residents or has a number of residents that consist of at least 50 percent of the new bed capacity of the new facility. We also note that under